

**DECLARATION**

*establishing*

**GREENPOINT TRAIL ASSOCIATION, INC.**

**S&J MORRELL, INC.**  
1501 Pittsford Victor Road  
Victor, New York 15464

**SPONSOR**

\_\_\_\_\_, 2017

**DATED**

**WOODS OVIATT GILMAN LLP**  
700 Crossroads Building  
Two State Street  
Rochester, New York 14614

**ATTORNEYS FOR THE SPONSOR**

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

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

THIS DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, 2017, by S&J Morrell, Inc., a New York corporation, which has offices at 1501 Pittsford Victor Road, Victor, New York, being hereinafter referred to as the "Sponsor".

WHEREAS, the Sponsor is the owner of the real property described in Article II of this Declaration, being Greenpoint Trail Subdivision, as the same is shown on a map of said subdivision recorded in the Monroe County Clerk's Office in Liber \_\_\_\_ of Maps, at page \_\_\_\_, which the Sponsor desires to develop as a residential community with open spaces and other common facilities for the benefit of said community, and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described above to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, and

WHEREAS, the Sponsor desires that certain portions of said real property be subdivided into lots upon which are or will be constructed residential dwelling units, which lots and units will be individually owned and the Sponsor desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community, and

WHEREAS, the Sponsor has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an Association to which should be delegated and assigned the powers of maintaining and administering the community property and facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, the Sponsor has incorporated the Greenpoint Trail Association, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Sponsor, for itself, its successors and assigns, declares the real property described in Section 2.01 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "ASSOCIATION" shall mean and refer to the GREENPOINT TRAIL ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Pittsford or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- F. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities, of the fee interest in any Lot or Townhome, whether or not such holder actually resides in such Townhome or on such Lot.
- G. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- H. "SPONSOR" shall mean and refer to S&J Morrell, Inc.
- I. "TOWNHOME" shall mean and refer to each completed dwelling, as evidenced by issuance of a Certificate of Occupancy by the Town of Pittsford, including garage, situated upon the Property or any such structure or improvement on the Property which is intended to be occupied as a residence or in conjunction with a residence.

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

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Pittsford, County of Monroe and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as "Property".

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be

transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

Section 2.03. Additional Property. The Sponsor shall have the right but not the duty or obligation to incorporate and bring into and within the scheme of this Declaration additional lands by amending this Declaration. The amendment shall contain such terms and conditions reflecting the uniqueness of the additional lands and its improvements.

### **ARTICLE III THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS**

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed the Association, to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, and as they may be amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a Not-for-Profit Corporation as contained in the Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Sponsor. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no other qualification for Membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including Lots which may be incorporated by amendment hereto, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. Lots Owned or Held by More Than One Person or by Entity. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common ownership or interest such Owners shall collectively be entitled to only that number of votes prescribed herein for such Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

In the case of an entity Owner, votes may be cast by an appropriate member, partner, or officer of such entity.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. The Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. All such assignments shall be subject to the provisions of the Offering Plan pursuant to which the Sponsor has offered interests in the Association, including any duly filed amendments thereof.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled.

Section 3.12. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, the Board of Directors may not, without the Sponsor's written consent, which consent will not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Property of the Association costing more than 20% of the then current annual budget, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Lot, or (v) reduce the quantity or quality of services or maintenance of the Association Property.

During Sponsor control, the Sponsor will not exercise veto power over the expenses in the Projected Schedule of Receipts and Expenses, nor over expenses required to (1) comply with applicable law or regulation; (2) remedy and notice of violation; (3) remedy any work order issued by an insurer; or (4) ensure the health and safety of the occupants of the building, provided such maintenance action is otherwise the obligation of the Association.

Until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, this Section of the Declaration or any other section of the Declaration shall not be amended without the prior written consent of the Sponsor.

**ARTICLE IV**  
**PROPERTY RIGHTS AND EASEMENTS**

Section 4.01. Dedication of Association Property. The Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members, which land shall hereinafter be referred to as "Association Property". The Association shall accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association, the Sponsor, and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner.

Every Member (and such Member's guests, licensees, tenants and invitees) also shall have an easement for ingress and egress by vehicle or on foot over Association Property and the common utility and conduit easements described in Section 4.06 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

Section 4.03. Rights of Association. With respect to the Association Property, and/or Property, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

- (a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;
- (b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;
- (c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Members who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;
- (d) to enter into agreements, reciprocal or otherwise, with other Homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than 60 days in advance of the vote on the proposed agreement;
- (e) to use electricity for *incidental* maintenance of Association Property without charge;

(f) to draw water more or less equally from Lot Owners outdoor hose bibs for watering lawns and shrubs. Lot Owners shall have the responsibility to have their water supply valve for the outdoor bibs in the open position from May 1st through October 31st of each year. Notwithstanding the above, Lot Owners have the first and primary responsibility for watering their lawns as weather dictates.

Section 4.04. Rights of Sponsor. With respect to Association Property, the Sponsor shall have the right until the improvement, marketing and sale of all Lots is completed:

- (a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not limited to, water, gas, electric, telephone, cable television and sewer to service the Property;
- (b) to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property;
- (c) to use the Association Property for ingress and egress to those portions of the Initial Property (as described in Section 2.01 of this Declaration);
- (d) to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not limited to, the paved areas;
- (e) to grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of the Property.

All easements, rights-of-way and other rights granted by the Sponsor pursuant to (a), (b), (c) and (e) above shall be permanent, run with the land and be binding upon and for the benefit of the Association and the Sponsor and their respective successors and assigns. The rights granted to the Sponsor pursuant to (d) above shall remain in effect until the Sponsor completes the improvement, marketing and sale of all Lots or the Sponsor records a written memorandum releasing its rights hereunder.

Section 4.05. Rights of Individual Lot Owners. Each Lot Owner shall have an easement over Association Property and over the property of adjacent Lot Owners for the performance of routine maintenance on a Lot Owner's Townhome, provided, however, the right of entry shall be exercised upon reasonable notice to the adjoining Lot Owner, except in the case of an emergency, shall be limited to reasonable times, and shall be exercised so as not to impair the enjoyment of the adjacent Lot. The easement area shall be limited to that area reasonably necessary to effect repairs and maintenance of the Owner's Townhome. The easement area shall be used for actual repairs and maintenance only; the storage of material, supplies and other objects associated with the work to be completed shall not be permitted. The Owner entering upon an adjacent Lot shall perform the contemplated work with dispatch, and shall be responsible for all costs for the repair and restoration of any damage caused to the adjacent Lot, including but not limited to structural repairs, replacement of lawns, bushes and similar objects. An Owner entering upon an adjacent Lot shall indemnify and hold harmless the adjacent Lot Owner against any and all claims which may arise by virtue of the repair or maintenance work performed.

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's driveway as constructed by the Sponsor.

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's deck or patio, if any, as constructed by the Sponsor, servicing the Owner's Townhome.

Section 4.06. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot. The Association shall have the right of access to each Lot and residential dwelling thereon for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot or within any residential dwelling thereon. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Lot Owner or Owners, it shall be considered a special expense allocable to the Lot Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Lot Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots to secure the payment thereof.

Section 4.07. Rear Yard Access Easement. Each Lot Owner shall have an access easement over the side and rear ten feet (10') of the unimproved portion of all Lots for routine and necessary maintenance purposes.

Section 4.08. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.09. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.

Section 4.10. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and, in its discretion, may establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment.

Section 4.11. Common Access Easement. The Sponsor and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways and drives located on the Association Property and the Association shall have an access easement to each Lot for the maintenance, repair and replacement of paved areas and any other property or facilities, the maintenance of which is the responsibility of the Association.

The Sponsor and all Owners and their guests, licensees and invitees shall have an easement of ingress and egress by foot and vehicle for the use and enjoyment of the paved common access drives.

Section 4.12. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of New York.

## **ARTICLE V** **ASSESSMENTS**

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, excluding the Sponsor, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); (b) special assessments for capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year ("Special Assessments"); hereinafter collectively referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and also shall be the personal obligation of the Owner of such Lot at the time the assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as landscaped areas, and of the Townhome exterior, including roof, gutters, and downspouts repairs and maintenance, exterior siding, including the painting of exterior surface frame and trim of windows and doors, the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise, but excluding the repair or maintenance of any glass surface, door, stoop, porch or stair.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such other date as determined by the Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration, excluding the Sponsor, shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any. For so long as Sponsor owns a Lot then subject to the Declaration, the Maintenance Assessment for Lots owned by someone other than Sponsor shall not be less than the amount set forth in the Offering Plan on file with the NYS Attorney General's Office, without the prior written consent of the Sponsor. The Maintenance Assessment on the Lots owned by the Sponsor shall be an amount calculated in accordance with the following: The Sponsor shall be obligated for the difference between the actual Association expenses, exclusive of reserves applicable to completed improvements, and the Association charges levied on owners who have closed title to their

Lots. For those Lots owned by Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of a Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. This Section may not be amended without the prior written consent of the Sponsor.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot transferred to a third party purchaser for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by a fraction, the numerator of which is one (1), and the denominator of which is the total number of Lots then subject to this Declaration, as amended.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, no change in the basis of Maintenance Assessments which adversely affects the interest of the Sponsor with respect to unsold Lots shall be valid except with the specific consent of the Sponsor in writing. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Section 5.07. Special Assessments for Capital Improvements and Other Needs. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from

time to time, such rate not to exceed ten percent (10%) per annum, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association, under no circumstances, shall entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or at the request of a mortgagee, shall send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Late charges, penalties and attorney fees shall not be payable or collectable for unpaid common charges or assessments owed by the Sponsor.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject to (i) the

approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;
- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
  - (1) assess the Maintenance Assessment on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
  - (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
  - (3) provide for the custody and safeguarding of all funds received by it;
  - (4) establish sinking funds and/or other security deposits;
  - (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

**ARTICLE VI**  
**MAINTENANCE BY THE ASSOCIATION**

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all paved areas on the Association Property, snow removal from all paved areas, and the maintenance of all landscaped areas within Lots and Association Property shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether such lines and facilities are on individual Lots or Association Property) also shall be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including the entrance monument, paved areas, walkways and landscaped areas within Lots and Association Property. The Association also shall be responsible for snow removal from paved areas, excluding walks. Individual Lot Owners are responsible for snow removal from the walks and entryways abutting their dwellings.

The Common Area, owned and maintained by the Association, will include the following improvements:

1. Storm water management pond and drainage swales;
2. Greenpoint Trail Road;
3. Driveways serving the individual townhomes;
4. Entrance monument;
5. Open space and landscaped areas.

The Association is solely responsible for the maintenance of the Common Area and the improvements within the area, including but not limited to the above items, in accordance with maintenance plans on file with the Association and the Town of Pittsford. Under no circumstances is the Town of Pittsford responsible for the maintenance of the Common Area and the improvements located thereon.

b. Maintenance of Townhomes. With respect to the Townhomes, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts and roofs. The Association shall paint the wood surfaces of trim, windows and doors, and seal or stain decks. The Association shall not repair or replace windows, skylights, window panes, doors, garage doors, storm doors, decks, or maintain, repair or replace porches, stone pavers or stoops, patios or concrete walks. Exterior items that are vinyl coated and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations. The Association shall not be responsible for the removal of snow from roofs.

