

# HOMEOWNERS ASSOCIATION OFFERING PLAN

THIS OFFERING RELATES SOLELY TO MEMBERSHIP IN THE RIVERS RUN HOMEOWNERS ASSOCIATION, INC. AND THE DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO ALL HOMES SOLD AT RIVERS RUN, CONSISTING OF 67 HOMES. THE PURCHASE PRICE OF HOMES INCLUDES MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION.

RIVERS RUN  
HOMEOWNERS ASSOCIATION, INC.  
FAIRWOOD DRIVE  
TOWN OF HENRIETTA  
MAILING ADDRESS: ROCHESTER 14623  
COUNTY OF MONROE  
STATE OF NEW YORK

APPROXIMATE AMOUNT OF OFFERING \$70,000 (Value). (This amount is based upon the total value of the common property to be owned and maintained by the Homeowners Association).

NAME AND ADDRESS OF SPONSOR: Rivers Run, LLC  
50 Fairwood Drive  
Rochester, New York 14623-4916

NAME AND ADDRESS OF SELLING AGENT: Gar Lowenguth  
Remax Realty  
40 Grove Street  
Pittsford, New York 14534  
(585) 248-0250

Date of Acceptance for Filing: February \_\_, 2006

This plan may not be used after February \_\_, 2007 unless extended by amendment.

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL MEMBERSHIP INTERESTS IN THE HOMEOWNERS (OR PROPERTY OWNERS) ASSOCIATION. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

**SEE PAGE 1 FOR SPECIAL RISKS TO PURCHASERS.**

*This Plan has been amended  
See inside front cover.*

**THIS OFFERING PLAN CONTAINS THE TERMS OF THE OFFER OF SALE AND THE OBLIGATIONS OF THE SPONSOR.**

**PLEASE READ IT CAREFULLY.**

**THE PROPERTY YOU ARE PURCHASING IS PART OF A PRIVATE SELF-GOVERNING SUBDIVISION WHICH MAY INITIALLY BE CONTROLLED BY THE SPONSOR.**

**YOUR OBLIGATIONS AS A LOT OWNER ARE INCLUDED IN THIS PLAN. THIS PLAN IS PREPARED AND ISSUED BY THE SPONSOR OF THIS SUBDIVISION. IT HAS BEEN FILED WITH THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, DEPARTMENT OF LAW, INVESTMENT PROTECTION BUREAU, 120 BROADWAY, NEW YORK, NEW YORK 10271.**

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## SPECIAL RISKS

1. There will be 67 townhomes in this development. The Sponsor expects the first units to be ready for occupancy approximately April, 2006 with all units completed by December, 2007. The Sponsor will complete all improvements to Association property including the parking area, driveways and landscaped areas. The Sponsor expects to complete all common areas by December 2007, excepting only weather dependent final items which will be completed in spring 2008. There are no bonds or other security established to guarantee the completion by Sponsor of any of the improvements. Therefore, the completion of the project is dependent upon the continued financial ability of the Sponsor (see pages 14, and 15).

2. The Sponsor will control the Homeowners Association for up to five (5) years after the sale of the first townhome in that the Sponsor retains the right to designate the directors until all lots in both phases are transferred or for five (5) years, whichever first occurs (see page 15).

3. The current management agreement is a one year contract between the Homeowners Association and Integrated Facility Solutions ("Integrated"), as management agent. Integrated is a company owned in part by David Christa, one of the principals of Sponsor. The management fee charged by Integrated is at the prevailing rate charged by companies providing similar management services to similar associations. The agreement may be terminated by the Board of Directors of the Association at the end of any year. In fact, as stated in paragraph 2 above, the Sponsor may designate the directors for as long as 5 years. Therefore, the Sponsor may retain Integrated as management agent for up to the full five (5) years (see Management Agreement, Sixth, p. N-1) (see page 22).

4. The current maximum amount in any account which will be insured by the Federal Deposit Insurance Corporation (F.D.I.C.) is \$100,000. It is possible that deposits totaling more than \$100,000 could be placed in the Rivers Run Subdivision Special Escrow Account at any given time. Any amount in excess of \$100,000 would not be covered by F.D.I.C. insurance (see page 10).

5. Occupancy of units in this development is limited to individuals who are at least 55 years of age or to couples, one of whom is at least 55 years of age. A surviving occupant who is not yet 55 may continue to own or occupy his or her unit and a single child over 20 years of age may reside in the premises with a qualified parent (see Declaration, Article VIII, subparagraph A, page F-7 (see page 17).

## PART I

### INTRODUCTION

This Offering is being made by Rivers Run, LLC, (hereafter "Sponsor" or "Declarant"). The property which is the subject of this Offering is located at Fairwood Road, a private road, in the Town of Henrietta, Monroe County, New York. The Sponsor is a contract vendee, under contract to purchase this property from the current owner, Rochester Institute of Technology ("RIT"). The purchase is scheduled to be completed by the end of February, 2006. The parcel being offered under this plan consists of approximately eighteen (18) acres to be shown on a map entitled Rivers Run, Section 2 (hereafter "Rivers Run" or the "Subdivision"). Access to Rivers Run from East River Road, a dedicated street, is over a permanent easement through land retained by RIT.

All of the land within the development will be owned in fee by either the Rivers Run Homeowners Association, Inc. (hereafter "Association" or "Homeowners Association" or "HOA") or by the individual townhome owners. Each townhome owner will own his home and garage and the lot on which the house and garage are located and have exclusive use of restricted common areas improved by unit driveways and unit patios. The Homeowners Association will own and maintain approximately fourteen (14) acres being the landscaped areas, parking areas (12 paved parking spaces) and private roads, see Part II, Exhibit C. The Association will provide services such as exterior maintenance, common area lighting, road and driveway snow removal, trash removal for the townhomes and all landscaping in the subdivision.

The number of lots with membership in the Homeowners Association will be sixty-seven (67). The lots will vary in size and will coincide with the exterior and common lines of the Units. All homes will be single family residences.

All owners of lots in Rivers Run will automatically become members of the Rivers Run Homeowners Association, Inc. The Association is a corporation formed under the Not-For-Profit Corporation Law of the State of New York for the purposes of owning and maintaining the common property. The function of this Association is to own and maintain the common property and to provide services for lot owners. Upon the sale of any lot and residence thereon, the membership of the former owner is automatically terminated and the new owner automatically becomes a member of the Association.

The price of the townhomes or lots includes the cost of membership in the Association and the prices are set by the Sponsor alone and are not subject to review or approval by the Department of Law or any other government agency. There are no fees or dues for membership in the