With respect to the other improvements on a Townhome Lot, the Association shall stain fences, railings and decks initially installed by the Sponsor, but shall not repair or replace spalling concrete walks, stoops or porches, or fences, railings and decks. Those portions of sewer, water, and utility laterals servicing one (1) or more Townhomes and not maintained by a utility company, public authority, municipality or other entity, will be maintained by the Association, limited however to repair necessitated by leakage or structural failure only.

The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company, (iii) the maintenance, repair or replacement of the dedicated improvements, or (iv) obstructed sewer laterals.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner, excluding the Sponsor, shall be made at the cost and expense of such Lot Owner ("Owner Repair"). In addition to the above, if the Association's master insurance policy covers the Owner Repair, the Lot Owner shall be solely responsible for payment of the deductible under the Association's master insurance policy. If such Owner Repair is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

The Lot Owner shall maintain the improvements in a clean and good condition, employing a high and proper standard, and in a manner equal to the maintenance standards of the Association. Upon the Lot Owner's failure to maintain, the Association may maintain the area or remove the improvement and restore the area to its original condition at the defaulting Lot Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Lot Owner and shall be deemed to be a common assessment, a lien against the Lot and collectable as such.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) upon reasonable notice to the Owner(s), shall have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

## ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property, shall be the responsibility of the Association, acting through the Architectural Standards Committee (hereinafter referred to as the "Architectural Committee") as provided in Section 7.02 below. ***Lot Owners may NOT make any exterior improvement to their home or the Lot, including but not limited to landscaping or foundation plantings, without Architectural Committee written approval.***

Section 7.02. Composition and Function of Architectural Standards Committee. The Architectural Committee shall be a permanent committee of the Association and shall approve all proposed improvements, additions, modifications or alterations to any existing improvements or any proposed change in the use of a Lot or any other portion of the Property, including Association Property, after transfer of title to such Lot or other portion of the Property, working within guidelines and policies established by the Board of Directors. The Architectural Committee also may assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three (3) or more persons, as determined by the Board of Directors of the Association, for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor no improvement, exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee, working within guidelines and policies established by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee, working within guidelines and policies established by the Board of Directors, may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, or proposed parking;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, preservation, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record, together with such qualifications, or provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 45 days after submission thereof, the applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;

- b. Seventy (70) days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Architectural Committee as long as the number and identity of such staff or members, and the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Architectural Committee.

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 7.11. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Architectural Committee Certificate was issued.

## **ARTICLE VIII**

### **PARTY WALLS AND ENCROACHMENTS**

Section 8.01. Party Walls. Each wall which is built as part of the original construction of the Townhomes, whether or not such wall is on the dividing line between two (2) adjacent Lots, and which serves as the exterior limit of the two (2) Townhomes, shall be considered a party wall.

Section 8.02. Maintenance of Party Walls. Each Townhome Owner whose Townhome contains a party wall shall have an easement to enter upon the Townhome with which the party wall is shared to effect necessary repairs or

maintenance of said party wall. Each Townhome Owner shall be responsible for the ordinary maintenance and repair of such Townhome Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two (2) Townhome Owners which share such wall.

In any event where it is necessary for a Townhome Owner, its authorized employees, contractors or agents, to enter upon a Townhome owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Townhome Owner, shall be limited to reasonable times, and shall be exercised so as not to impair enjoyment of said adjacent Townhome.

Section 8.03. Exposure of Wall. A Townhome Owner who, by negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used and Workmanship. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Townhome which used the wall may restore it. The Townhome Owner who undertakes such restoration shall be entitled to a contribution equaling one-half (1/2) the cost of such restoration from the Owner of the other Townhome which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of a Townhome Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Townhome Owner.

Section 8.07. Encroachments and Projections. If any Townhome and all improvements associated with it, including but not limited to patios, porches, walks, decks, and privacy fencing, or any other improvement installed by the Sponsor, encroaches or projects upon any other Townhome Lot or upon any portion of the Association Property as a result of the construction of such Townhome, or if any such encroachment or projection shall occur as a result of settling or shifting of such Townhome or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Townhome or portion thereof shall stand. In the event one (1) or more Townhomes or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or Proceedings of similar import and effect, and such Townhome(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Townhome(s) or portions thereof upon any other Townhome or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

## **ARTICLE IX**

### **INSURANCE AND RECONSTRUCTION**

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) fire

and casualty insurance on the Association Property, the Townhomes, (ii) liability insurance on the Association Property, (iii) directors' and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverage shall be as follows:

1. Fire and Casualty. Coverage shall be for the unit value of each Townhome under the "single entity" concept, i.e. covering the Townhomes as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings and all machinery servicing the Townhomes and common facilities, excluding the land, foundations, the personal property of Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, and wall coverings) made by present or prior Owners or occupants.

The policy shall have the following provisions, endorsements and coverage: (i) extended coverage, vandalism and malicious mischief, (ii) inflation guard, (iii) coverage for loss of Maintenance Assessment from Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association, (v) a provision that the policy shall in no event be brought into "contribution" by individual Owners or mortgagees, (vi) a provision that the policy cannot be canceled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (vii) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage, (x) a provision that adjustment of loss shall be made by the Board of Directors and (xi) a provision that the policy not require the insured to be a co-insurer in the event of loss or claim under the policy.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or otherwise for the purpose of determining the amount of fire insurance to be effected pursuant to this section.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less shall be payable to the Association, and if \$50,000.00 or more, to an Insurance Trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 9.02 of this Declaration.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the Trustee shall be paid by the Association and shall be a common expense of the Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to the mortgagees as its interest shall appear, subject, however to the loss payment provisions in favor of the Association and the Insurance Trustee. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Each Owner and such Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing insurance coverage.

Duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of Townhomes.

If the Board of Directors decides not to insure the Townhomes or decides to insure the Townhomes in an amount less than that necessary to provide for the full replacement or reconstruction of the damaged improvements taking into account coinsurance provisions, each Owner shall, at the Owner's sole cost and expense, purchase and maintain fire and extended coverage insurance in such amounts as from time to time may be required by the Board of Directors, from a company licensed to do business in the State of New York. Such insurance shall be in the standard New York State form and shall cover loss and damage to the Lot, Townhome (including garage), and all other improvements on the Lot. All insurance policies shall cover the interest of the Owner, the Association, and mortgagees, if any, as their interests may appear.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners of Townhomes, but not the liability of Townhome Owners arising from occurrences within such Owner's Townhome or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) Personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage, with an excess umbrella of \$1,000,000.00.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$1,000,000.00.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$5,000.00 for forgery.

5. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

6. No Liability for Failure to Obtain Above Coverage. The Board of Directors shall not be liable for failure to obtain any of the coverage required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage are so available only at demonstrably unreasonable cost.

7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense for those claims relating to Association maintenance responsibility. The Board of Directors of the Association shall assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner, as well as any deductible amount necessitated by a fire within the Lot Owners dwelling and not caused by the Association's negligence or activities. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

**Option to Have Insurance Paid by Lot Owners** Directly The Board of Directors may, at its option, elect to have any insurance which it obtains, paid for directly by the Owners of the Lots rather than from assessments paid to the Association. However, should any Owner fail to pay such Owner's portion of such insurance premium, the Board of Directors may elect to pay such amount on behalf of such Owner in which event such amount so advanced shall be a charge and continuing lien upon the Lot of such Owner and shall also be the personal obligation of such Owner. Such amount shall bear interest and shall be collectible in the same manner as a delinquent assessment as set forth in Section 5.08 of this Declaration.

Section 9.02. **Restoration or Reconstruction After Fire or Other Casualty.** In the event of damage to or destruction of any Townhome, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if the Owners of 75% or more of all Townhomes do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Townhome Owners in proportion to the damage to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to a Townhome Owner until there has first been paid out of such Townhome Owner's share of such funds all liens on such Owner's Townhome. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners of the damaged Townhomes in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhome and any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to the respective mortgagees and Townhome Owners in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhome and Lot, provided, however, that no part of a distribution that results from an Assessment paid by a Townhome Owner, shall be made to all Townhome Owners and their mortgagees as their interest may appear.

Section 9.03. **Insurance Carried by Owners.** Owners of Townhomes shall not be prohibited from carrying other insurance for their own benefit, provided that such policies contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

## **ARTICLE X**

### **GENERAL COVENANTS AND RESTRICTIONS**

Section 10.01. **Advertising and Signs.** Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots, no additional sign (other than a professional shingle affixed to the dwelling indicating the name of a firm or person and/or such firm's or person's profession, the materials, size, design, style and color of which shall be approved by the Architectural Committee) or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property, including but not limited to temporary signs advertising property for sale or rent, except with the consent of the Architectural Committee.

Section 10.02. **Animals, Birds and Insects.** The Association may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of pets and (ii) prohibit certain types of pets entirely. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. Provided an Owner obtains the prior written consent of the Association, an underground pet containment system may be installed. Assuming the Owner has installed an underground pet containment system, a pet may be let outdoors within the area of the underground pet containment system in the company of a responsible person, but need not be leashed. No above

ground or visible pet containment enclosures shall be permitted. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any pet, if, in the opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners.

Section 10.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially installed by the Sponsor on a Lot or other portion of the Property and not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Association so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association.

Section 10.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 10.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Association.

Section 10.08. Dwelling in Other Than Residential Unit. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.09. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association, which shall be in compliance with Federal regulations.

Section 10.10. Trees and Other Natural Features. After the transfer of title by the Sponsor to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.11. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 10.12. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association, subject, however, to the Town of Pittsford Zoning Code and the Parks and Recreation Law of the State of New York.

Section 10.13. Commercial and Professional Activity on Property. No wholesale or retail business, service occupation or home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, except by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots, except that Association consent shall not be required for a legal home occupation requiring no visitor parking or employee parking.

Section 10.14. Outside Storage. Outside storage or parking for more than one 72 consecutive hour period per month of commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited.

Section 10.15. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

Section 10.16. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property for more than 72 hours within any month:

- a. any vehicle which cannot fit into a garage of the size constructed by the Sponsor with the Units with the overhead garage door closed;
- b. commercial vehicles of a weight of two (2) tons or more, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 10.17. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Association.

Section 10.18. Chain Link Fences. Unless otherwise consented to by the Association, no chain link fence shall be erected anywhere on the Property.

Section 10.19. Prohibited Structures. No shack, barn, storage shed or other out-building, accessory structure, either temporary or permanent, shall be erected on any Lot.

**ARTICLE XI**  
**ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION**

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property, whether or not the deed, lease or any other instrument incorporates or refers to the Declaration, covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. Additionally, after 30 days written notice of any violation of the Declaration or the Associations Rules and Regulations, as adopted from time to time, the Lot Owner will be subject to a violation fee of \$50 per day until the violation is cured.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior to or subsequent thereto. No liability shall attach to the Sponsor, the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any. This paragraph shall not be applicable to any action brought by the Association against the Sponsor.

Section 11.05. Inspection and Entry Rights. Any agent of the Association or the Architectural Committee may at any reasonable time or times, upon not less than 24 hours' notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the view of street traffic, or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall

be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter endeavor to provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration.

Section 11.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration. In addition, so long as the Sponsor owns a Lot subject to this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor.

In voting for such amendment or rescission, the Members voting rights shall be as set forth in Article III hereof.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least 30 days prior to the date set for voting on said proposed amendment or rescission.

In addition to the approval of the Lot Owners and Sponsor, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2030, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 11.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and making and finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and other residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization or approval, as herein provided, the Association may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the consideration set forth in the immediately preceding paragraph hereof.

Section 11.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.12. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.13. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

**ARTICLE XII**  
**GENERAL**

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 12.02. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Sponsor, Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 12.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.05. Right of Association To Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners or residents association or similar entity.

S&J MORRELL, INC.

By: \_\_\_\_\_  
Jeff Morrell, Vice President

GREENPOINT TRAIL ASSOCIATION, INC.

By: \_\_\_\_\_  
Jeff Morrell, President

STATE OF NEW YORK)  
COUNTY OF MONROE) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 201\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared Jeff Morrell personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

Schedule A  
Legal Description

**CERTIFICATE OF INCORPORATION  
OF  
GREENPOINT TRAIL ASSOCIATION, INC.**

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, being at least 18 years of age and desiring to form a not-for-profit corporation under the Not-for-Profit Corporation Law of the State of New York, hereby certifies that:

1. The name of the Corporation is Greenpoint Trail Association, Inc.
2. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain and no part of the assets, income or profit of the Corporation shall be distributable to, or inure to the benefit of, its members, directors or officers, or any private person, except to the extent permissible under the Not-for-Profit Corporation Law. The Corporation is a non-charitable corporation under section 201 of the Not-for-Profit Corporation Law.
3. The Corporation is a homeowners association formed to promote and provide for the maintenance, preservation, and architectural control of the homes and common area of Greenpoint Trail, Pittsford, Monroe County, New York (the "Property"), to promote the health, safety, and welfare of the residents of the community.
4. In furtherance of, and not in limitation of, the purposes of the Corporation, the Corporation shall have all the powers now or hereafter granted to non-charitable corporations under the Not-for-Profit Corporation Law and any successor statute, including, without limiting the generality of the foregoing, the power to acquire, invest in, hold, sell, exchange and dispose of real and personal property of all kinds and varieties and interests, including security interests and mortgages therein.
5. The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any State official, department, board, agency or other body. No such consent or approval is required. Further, the Corporation is not formed to operate a hospital, drug maintenance program, certified home health agency, health maintenance organization or to provide hospital or health related services, or to offer a comprehensive health services plan as any of the foregoing are respectively defined in Articles 28, 33, 36, and 44 of the Public Health Law.
6. The office of the Corporation will be located in the County of Monroe, State of New York.
7. The initial directors of the corporation until the first annual meeting are as follows:

Jeffrey D. Morrell  
1501 Pittsford Victor Road  
Victor, New York 14564

Scott M. Morrell  
1501 Pittsford Victor Road  
Victor, New York 14564

Hannah Hall  
1501 Pittsford Victor Road  
Victor, New York 14564

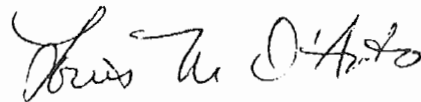
8. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is 1501 Pittsford Victor Road, Victor, New York 14564.

9. Every person or entity who is a record owner of a fee interest in any Lot in the Property which is subject by covenants of record (the "**Declaration**") to assessments by the Corporation, including contract vendors, and, in addition, the Sponsor, so long as it shall be the record owner of a fee interest in any Lot in the Property, whether or not subject to assessments by the Corporation, shall be a member of the Corporation. The Corporation shall have two (2) classes of membership. No person shall be a member of the Corporation solely on account of ownership of an interest in a Lot in the Property solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot in the Property subject to assessment by the Corporation.

10. Neither this Certificate of Incorporation nor the Corporation's By-Laws shall be amended in any manner which conflicts with the Declaration.

11. Upon dissolution of the Corporation other than incident to a merger or consolidation, no part of the assets of the Corporation nor any of the proceeds thereof shall be distributed to the members, officers or directors of the Corporation as such, but all such property and proceeds shall, subject to the discharge of the Corporation's liabilities, be distributed as directed by the members of the Corporation to a public agency to be used for not-for-profit purposes similar to those for which the Corporation was created or for the general welfare of the residents of the municipality in which the Property is located or to a corporation, association, trust or other organization not organized for profit and operated exclusively for the promotion of social welfare, subject to the approval of a Justice of the Supreme Court of the State of New York.

IN WITNESS WHEREOF, the undersigned has subscribed and affirmed this Certificate as true under the penalties of perjury this September 6, 2016.



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Louis M. D'Amato  
Woods Oviatt Gilman LLP  
2 State Street, 700 Crossroads Building  
Rochester, New York 14614

**By-Laws**

*establishing*

**Greenpoint Trail Association, Inc.**

**S&J Morrell, Inc.**  
1501 Pittsford Victor Road  
Victor, New York 14564

**Sponsor**

**Woods Oviatt Gilman LLP**  
700 Crossroads Building  
Two State Street  
Rochester, New York 14614

**Attorneys for the Sponsor**

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**BY-LAWS  
OF  
GREENPOINT TRAIL ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

SECTION 1.01 Name and Location. The name of the corporation is the GREENPOINT TRAIL ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Association shall be located in the Town of Pittsford, County of Monroe and State of New York.

**ARTICLE II**

**DEFINITIONS**

As used in these By-Laws, the following terms shall have the definitions ascribed to them below:

SECTION 2.01 Association. GREENPOINT TRAIL ASSOCIATION, INC., a New York not-for-profit corporation.

SECTION 2.02 Declaration. The document entitled "Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens" imposed by the Sponsor of the Property, as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

SECTION 2.03 Lot. Any portion of the Property identified as a separate parcel on the tax records of the Town of Pittsford or shown as a separate lot upon any recorded or filed subdivision map, with the exception of Association Property as defined in the Declaration.

SECTION 2.04 Member. Every person or entity who is a record owner of a fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract vendors and, in addition, the Sponsor, as that term is defined in the Declaration, so long as it shall be the record owner of a fee interest in any Lot subject to the Declaration, whether or not subject to assessments by this Association. No person, however, shall be a member of the Association solely on account of ownership of an interest in a Lot solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot subject to assessment by the Association.

SECTION 2.05 Property. All property within Greenpoint Trail.

SECTION 2.06 Sponsor. S&J Morrell, Inc., its successors and assigns.

SECTION 2.07 Townhome. A single family dwelling on the property that is attached to at least one (1) or more townhomes by means of a party wall or otherwise.

### ARTICLE III

#### **MEMBERS**

SECTION 3.01 Membership in the Association. The Members of the Association shall be the Owners of Lots within the Property, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member. The Association shall have two (2) classes of Membership. Class A members shall be all Owners of Lots except the Sponsor and the sole Class B member shall be the Sponsor or assignee. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until all Lots owned by Sponsor, including Lots incorporated by subsequent amendment to the Declaration, are transferred by the Sponsor, or until 15 years following the recording of the Declaration, whichever shall first occur. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights.

SECTION 3.02 Right of Sponsor to Assign; Otherwise No Assignment. Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

### ARTICLE IV

#### **MEETINGS OF MEMBERS; VOTING**

SECTION 4.01 Annual Meeting. There shall be an Annual Meeting of the Members on the first Tuesday of March at 8:00 p.m., or at such other date and time and at such other place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the annual Meeting shall be a legal holiday, the meeting shall be held on the first day following, which is not a legal holiday. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

SECTION 4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, and shall be called by the Secretary of the Association at the request in writing of Members of the Association holding not less than the ten percent (10%) of the votes entitled to be cast at the meeting.

SECTION 4.03 Notice of Meetings. Not less than ten (10) days or more than 30 days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member written or printed notice stating the time and place of the meeting and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person without objection to lack or deficiency of notice prior to the conclusion of the meeting, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

SECTION 4.04 Voting Rights. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until all Lots owned by

Sponsor are transferred by the Sponsor, or until 15 years following the recording of the Declaration, whichever shall first occur. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights, and each Member shall have one vote, regardless of the number of Lots owned.

SECTION 4.05 Quorum and Vote. The presence in person or by proxy of Members having not less than one-half (1/2) of the total votes of the Membership entitled to vote shall constitute a quorum at any meeting. However, if a meeting cannot be held because a quorum is not present, the majority of the Members present, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours later, until a quorum shall be present in person or by proxy, with the quorum required for each reconvened meeting being one-half (1/2) of the quorum required for the previous meeting, but never less than one-tenth (1/10) of the total votes of the Membership entitled to vote. Directors shall be elected by the affirmative vote of Members entitled to vote and casting a plurality of the vote cast at a meeting of Members. With respect to all acts other than the election of Directors, the act of Members casting a majority of the votes cast at a meeting shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

SECTION 4.06 Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

SECTION 4.07 Entity Members. Any votes of an entity member may be cast by an appropriate partner, member, or officer of such entity.

SECTION 4.08 Joint or Common Ownership. Any one (1) joint or common fee owner of a Lot shall be entitled to cast the vote with respect to the Lot so owned, but all such joint or common owners shall together cast only one (1) vote for each Lot conferring voting rights. If the owners are unable to determine how the vote shall be cast, no vote shall be cast.

SECTION 4.09 Absentee Ballots. On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and that the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors, or may vote by a proxy which shall be in writing and shall be filed with the Secretary of the Association.

SECTION 4.10 Waiver and Consent. Wherever the vote of the membership is required by law or by the Certificate of Incorporation of the Association, the Declaration or 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.

## ARTICLE V

### **BOARD OF DIRECTORS**

SECTION 5.01 Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be five (5), except that an initial Board of three (3) Directors shall be designated by the Sponsor. The initial Board of Directors shall hold its first meeting within 30 days of

transferring title to the first Lot. The initial Board of Directors shall serve until the first annual meeting after the Sponsor no longer has an interest in a Lot then subject to the terms of the Declaration. Directors need not be Members.

SECTION 5.02 Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. Nominations also may be made from the floor at the Annual Meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election of the Board of Directors as it shall determine, in its sole discretion, but not less than the number of vacancies that are to be filled and such nomination may be made from Members of the Association.

SECTION 5.03 Election. At the first Annual Meeting after the Sponsor relinquishes control of the Board of Directors, that is when it no longer has an ownership interest in a Lot then subject to the Declaration, the Members shall elect three (3) Directors for a term of two (2) years and two (2) Directors for a term of one (1) year. At each Annual Meeting thereafter, the Members shall replace those Directors whose terms have expired and elect such successor Directors for a term of two (2) years. Voting shall be by secret written ballot which shall:

- a. Set forth the number of vacancies to be filled;
- b. Set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- c. Contain space for a write-in for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

SECTION 5.04 Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors (although less than a quorum) or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

SECTION 5.05 Removal. At any meeting of Members, duly called at which a quorum is present, the Members may, by the affirmative vote of not less than two-thirds (2/3) of the Members entitled to vote, remove any Director or Directors from office with or without cause and may by plurality vote elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. In addition the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings. This paragraph shall not apply to board members appointed by Sponsor.

SECTION 5.06 Compensation. Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. A Director who serves the Association in any capacity other than as a Director or officer, however, may receive compensation therefor.

SECTION 5.07 Regular Meetings. Regular Meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by

resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

SECTION 5.08 Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any two (2) Directors after not less than two-(2) days' notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in writing signed by such Director before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting without objection to lack or deficiency of notice prior to the conclusion of such meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of any Special Meeting need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

SECTION 5.09 Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, except as otherwise required by law, by the Certificate of Incorporation of the Association or by these By-Laws. Except in cases in which it is provided otherwise by law, by the Certificate of Incorporation or by these By-Laws, a vote of a majority of Directors present at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

SECTION 5.10 Informal Action by Directors. Any action required or permitted to be taken by a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be. Such written consent shall be filed with the minutes of proceedings of the Board or committee.

SECTION 5.11 Powers of the Board. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or these By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to, the following:

- a. To determine, levy and collect the assessments and common charges as provided for in the Declaration.
- b. To collect, use and expand the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association as permitted by the Declaration.
- c. To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Townhomes as it deems appropriate.
- d. To repair, restore or alter the properties of the Association or such other improvements for which the Association may now or hereafter have such responsibility under the Declaration, as amended, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- e. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce penalties for infractions thereof.

- f. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- g. To pay all expenses incurred by the Association and all taxes owing by the Association.
- h. To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.
- i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.
- j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.
- k. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.
- l. To dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall, however, require the consent of two-thirds (2/3) of the total votes of all Members at any meeting duly called and held or who shall vote upon written ballot which shall be sent to every Member not less than 30 days nor more than 60 days in advance of the canvass thereof. In addition, no such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance.
- m. To enter into agreements, reciprocal or otherwise, with other homeowners and residents associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than 10 days nor more than 60 days in advance of the vote on the proposed agreement.
- n. To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.

SECTION 5.12 Duties of the Board. It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.
- b. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.
- c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:

(1) Fix the amount of Special Assessments and Maintenance Assessments and other assessments to be assessed and levied against each Lot at the time or times and in the manner provided in the Declaration.

(2) Send written notice of each assessment to every owner of a Lot subject thereto at the time and in the manner provided in the Declaration.

(3) Foreclose the lien against any Lot for which assessments are not paid within 30 days after their due date, and to bring an action at law against the Member thereof personally obligated to pay the same.

d. Issue, or cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a Certificate states an assessment has been paid, such Certificate shall be conclusive evidence of such payment.

e. Procure and maintain adequate liability and hazard insurance for the Association Property, and if it so opts for the Townhomes.

f. Cause the Association Property, and on the default of the Lot Owner, the exteriors of the Townhomes to be maintained.

g. Cause all officers or employees having fiscal responsibilities to be bonded, as the Board of Directors may deem appropriate.

h. Prepare annual finance statements of the Association which are to be mailed to each Member by March 15th of each year.

SECTION 5.13 Performance of Duties: Conflict of Interests. The Directors and Officers of the Association may freely make contracts, enter transactions or otherwise act for and in behalf of the Association relating to or incidental to its operations, notwithstanding the fact that they may also be acting as individuals or as Directors of the Association and as agents for other persons or business concerns or may be interested therein as stockholders of said corporations or business concerns or otherwise, provided, however, that all such dealings shall at all times be at arm's length for and in the best interests of the Association and otherwise lawful.

## ARTICLE VI

### OFFICERS

SECTION 6.01 Officers. The officers of the Association shall be the President (who shall be a member of the Board of Directors), one (1) or more Vice Presidents (the number to be determined by the Board of Directors), the Secretary and the Treasurer and shall be appointed by the Board of Directors. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Two (2) or more offices may not be held by the same person.

SECTION 6.02 Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

SECTION 6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold offices until his or her successor shall have been duly elected, unless he or she shall sooner

resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 6.04 Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6.05 President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall preside at all meetings of Directors and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

SECTION 6.06 Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

SECTION 6.07 Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

SECTION 6.08 Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President, the Board or these By-Laws.

SECTION 6.09 Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

SECTION 6.10 Compensation. No executive officers of the Association shall receive any stated salary for their services, provided that nothing herein contained shall preclude any executive officer from serving the Association in any other capacity and receiving compensation therefor.

## ARTICLE VII

### COMMITTEES

SECTION 7.01 Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one (1) or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided, however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to these By-Laws or a plan of merger or consolidation.

SECTION 7.02 Committees of the Association. The committees of the Association shall be the Architectural Standards Committee, the Nominating Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of

the Board of Directors. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration.

SECTION 7.03 Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## **ARTICLE VIII**

### **FINANCE**

SECTION 8.01 Checks. All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer and countersigned by one (1) Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

SECTION 8.02 Fiscal Year. The fiscal year of the Association shall be the twelve-(12) calendar months, ending December of each year, unless otherwise provided by the Board of Directors.

SECTION 8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members and filed within 20 days thereafter at the principal office of the Association.

## **ARTICLE IX**

### **BOOKS AND RECORDS**

SECTION 9.01 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

## **ARTICLE X**

### **CORPORATE SEAL**

SECTION 10.01 Corporate Seal. The Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

## **ARTICLE XI**

### **AMENDMENTS**

SECTION 11.01 Alteration, Repeal or Amendment. These By-Laws may be altered, repealed or amended and new By-Laws may be adopted at any regular or special meeting of the Members, by vote of a majority of Members entitled to vote present in person or by proxy or (except as to any matter affecting membership qualifications or voting rights) at any regular or special meeting of the Board of Directors or by the affirmative vote of a majority of the whole Board of Directors.

SECTION 11.02 Conflict with Certificate of Incorporation or with Declaration. 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.

## ARTICLE XII

### INDEMNIFICATION

SECTION 12.01 Indemnification. To the extent permitted by law, the Association shall indemnify and hold harmless any person made a party to any proceeding by reason of the fact that such person is or was a Director or officer of the Association against any loss or expense incurred by said person by reason of such proceeding, including the settlement thereof, except in relation to matters which such person is adjudicated to be liable for gross misconduct in the performance of that person's duties.

## SPONSOR'S CERTIFICATION

STATE OF NEW YORK )  
COUNTY OF MONROE ) SS:

Re: Greenpoint Trail Association, Inc. ("HOA")

We are the Sponsor and the principals of the Sponsor of the homeowners association offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Office of the Attorney General in Part 22, and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

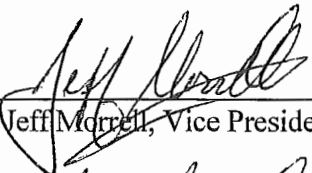
We certify that the rights of way, sewers and water lines, when constructed, will be in accordance with local government specifications. If the construction of the above public improvements has not been completed prior to conveyance to the Town of Pittsford or the Association, a bond or letter of credit will be posted with the Town or Association, or other adequate security will be provided in an amount to be determined by an engineer licensed to practice as a professional engineer in the jurisdiction where the Association is located, which amount shall not be less than the amount required to complete such construction to required specifications.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made.


We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: December 30, 2016

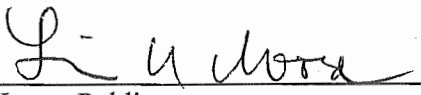
S&J Morrell, Inc.

By:   
Jeff Morrell, Vice President

  
Jeff Morrell

  
Scott M. Morrell

Sworn to before me this  
30 day of December, 2016

  
Notary Public

Lisa N. Moore  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires 5/8/18  
PL #01M06145578

**ENGINEER'S CERTIFICATION**

STATE OF NEW YORK       )  
COUNTY OF MONROE     ) SS:

Re: Greenpoint Trail Association, Inc. ("HOA")

The Sponsor of the offering plan to convert the captioned property to HOA ownership retained our firm to prepare a report describing the construction of the property (the "Report"). We examined the building plans and specifications that were prepared by Marathon Associates dated February 24, 2016 and prepared the Report dated December 29, 2016, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

We are licensed engineers in the State where the property is located.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 22 insofar as they are applicable to this Report.

We have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

We certify that the Report:

- (i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we examined;
- (ii) in our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we examined;
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by and have no beneficial interest in the sponsor and that our compensation for preparing this Report is not contingent on the conversion of the property to an HOA or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

Dated: DECEMBER 29, 2016

Marathon Engineering

By: [Signature]  
Robert P. Bringley, Registered Engineer, Lic # 66924

Affirmed to before me this  
29th day of December, 2016

[Signature]  
Notary Public

JOANNA L. STAPLETON  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-ST6062336  
QUALIFIED IN MONROE COUNTY  
MY COMMISSION EXPIRES 08-06-2017

**ARCHITECT'S CERTIFICATION**

STATE OF NEW YORK    )  
COUNTY OF MONROE   ) SS:

Re: Greenpoint Trail Association, Inc. ("HOA")

The Sponsor of the offering plan to convert the captioned property to HOA ownership retained our firm to prepare a report describing the construction of the property (the "Report"). We examined the building plans and specifications that were prepared by James Fahy Design dated June 10, 2016 and prepared the Report dated October 2016, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

We are a licensed architect in the State where the property is located.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 22 insofar as they are applicable to this Report.

We have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

We certify that the Report:

(i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we examined;

(ii) in our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we examined;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

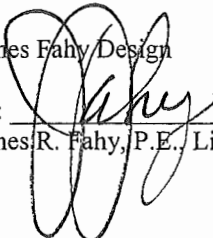
(vii) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by and have no beneficial interest in the sponsor and that our compensation for preparing this Report is not contingent on the conversion of the property to an HOA or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

Dated: January 5, 2017

James Fahy Design

Affirmed to before me this  
5<sup>th</sup> day of Jan, 2017

By:   
James R. Fahy, P.E. Lic. No. 063585

Notary Public

LOUIS M. D'AMATO  
Notary Public, State of New York  
Qualified in Monroe County  
No. 01DA4954365  
Commission Expires August 7, 2017

CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK )  
COUNTY OF MONROE ) SS:

Re: Greenpoint Trail Association, Inc. ("HOA")

The Sponsor of the homeowners association offering plan for the captioned property retained our firm to review Schedule A containing projections of income and expenses for the first year of operation as a homeowners association. Our experience in this field includes the management of forty three homeowners associations and condominiums, totaling over 3,700 living units. We have over 28 years experience in the management of homeowners associations, condominiums and commercial office and retail centers. We are a member of the Community Associations Institute and hold designations as a Real Property Administrator from the Building Owners and Managers Institute since 2001.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 22, insofar as they are applicable to Schedule A.

We have reviewed the Schedule and investigated the facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential/commercial property.

We certify that the projections in Schedule A appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

We certify that the Schedule:

(i) sets forth in detail the projected income and expenses for the first year of HOA operation;

(ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the Sponsor. We understand that a copy of this certification is intended to be incorporated into the offering plan.

This statement is not intended as a guarantee or warranty of the income and expenses for the first year of operation as a homeowners association.

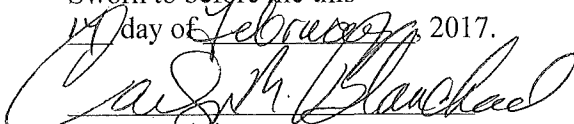
This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Realty Performance Group, Inc.

Dated: 2-14-, 2017

By:   
Robert F. Marvin, RPA, FMA, Pres.

Sworn to before me this  
17 day of February, 2017.

  
Notary Public

CAROLYN M. BLANCHARD  
Notary Public, State of New York  
No. 01BL6111382  
Qualified in Monroe County  
Commission Expires June 7, 2020

## MANAGEMENT AGREEMENT

This Agreement, made this 1st day of June, 2017 between **GREENPOINT TRAIL HOMEOWNERS ASSOCIATION, INC.**, having its principal office at c/o Jeff Morrell, Attention: Hanna Hall, Morrell Builders, 1501 Pittsford-Victor Rd., Victor, New York 14564, herein called Association, and **REALTY PERFORMANCE GROUP, INC.**, having its principal office at 1800 Hudson Ave., Suite 100, Rochester, New York 14617 herein called Agent.

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

### ARTICLE ONE

Association hereby appoints Agent, and Agent hereby accepts appointment on the terms and conditions hereinafter provided, as exclusive managing agent for the property known as Greenpoint Trail Homeowners Association, consisting of 34 homes (when completed), located at Pittsford, New York, which is hereinafter referred to as the Property.

Except as provided in Article Ten herein, this Agreement shall be for a term of three years, commencing June 1, 2017 and terminating May 31, 2020.

### ARTICLE TWO

In order to facilitate efficient operations, Association shall furnish Agent with a complete set of plans and specifications for the Property, if available, any rules and regulations established for the Property, all legal documents, a current assessment roll indicating the status of all homeowners on collections of assessments and other charges, copies of current insurance policies, any existing contracts affecting the Property, and any other pertinent information on the Property and Association. With the aid of these documents and inspection made by competent personnel, Agent will inform itself with respect to the layout, construction, location, character, plan and operation of the lighting, heating, plumbing, and ventilating systems, as well as elevators, if any, and other mechanical equipment in the Property that are the responsibility of Association. Copies of guarantees and warranties pertinent to the construction of the Property and in force at the time of the execution of this Agreement shall be furnished to Agent.

### ARTICLE THREE

Agent shall arrange for the employment of all managerial personnel necessary for the efficient discharge of the duties of Agent hereunder. Compensation for the services of such employees shall be the responsibility of Agent. Agent and those employees of Agent who are responsible for the handling of Association's monies shall, without expense to Association, be bonded by a fidelity bond with a company to be determined by Agent and in an amount acceptable to Agent and Association.

### ARTICLE FOUR

Under the personal and direct supervision of Agent, Agent or one of its employees shall render services and perform duties as follows:

a) Maintain a comprehensive system of office records and books, which records shall be subject to examination by authorized agents of Association at all reasonable hours. Agent shall maintain a current roster of individual homeowners and make such record changes as are appropriate in connection with all transfers of ownership, a roster of tenants in the Property, a roster of Board members and officers of Association.

b) Maintain businesslike relations with homeowners whose service requests shall be received, considered, and recorded in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to Association with appropriate recommendations. Agent shall assist Association in the enforcement of the provisions of Association's Declaration, By-Laws, rules and regulations, and any other governing documents. Agent shall maintain regular office hours of 8:00 AM to 5:00 PM weekdays, except holidays, and shall provide a 24-hour emergency answering service during non-business hours.

c) Collect, record and deposit all monthly assessments, late fees, fines, and other charges due from homeowners. Agent shall prepare and deliver a payment coupon book or twelve pre-addressed payment envelopes, at Association's option, for each homeowner for each fiscal year. Association hereby authorizes Agent to request, demand, collect, receive and receipt for any and all charges which may at any time be or become due to Association. Agent agrees to send one notice per month to any homeowners delinquent in the payment of fees due to Association, and to commence such legal action in the name of Association, when authorized by Association, against delinquent homeowners.

d) Investigate, hire, pay, supervise, and discharge the maintenance personnel necessary to be employed in order to be able to provide minor repair and maintenance services to the Property. Such personnel shall in every instance be in Agent's employ, and compensation for the services of such employees, as evidenced by payrolls certified by Agent, shall be considered part of the expenses of Association. Agent shall not be responsible for the acts, defaults, or negligence of such maintenance employees if reasonable care has been exercised in their appointment and retention. The charge rate for such maintenance employees of Agent shall range from \$45.00 to \$47.00 per hour, portal to portal, plus mileage at \$0.565 per mile. Seasonal employee rates shall range from \$32.00 to \$35.00 per hour. Such charge rates are subject to reasonable change by Agent periodically as may be necessary due to compensation changes or travel expense increases. Agent shall prepare for execution, filing and payment all employment forms, reports, and returns required by law in connection with unemployment insurance, worker's compensation insurance, disability benefits, social security, and other similar taxes now in effect or hereafter imposed.

e) Cause the common areas of the buildings, appurtenances, and grounds on the Property to be maintained, including but not limited to lawn mowing and fertilization, tree and shrub trimming and fertilization, shrub bed maintenance, snow removal, trash removal and recycling, annual pot hole repairs in pavement, common area cleaning, if applicable, and other maintenance and repair work as may be necessary. With the exception of payments required for taxes, insurance, utilities, and Association-approved contractual obligations, no expenditure shall be made in excess of \$1,000.00 for any item without the prior approval of Association; excepting, however, that emergency repairs, involving manifest danger to life or property, or immediately necessary for the preservation and safety of the Property, or the safety of the homeowners, or required to avoid the suspension of any necessary service to the Property, may be made by Agent irrespective of the cost limitation imposed by this paragraph. Notwithstanding this authority as to emergency repairs, it is understood and agreed that Agent will, if at all possible, confer immediately with Association regarding every such expenditure.

f) Subject to approval by Association, make contracts for water, electricity, gas, fuel oil, telephone, vermin extermination, and other necessary services or such of them that Agent shall deem advisable; and place orders for such equipment, tools, appliances, materials, and supplies as are necessary to properly maintain the Property. All such contracts and orders shall be made in the name of Association and shall be subject to the limitations set forth in Paragraph (e) of this Article Four. When taking bids or issuing purchase orders, Agent shall secure for credit to Association any discounts, commissions, or rebates obtainable as a result of such purchases.

g) Agent shall conduct weekly inspections of the Property, checking the general condition of the common areas, performance of Association's subcontractors, violations of Association rules and regulations, etc.

h) Obtain and submit to Association for approval, quotes for insurance needed to protect the Association (or as required by law), including, when appropriate, public liability insurance, directors and officers liability insurance, boiler insurance, fire and extended coverage insurance, and burglary and theft insurance. Agent shall be a named insured on all such insurance policies during the term of this Agreement.

i) From the funds collected and deposited in the special account hereinafter provided, cause to be disbursed regularly and punctually the Association real estate taxes, fire and other hazard insurance premiums, the amount specified for allocation to the funds for replacements and reserves, the sums otherwise due and payable by Association as operating expenses authorized to be paid under the terms of this Agreement, including Agent's fees. After disbursements, any balance remaining in the special account may be transferred from time to time, but only as specifically directed by Association in writing.

j) As a standard practice, Agent shall render to Board members of Association by not later than the tenth business day of each month a financial report on the operation of the Property during the previous month. Said financial report shall include the following:

- (1) Balance sheet, including assets, liabilities, detailed reserve accounts, and members equity.
- (2) Budget comparison report, comparing actual to budgeted amounts, showing the variance in both dollars and percentages for both the current month and year to date.
- (3) Homeowner assessment roll, listing each homeowner by unit number.
- (4) Rent roll, including each known tenant in the property, listed by unit number.
- (5) Expense register, listing every disbursement.
- (6) Delinquency report.
- (7) Reconciled bank statements.
- (8) Schedule of accounts payable, if any.
- (9) Other more detailed reports, if needed, are available, including a trial balance, general ledger, etc.

k) Prepare at least 30 days before the beginning of each new fiscal year, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the new fiscal year, taking into account the general condition of the Property. Once approved by the Board of Association, said budget shall be broken down on a monthly basis by Agent.

l) Attend the annual meeting of the Association and prepare and send meeting notices, ballots, proxies, etc. to homeowners. Attend the periodic Board meetings of Association, to a maximum of eleven such Board meetings per year. If the duration of any meeting exceeds two hours in length, Agent shall be entitled to additional compensation, as described in Article 8 (e).

m) It shall be the duty of Agent at all times during the term of this Agreement to operate and maintain the Property according to the highest standards achievable consistent with the overall plan of Association, and to this end Agent shall see that all homeowners are informed with respect to the rules, regulations, and notices as may be established for the Property. Agent shall be expected to perform such other acts and deeds as are reasonable, necessary, and proper in the discharge of its duties under this Agreement.

#### ARTICLE FIVE

Everything done by Agent under the provisions of Article Four shall be done as agent of Association, and all obligations or expenses incurred thereunder shall be for the account on behalf and at the expense of Association, except that Association shall not be obliged to pay the overhead expenses of Agent's office. Authorized expenses include all legal expenses, including without limitation reasonable attorney's fees, incurred in any action, proceeding, or suit in connection with the operation and management of the Property. However, no such action, proceeding or suit shall be commenced on behalf of Association without its prior consent. Any payments to be made by Agent hereunder shall be made out of such sums as are available in the special account of Association, or as may be provided by Association. Agent shall not be obliged to make any advance to or for the account of Association or to pay any sum, except out of funds held or provided as aforesaid, nor shall Agent be obliged to

incur any liability or obligation for the account of Association without assurance that the necessary funds for the discharge thereof will be provided.

#### ARTICLE SIX

Agent shall establish and maintain, in a bank whose deposits are insured by an agency of the federal government and in a manner to indicate the custodial nature thereof, a bank account for the deposit of monies of Association, with authority to draw thereon for any payments to be made by Agent to discharge any liabilities or obligations incurred pursuant to this Agreement, and for the payment of Agent's fee, all payments subject to the limitations in this Agreement. Such depository shall be selected by Agent. Agent shall not be held liable in the event of bankruptcy or failure of a depository. Any such accounts shall be separate and apart from Agent's accounts.

#### ARTICLE SEVEN

Association agrees to indemnify, defend, and save the Agent harmless from all suits in connection with the Property and from liability for damage to property and injuries to or death of any employee or person whomsoever, and to carry, at its own expense, necessary public liability, elevator liability (if elevators are part of the equipment of the premises), and worker's compensation insurance adequate to protect the interests of the parties hereto.

#### ARTICLE EIGHT

As compensation for services rendered by Agent in accordance with this Agreement, Association agrees to pay Agent as follows;

**34 units: Management fee of \$20.00 per unit per month \$8,160.00 annually.**

a) For management, a fee computed and payable monthly based on the number of units constructed as listed above. Payments due Agent for periods of less than a calendar month shall be prorated over the number of days for which compensation is due. The monthly management fee payable during the second year hereof and any annual renewal period shall be equal to the fee payable during the immediately preceding month plus an increase equivalent to the greater of three percent (3%) or the percentage increase in the Consumer Price Index (CPI-U) during the preceding calendar year or any renewal period.

b) If Association requests the presence of a representative of Agent at a special Board meeting of Association (other than the annual meeting and 3 monthly Board meetings) or a subcommittee meeting of Association, so long as Agent is given sufficient notice, Agent shall attend. Agent shall be paid an additional fee of \$50.00 per hour of attendance at any such meetings.

c) Association shall reimburse Agent for any and all out of pocket expenses incurred directly for Association, including but not limited to postage, long distance telephone call charges, stationery, assessment payment coupons and other pre-printed forms utilized at or for the Property, at cost, Association's share of the cost associated with the emergency answering service provided by Agent, and photocopies at \$0.10 per copy black/white and \$0.15 for colored per copy.

d) If during the term of this Agreement, Agent is required to prepare and submit an insurance claim to Association's insurance carrier, Agent shall be entitled to a fee equivalent to ten percent (10%) of the cost of said insurance claim. Agent shall include said fee in any such insurance claim as an administrative, management or overhead expense.

e) For any services provided by Agent to Association that are not specified herein, Agent shall be paid an hourly fee of \$50.00 per hour for manager time, and \$35.00 for support staff time, unless otherwise agreed by the parties hereto.

## ARTICLE NINE

Agent shall devote such of its time as it deems necessary to manage the Property in a prudent and efficient manner. Either of the parties may engage in and/or possess an interest in other business ventures of any nature and description, independently or with others, including but not limited to the ownership, financing, leasing, operation, management, syndication, brokerage, and development of real property; and neither party shall have any rights by virtue of this Agreement in and to said independent ventures or as to the income or profits derived therefrom. The fact that either party or any other entity in which it has interest or is employed by, is directly or indirectly interested in or connected with, any person, firm or corporation employed by either party, to render or perform a service for the Property, or to or from whom either party may lease with or employing such person, firm or corporation or from otherwise dealing with him or it and neither party, its parent, subsidiary, or any affiliate, as such, shall have any rights in or to any income or profits derived therefrom. If either party has an interest in any other person, firm, or corporation, directly or indirectly, which such party intends to employ to render a service for the Property, it shall notify the other party of the interest and will not so employ such person, firm, or corporation unless the fees to be paid for such service are competitive with those rates charged for similar services by disinterested parties in the general vicinity of the Property.

## ARTICLE TEN

a) Unless cancelled pursuant to Paragraph (a), (b), (c), or (d) of this Article, this Agreement shall be in effect for the term indicated in Article One above and thereafter for additional three year renewal periods from time to time, unless on or before sixty (60) days prior to the expiration of any such three year term, either party shall notify the other, in writing, that it elects to terminate this Agreement.

b) This Agreement may be terminated by either of the parties in writing as of the end of any calendar month.

c) In the event a petition in bankruptcy is filed by or against either Association or 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 terminate this Agreement without notice to the other, but prompt written advice of such action shall be given to the consenting parties.

d) Notwithstanding the foregoing, this Agreement shall terminate in any event, and all obligations of the parties hereunder shall cease (except as to liabilities or obligations which have accrued or arisen prior to such termination, or which accrue pursuant to Paragraph (e) in Article Ten as a result of such termination, and obligations to insure and indemnify), upon the occurrence of any of the following events:

(i) Breach of Agreement - Thirty (30) days after the receipt of notice by either party to the other specifying in detail a material breach of this Agreement, if such breach has not been cured within said thirty (30) day period; or if such breach is of a nature that it cannot be cured within said thirty (30) day period but can be cured within a reasonable time thereafter, if efforts to cure such breach have not commenced and/or such efforts are not proceeding and being continued diligently both during and after such thirty (30) day period prior to the breach being cured. However, the breach of any obligation of either party hereunder to pay any monies to the other party under the terms of this Agreement shall be deemed to be curable within thirty (30) days.

(ii) Failure To Act, Etc. - In the event that any insurance required of Association is not maintained without any lapse, or it is alleged or charged that the Property, or any portion thereof, or any act or failure to act by Association, its agents and employees with respect to the Property, fails to comply with any law or regulation, or any order ruling of any public authority, and Agent, in its sole discretion, considers that the action or position of Association or its representatives with respect thereto may result in damage or liability to Agent, or disciplinary proceeding with respect to Agent's license, Agent shall have the right to terminate this Agreement at any time by

written notice to Association of its election to do so, which termination shall be effective upon the service of such notice. Such termination shall not release the indemnities of Association set forth herein.

(iii) Excessive Damage - Upon the destruction of nor substantial damage to the Property by any cause, or the taking of all or a substantial portion the Property by eminent domain, in either case making it impossible or impracticable to continue operation of the Property.

(iv) Inadequate Insurance - If Agent deems that the liability insurance obtained by Association is not reasonably satisfactory to protect its interest under this Agreement, and if Association and Agent cannot agree as to adequate insurance, Agent shall have the right to cancel this Agreement upon the service of notice to Association.

e) If (1) Association terminates this Agreement before the end of the initial term or any subsequent term year for any reason other than for a breach by Agent under Paragraph (d) (i) above, or if (2) Agent terminates this Agreement for a breach by Association under Paragraph (d) (i) above or pursuant to the provisions of Paragraph (d) (ii) or (d) (iv) above, then in any such event, Association shall be obligated to pay Agent as liquidated damages an amount equal to the management fee earned by Agent, as determined under paragraph (a) in Article Eight above, for the calendar month immediately preceding the month in which the notice of termination is given to Agent or to Association, multiplied by the number of months and/or portions thereof remaining from the termination date until the end of the initial term or term year in which the termination occurred. Such damages, plus any amounts accruing to Agent prior to such termination, shall be due and payable upon termination of this Agreement. To the extent that funds are available, such sums shall be payable from the operating and/or other Property bank accounts maintained by Agent. Any amount due in excess of the funds available from said accounts shall be paid by Association to Agent upon demand.

f) Upon termination of or withdrawal from this Agreement, Association shall assume the obligations of any contract or outstanding bill executed by Agent under this Agreement for and on behalf of Association and responsibility for payment of all unpaid bills. In addition, Association shall furnish Agent security, in an amount satisfactory to Agent, against any obligations or liabilities which Agent may have properly incurred on Association's behalf under this Agreement. Agent may withhold funds for sixty (60) days after the end of the month in which this Agreement is terminated, in order to pay bills previously incurred but not yet invoiced and to close accounts. Agent shall deliver to Association, within sixty (60) days after the end of the month in which this Agreement is terminated, any balance of monies due Association which were held by Agent with respect to the Property, as well as a final accounting reflecting the balance of income and expenses with respect to the Property as of the date of termination or withdrawal, and all records, receipts for deposits, and other papers or documents which pertain to the Property. All leases, keys, contracts, and other documents necessary for the day-to-day operation of the Property shall be delivered to Association by Agent on the termination date.

g) All representations and warranties of the parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require Association to have insured or to defend, reimburse, or indemnify Agent shall survive any termination; and if Agent is or becomes involved in any proceeding or litigation by reason of having been Association's Agent, such provisions shall apply as if this Agreement were still in effect.

#### ARTICLE ELEVEN

a) Agent is authorized to deal with Association's Board President, or in his or her absence, the Vice President, on all matters relating to the management of the Property, unless otherwise directed by the Board, in writing. Agent is directed not to accept direction or instructions from anyone else.

b) All notices in relation to this Agreement shall be in writing and mailed, postage paid: if to Association, to the President of Association at his or her then current address; if to Agent, to Realty Performance Group, Inc., 1800 Hudson Ave, Suite 100, Rochester, New York 14617, unless otherwise directed by either party, in writing.

c) Invalidation of any portion of this Agreement or any provision shall in no way affect any other provision, which shall remain in full force and effect.

d) This Agreement may be executed in counterparts and all such counterparts, as so executed, shall constitute one agreement binding upon all the parties thereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

e) This Agreement shall be binding upon the successors and assigns of the contracting parties.

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

Agent:

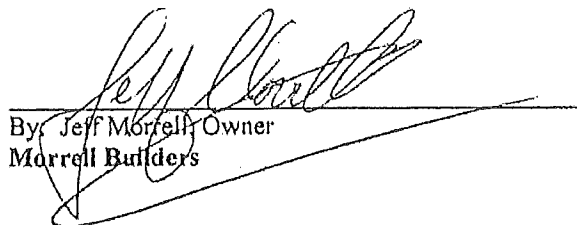
REALTY PERFORMANCE GROUP, INC.



By: Robert F. Marvin, President

Association:

GREENPOINT TRAIL HOMEOWNERS ASSOCIATION, INC.



By: Jeff Morrell, Owner  
Morrell Builders

**LEASE AGREEMENT  
GREENPOINT TRAIL**

Landlord: S&J Morrell, Inc. with its principal office at 1501 Pittsford-Victor Road, Victor, NY 14564 ("Landlord").

Resident: \_\_\_\_\_ ("Resident")

Additional Occupants: \_\_\_\_\_ ("Occupant" or "Occupants")

Resident Current Address: \_\_\_\_\_

Date of Lease	_____	Monthly Rent	\$ _____
Townhome No.	_____	Annual Rent	\$ _____
Term	<input checked="" type="checkbox"/> One Year <input type="checkbox"/> ____ Years		
Commencement Date	_____	Security Deposit	\$ _____
Termination Date	_____	Pet Security Deposit	\$ _____
Move In Date	_____	Initial/Pro-Rata Rent	\$ _____
Maximum Occupancy	Four (4) people	Total Received	\$ _____

**1. LEASE OF TOWNHOME**

Landlord leases to Resident and Resident leases from Landlord the Townhome above specified located at Greenpoint Trail Subdivision, {Insert Street Address}, Pittsford, Monroe County, New York (the "Townhome").

**2. PAYMENT OF RENT**

(a) Resident agrees to pay the monthly rent and all additional monthly charges in full in advance on the first day of each month during the term of the Lease at the post office box of the Landlord or such other place as the Landlord may select without any deductions being made from the rent payment. If the Resident's rent is not received by the Landlord by the first (1st) day of the month in which it is due, Resident agrees to pay a late charge of twenty-five dollars (\$25.00) as additional rent to the Landlord. If Resident's rent is not received by Landlord by the tenth (10<sup>th</sup>) day of the month in which it is due, Resident agrees to pay an additional late charge of fifty dollars (\$50.00). Resident agrees to pay a forty dollar (\$40.00) service charge as additional rent when any check or draft tendered by Resident to Landlord is returned due to insufficient funds, a stop payment order or any similar reasons or matter relating to Resident. In addition, if Resident's rent check is returned, Resident will pay the rent and the applicable late fees and charges by money order or certified check. If Resident's rent check is returned more than two (2) times in any twelve (12) month period, Resident shall pay all rent and other charges by money order or certified check. All payments made each month should be in the form of cash, personal check, money order or certified check and made payable to Cottage Grove Townhomes, or such other entity instructed by Landlord in writing to Resident.

(b) Resident and Landlord agree that all additional monthly charges are additional rent. Additional rent is payable together with Resident's next monthly rental installment. If Resident fails to pay the additional rent on time, Landlord shall have the same rights against Resident as if Resident failed to pay the rent.

(c) Resident agrees to pay as additional rent any expenses incurred by Landlord for collection or any other action Landlord takes to enforce or defend its rights under this Lease plus reasonable attorneys' fees. In the event Landlord commences an action to enforce its rights in which no monetary damages are sought, Landlord may recover its reasonable attorneys' fees.

(d) Resident shall be responsible for all utilities and services provided to the Townhome, including but not limited to gas, electric, telephone, cable, water and sanitary sewer services. All utilities and services shall be paid by Resident as determined by utility meters or sub-meters as assigned to townhome.

**3. TERM**

This Lease will not automatically renew and will terminate at twelve noon of the termination date above specified, unless this Lease is sooner terminated by Landlord upon default of Resident ("Termination Date"). If Resident desires to renew this Lease, Resident should provide written request to Landlord at least 60 days prior to the Termination Date.

**4. SECURITY DEPOSIT**

Landlord acknowledges receipt of the security deposit and agrees the security deposit will be deposited in a local bank selected by Landlord. No pet shall be housed within the Townhome or on the property without the express written consent of Landlord, which consent may be determined at Landlord's sole discretion. Any Resident owning a pet will be charged an additional security deposit in an amount to be determined by Landlord. If Resident fully complies with all of the terms of the Lease, Landlord will return the security deposit after the Lease Term ends. If Resident does not fully comply with the terms of the Lease, Landlord may use the security deposit plus any accumulated interest to pay any amounts owed by Resident to Landlord. Resident cannot use the security deposit for payment of rent.

**5. USE OF TOWNHOME**

Resident agrees to use and to occupy the Townhome strictly as a private dwelling for Resident and Occupant. Only those persons named in this Lease shall occupy the Townhome. Resident agrees to use and occupy the Townhome in a quiet and peaceful manner so as to not disturb, annoy or harass other Residents.

**6. CARE OF TOWNHOME**

Resident agrees to clean and take good care of the Townhome, its fixtures, equipment, appliances, carpeting and the interior and exterior walls Townhome and the building which the Townhome forms a part, and not to cause or allow to be caused any damage to Landlord's property.

**7. REPAIRS, ALTERATIONS AND DAMAGES**

(a) Resident agrees to pay for all costs necessary to repair the Townhome when damage to the Townhome is caused by Resident, Occupant or a guest of Resident or Occupant. Resident agrees to notify Landlord's office of any damage or defect in the Townhome, or any condition or emergency that might arise. Resident's taking possession of the Townhome shall be conclusive evidence that the Townhome and the building of which the Townhome is a part are in good and satisfactory condition at the time possession is taken.

(b) Resident may not paint, wallpaper, remodel, or make any structural changes to the Townhome without prior written permission from the Landlord. Any additions, decorations, installations, alterations or modifications made shall remain a part of the Townhome or at the Landlord's request, shall be removed by Resident and Resident also shall restore the Townhome to its original condition. No nailing of pictures and other wall decorations is permitted without Landlord's written permission. Resident shall make no changes in or additions to the electrical wiring as installed and maintained by the Landlord, nor shall Resident install and/or use electrical equipment or appliances not furnished by the Landlord except for small 110 volt appliances for personal use.

(c) Resident agrees to reimburse the Landlord upon demand for all expenses, attorneys' fees, damages or fines that are imposed upon the Landlord or incurred by Landlord (1) due to the violation of any provision of this Lease by any Resident, Occupant or a guest of Resident or Occupant or (2) resulting from injuries to persons or property caused by Resident, Occupant or a guest of Resident or Occupant or (3) resulting from improper conduct, carelessness or negligence of Resident, Occupant or a guest of Resident or Occupant. Resident is completely responsible for all acts of Resident, Occupants or guests.

(d) Resident will use reasonable care to use and maintain the carpeting in the Townhome in substantially the same condition as delivered to the Resident, except reasonable wear and tear. If Resident chooses to clean the carpet during the Lease Term, Resident will do so pursuant to manufacturer's specifications. At the end of the Lease Term, **Resident will pay a one-time, non-refundable carpet cleaning fee in the amount of \$100.00.** This fee shall be

payable as Additional Rent and due with the last Rent for the Lease Term. In the event Resident does not pay said Additional Rent for carpet cleaning, Landlord will withhold the same amount from the Security Deposit.

(e) Landlord shall not be liable for injury or damage to Resident, Occupant or a guest of Resident or Occupant and Resident and Occupant hereby release Landlord from any such liability. Resident and Occupant hereby indemnifies and holds Landlord harmless for, from and against all claims, losses or damages, including all reasonable attorneys' fees, costs and expenses, arising from any such injury or damage. In any action against Landlord by Resident, Occupant, Resident's or Occupant's family or guests, recovery shall be limited to liquidated damages in the amount paid by Resident to Landlord under the terms of this Lease.

#### **8. OBLIGATION TO INSURE**

Landlord will not be responsible or liable for any damage to Resident's or Occupant's personal property. The Resident and Occupant shall have these items insured for their replacement cost. Resident also shall have a Renters' Insurance Policy with Liability Coverage, naming Landlord as an additional insured. Landlord will not be liable for any loss, expense or damage to any person or property unless due to Landlord's gross negligence or intentional misconduct.

#### **9. RULES AND REGULATIONS**

(a) Resident agrees to comply with the Rules and Regulations included with this Lease along with any other reasonable rules Landlord may adopt for the safety, care and cleanliness of the building and the comfort, quiet enjoyment, and convenience of Resident and other Residents. Resident is responsible for the compliance by Occupants and a guest of Resident or Occupant with these Rules and Regulations.

(b) Notice of new rules will be given to Resident (on ten days written notice to Resident). Landlord need not enforce these Rules against other Residents. Landlord is not liable to Resident if another Resident violates these Rules. Resident receives no rights under these Rules.

#### **10. APPLICABLE LAW**

Resident must, at Resident's expense, promptly comply with all laws, orders, rules, requests and directions of all governmental authorities, Landlord's insurers, Board of Fire Underwriters or similar groups. Notices received by Resident from any authority or group must be promptly delivered to Landlord. Resident and Occupant may not do anything which may increase Landlord's insurance premiums. If Landlord's insurance premiums increase due to Resident's or Occupant's actions, Resident shall pay the increase in premium as additional rent.

#### **11. ACCESS TO TOWNHOME**

Resident agrees to allow Landlord to retain a key to the Townhome. Resident shall not change the locks to the Townhome without Landlord's written permission. Landlord may, at reasonable times, enter the Townhome to inspect, to make repairs or alterations, or to provide routine or preventive maintenance to the Townhome. Landlord may make such repairs and alterations as Landlord may deem necessary to the preservation of the Townhome, but Landlord is not required to make any repairs to the Townhome except as specifically contained in this Lease. Landlord may enter at any time for repairs or maintenance in the case of an emergency. Landlord reserves the right during the last 60 days of the Lease to show the Townhome during reasonable hours to prospective renters.

#### **12. RESIDENT'S OBLIGATIONS UPON TERMINATION**

Upon the termination of occupancy, Resident will leave the Townhome by twelve noon of the Termination Date. The Townhome shall be clean and in good condition and repair, subject to reasonable wear and tear. Resident shall return the keys and garage door remotes (2) for the Townhome to the Landlord's office and settle all outstanding matters and debts with the office. Resident will remove all property of Resident, Occupant and/or a guest of Resident or Occupant from the Townhome and shall pay for any damage to the Townhome or building caused by moving personal property in or out of the Townhome or building. Any property left in the Townhome shall be deemed abandoned and Landlord shall have no responsibility to care for it. All abandoned property may be moved, stored, or disposed of by Landlord and Resident shall be charged for such services.

**13. HOLDOVER TENANCY**

(a) In the event that Resident or any one occupying through Resident continues to occupy the Townhome after the Termination Date without Landlord's written permission, Landlord shall have the option: (1) to charge Resident a monthly sum equal to twice the amount of the monthly rent above specified, and such sum shall be paid on the first day of each month for the time such possession is withheld; (2) to treat such holding over as a renewal by Resident of the Lease for another year, upon the same terms and conditions except that the monthly rent for the renewal term shall be 110% of the monthly rent above specified; or (3) to use all legal remedies available to remove the Resident from the Townhome including but not limited to self-help.

(b) The Resident will indemnify and hold harmless Landlord against any claim or action resulting from Landlord's inability to give possession of the Townhome to a new Resident. The Resident will also be liable for all collection fees and charges, including reasonable attorneys' fees, which Landlord incurs in order to remove the Resident from the Townhome.

**14. RIGHT TO RE-ENTER**

If, during the last month of the Lease, Resident has vacated or removed all or substantially all of the personal property from the Townhome, Landlord shall have the right to enter the Townhome in order to clean and redecorate without affecting or changing any of the terms of this Lease and with no abatement of rent. Resident waives any right to reenter the Townhome or redeem the Lease.

**15. DEFAULT, CANCELLATION, AND REMEDIES**

(a) Resident shall be in default upon the occurrence of any of the following events ("Event of Default"):  
(1) Failure to pay rent or additional rent on time; (2) Improper assignment of the Lease or improper subletting of all or part of Townhome; (3) Conduct by Resident, Occupant or a guest of Resident or Occupant: (i) which Landlord in its sole discretion considers objectionable, (ii) which causes or threatens to cause damage to Landlord's property or bodily injury to anyone, or (iii) which is illegal or immoral or use of the Townhome in an illegal or immoral manner; (4) Vacancy, abandonment or desertion of the Townhome, whether or not rent and additional rent have been paid; (5) Use of the Townhome by any person other than Resident or an authorized Occupant; (6) Misrepresentation of any material fact contained in Resident's rental application; (7) Violation of the Rules and Regulations adopted by Landlord; or (8) Failure to fully perform any other promise contained in this Lease.

(b) If Resident is in default, Landlord shall have the right to cancel this Lease by giving Resident five (5) days written notice of Landlord's intention to do so and this Lease and the term of this Lease shall expire and come to an end on the date set forth in such notice, as if that date were date originally fixed in this Lease for the expiration of the term. Resident will continue to be responsible for rent, expenses, damages, losses and reasonable attorneys' fees.

(c) If the Lease is cancelled, or rent or additional rent is not paid on time, or Resident vacates the Townhome, Landlord may, in addition to other remedies, remove Resident's property and take possession of the Townhome by any lawful means. Landlord may remove Resident by dispossession proceedings or otherwise, without being liable in any way.

(d) If the Lease is ended or Landlord takes back the Townhome, rent and additional rent for the unexpired term shall be immediately due and payable. Landlord may re-rent the Townhome for any term. Landlord may re-rent for a lower rent and/or give an allowance to the new Resident. Resident shall be responsible for the Landlord's cost of repairs, decorations, broker's fees, attorneys' fees, advertising and preparation for renting. If Landlord re-rents the Townhome or exercises any other right under this section, Resident nevertheless shall continue to be responsible for rent, expenses, damages and losses. Any rent received from the re-renting shall be applied first to the payments of rent due Landlord under this Lease. Resident agrees to pay Landlord any deficiency for each month for the balance of the rental Term. Landlord shall not be responsible to Resident for failing to re-rent the Townhome or failing to collect rent from the new Resident.

(e) Following an Event of Default, Resident waives all rights to redeem this Lease, and to return to the Townhome after possession is given to the Landlord by a court or Landlord takes back possession of the Townhome.

(f) Landlord may correct any default of Resident under this Lease at Resident's expense. All sums expended by Landlord on Resident's behalf shall be additional rent.

In addition to the above, if Resident is a purchaser under a Purchase Agreement for the Townhome, an uncured default under the Purchase Agreement is a default under this Lease, and an uncured default under this Lease is a default under the purchase agreement. Before the Landlord may utilize the default under this Lease to declare a default under the Purchase Agreement, the Landlord shall first obtain either an order of eviction or other judgment or order from a court of competent jurisdiction against the Resident, unless the Resident has vacated the Townhome. Resident has to vacate the Townhome within seven days after default under the Purchase Agreement or recession of the Purchase Agreement by Resident.

**16. NO-WAIVER**

The Resident understands that the receipt of rent and additional rent by the Landlord with knowledge of any violation by Resident of the provisions of this Lease does not indicate a waiver of the violation. The failure of the Landlord to enforce any Lease provision or the Rules and Regulations against the Resident, or any other Resident in the building, shall not be deemed a waiver of the Lease provision or of the Rules and Regulations. No provision of this Lease or the Rules and Regulations shall be waived unless such waiver is in writing and signed by the Landlord.

**17. POSSESSION**

Landlord will not be held liable for its inability to give possession of the Townhome on the date and at the time indicated in this Lease. Failure to give possession on the date stated in this Lease does not affect the terms and conditions of the Lease, or extend the Lease beyond the Termination Date, or give either party the right to cancel the Lease. Rent for the Townhome will not commence until the Townhome is available for occupancy and shall be pro-rated where occupancy is not provided on the first day of the month.

**18. NO CLAIM AGAINST LANDLORD**

(a) Resident agrees not to reduce the rent payments or hold Landlord liable for any inconveniences or annoyances as a result of Landlord making repairs, changes, additions or improvements to any part of the building, the Townhome, fixtures, equipment, or utilities unless such repairs, in the opinion of the Landlord, make the Townhome unlivable, at which time the rent will be pro-rated.

(b) If any services are reduced or discontinued because of matters beyond the control of the Landlord, Resident may not withhold or reduce rent, make a money claim against Landlord or claim an eviction.

(c) Landlord may stop service of plumbing, heating, air cooling or electrical systems, because of accident, emergency repairs or changes until the work is complete. If unable to supply any service because of labor trouble, government order, lack of fuel supply or other cause not controlled by Landlord, Landlord is excused from supplying that service. Service shall resume when Landlord is able to supply the service.

**19. SUBLEASE OR ASSIGNMENT**

Resident shall not assign this Lease or enter into a sublease without Landlord's written consent. Landlord may withhold its consent to an assignment without or with cause. Landlord may withhold its consent to a sublease for cause. Landlord shall have the right to consider, among other factors, all matters shown on the party's application. Resident shall not be in default of any term of this Lease at the time of any assignment or sublease. Landlord shall charge Resident a one hundred dollar (\$100) fee to process an application for permission to assign or sublease the Townhome. The Landlord does not waive the right to require written consent by the receipt of a rental payment from a person other than the Resident. Resident shall remain liable under this Lease after a sublease or assignment, and the security deposit shall continue to be held by the Landlord, notwithstanding the fact that an additional security deposit is required from the new Resident.

**20. SUBORDINATION**

This Lease and Resident's rights are subject and subordinate to all present and future (a) leases for the building or the land on which it stands; (b) mortgages on the leases or the building or land; (c) agreements securing money paid or to be paid to a lender; and (d) terms, conditions, renewals, changes of any kind and extensions of the mortgages, leases or lender agreements. Resident must promptly execute any certificate(s) that Landlord requests to show that this Lease is subject and subordinate as above stated. Resident authorizes Landlord to sign these certificates for Resident.

**21. RELEASE ON DISPOSITION**

Provided that Landlord has notified Resident of the sale or lease of the building, Landlord shall have no further liability under this Lease after Landlord sells or leases the building. If Landlord sells the building in which the Townhome is located, Landlord may assign the security deposit to the buyer. Landlord shall notify Resident in writing of the name and address of the buyer. Upon doing so, Landlord shall be released from all obligations to Resident, the security deposit and its return.

**22. FIRE OR OTHER CASUALTY**

(a) The Resident agrees that in case of damage to the Townhome or the building in which it is located, rendering the Townhome uninhabitable, the Resident shall give immediate written notice thereof to the Landlord. If the Landlord then finds that only a part of the Townhome can be occupied following the damage, a proportionate rent shall be paid for the usable portion until repairs can be completed by the Landlord. If the Landlord finds that the Townhome cannot be occupied following the damage, the Landlord may notify the Resident to vacate the Townhome until such time as repairs are performed and the Landlord determines the Townhome is habitable. Rent shall be apportioned pro-rata to the date the Resident vacates and removes all property. After notice is provided by the Landlord that the Townhome is habitable following repairs, rent shall again begin to run and be payable as before the damage, as of the date that the Landlord determines the Townhome to be habitable. The Landlord shall have no further liability. Landlord need only repair the damaged structural part of the Townhome. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

(b) If the fire or other casualty is caused by the act or neglect of Resident, Occupant or a guest of Resident or Occupant, then all repairs will be made at Resident's expense and Resident must pay the full rent with no adjustment. The cost of the repairs will be additional rent.

(c) If the Landlord finds the Townhome or building in which it is located is totally destroyed or in the event the Landlord shall decide not to repair or rebuild, the Landlord may notify the Resident of a date, within sixty (60) days of the damage of the termination of the Lease, and the Lease term shall expire and come to an end on the fire damage termination date, as if that date were the date originally fixed in this Lease for the expiration of the term. The Landlord shall have no further liability. The Resident shall vacate the Townhome and remove all property, and the rent shall be apportioned pro-rata to the fire damage termination date. Upon payment, this Lease shall come to an end. The Landlord retains any right which may exist, under this Lease or otherwise, to obtain recovery for damages for which the Resident is responsible.

**23. CONDEMNATION**

If the building or Townhome is taken by a governmental agency or other body having the right to take property, this Lease shall end on the date of the taking and Resident shall have no claim for the value of this Lease. Any rent paid by Resident for period after the date of the taking shall be refunded to Resident.

**24. WAIVER OF JURY TRIAL, COUNTER-CLAIMS, AND SET-OFFS**

Resident agrees not to demand a trial by jury in any action of proceeding brought by either Landlord or Resident against the other for any matter concerning this Lease or the Townhome (except for a personal injury or property damage claim). Resident waives the right to make a set-off or counterclaim in any proceeding commenced by Landlord against Resident.

**25. WRITTEN NOTICE**

Any written correspondence between Landlord and Resident shall be delivered to the Resident at the mailing address for the Townhome and to the Landlord at the address above set forth.

**26. REPRESENTATIONS AND MODIFICATIONS**

Resident agrees that Landlord has made no statements or promises with respect to the building, surrounding area or the Townhome except those that are contained in this Lease. This Lease may be modified only by an agreement in writing signed by both parties.

**27. INTERPRETATION**

Each clause and provision of this Lease shall be interpreted separately, and in the event any clause or provision is found to be invalid, the remainder of the Lease shall not be affected. Paragraph headings are for convenience only.

**28. JOINT AND SEVERAL LIABILITY**

If there is more than one Resident, the obligations of the Residents shall be joint (all parties responsible) and several (each party individually responsible).

**29. SUCCESSORS**

Landlord and Resident agree that this Lease binds and will continue to the benefit of the Landlord and Resident, their legal heirs, successors and assigns.

**30. QUIET ENJOYMENT**

If the Resident shall pay the rent and not be in default under this Lease, the Resident shall and may peaceably and quietly have and enjoy the Townhome for the term of this Lease, subject to the terms and conditions as previously stated.

**31. PETS**

\_\_\_\_\_ Initial here if pet permitted – Resident has permission to keep a pet in the Townhome; subject to the terms of the Landlord’s Pet Addendum, which shall be deemed to become part of the Lease.

**RESIDENT**

**LANDLORD**

\_\_\_\_\_  
Resident Name Date

S&J Morrell, Inc.  
Doing Business As Morrell Builders

\_\_\_\_\_  
Resident Name Date

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

WITNESS: \_\_\_\_\_

Name: \_\_\_\_\_

**RULES AND REGULATIONS**

**1.** Resident shall not store any flammable substance which may cause a fire hazard. No extension cords may be used for electrical service outside the building. Resident shall not run exposed wires or do anything else in violation of the Building Code or any other applicable fire regulations.

**2.** If Landlord provides any storage space, this space is provided without charge and at Resident’s own risk. Resident shall be responsible for compliance with all fire and safety precautions. Flammable liquids may not be kept in any storage space. Landlord shall not be responsible for any damage or loss to any items stored in the storage area.

**3.** Resident shall not change the locks of the Townhome or install any locks, chain guards, dead bolts or any other attachments to any door without prior written permission of the Landlord. Any such installation shall remain a

permanent fixture in the Townhome. Resident acknowledges receipt of a door and mailbox key and will not make duplicate keys. All duplicate keys must be obtained from Landlord for \$5.00 each. Resident will be charged \$40.00 for any after-hours lockouts. Resident shall return all keys to the Landlord upon vacating the Townhome. There will be a \$30.00 charge per key fob not returned to Cottage Grove

4. Resident may not at any time enter or attempt to enter the roof of the building, utility rooms or other areas set aside for the Landlord.

5. Bicycles, play-pens, buggies, toys, grills, or other items shall not be allowed in or on the front or back areas of the building, porches or common areas. Cooking grills may only be used on driveways, and must be more than ten feet (10') away from any building. Cooking vapors, flames or smoke must not bother any other Resident. No outdoor cooking is permitted on any patio or porch area and no cooking appliances may be stored on any patio or porch.

6. In addition, Resident may not hang anything, including but not limited to towels and/or laundry, from any porch, balcony or stairwell in the community.

7. Trash will be disposed of in provided totes which shall be kept in the garage of the Townhome. No volatile or highly flammable material shall be placed in with the refuse. Landlord will arrange for normal collection of trash and rubbish.

8. Resident may not paint, wallpaper, remodel, or make any structural changes to the Townhome without prior written permission from the Landlord. Pictures and other wall decorations may be hung using only small nails, brads, and picture hangers.

9. Resident agrees to maintain the Townhome and the area around the Townhome in a clean, sanitary and orderly condition. Resident shall not permit the accumulation of refuse in the Townhome. If Resident does not comply with this Rule, Landlord may take whatever action is reasonably necessary to place the Townhome in a clean, sanitary and orderly condition, even to the extent of removing any articles from the area which may have caused this condition. Landlord may charge Resident the cost of clean-up. This cost will be additional rent.

10. Resident shall not throw anything whatsoever out of windows or doors, or on the land outside the building.

11. The Resident shall not take any action that will promote conditions allowing insects and rodents to thrive.

12. Resident agrees not to clean, or to allow to be cleaned, any window in the Townhome from outside which might result in a violation of Section 202 of the Labor Law or any other law or governmental provision of any authority having jurisdiction in this matter.

13. Waterbeds or other water-filled furniture are not permitted in the Townhome.

14. Resident agrees not to make or permit any disturbing noises, nor do or permit any act which could reasonably interfere with the rights, comforts, or conveniences of others living in the complex. Resident shall keep the volume of any radio, television or musical instrument reduced at all times so as not to disturb other residents in the building. Landlord shall give Resident written notice of any violation and shall reserve the right to cancel the Lease after the giving of a third (3<sup>rd</sup>) such notice.

15. No motor vehicle of any kind is allowed on the lawn for any reason. Resident agrees to pay a \$50.00 fine for violating this rule, in addition to any damages incurred.

16. Resident shall not attach any aerials, antennas, awnings, satellite dishes, posters, signs, advertisements or other objects to the outside of the building without written permission.

17. Resident shall not hang or affix any sign, device, notice or advertisement in or on the building without prior written consent of the Landlord.

18. No garage or household sales will be allowed in the Townhome or the building or at Cottage Grove Townhomes.

19. Resident agrees to use all plumbing fixtures such as toilets, sinks, drains, bathtubs, etc. only for the purpose for which they were constructed. Resident will not allow sweepings, rubbish, rags, sanitary napkins or other improper articles to be placed or thrown into these fixtures. The Resident will be responsible for cost of repairing any damage resulting from Resident's violation of this Rule.

20. Resident shall not be allowed to install or use his or her own washing machine, dryer, refrigerator, dishwasher, heaters or air conditioners or stove.

21. If Landlord provides recreational facilities, it is without charge, and it is agreed all persons using the recreational facilities do so at their own risk. Landlord shall not provide any supervision for these areas. Landlord shall

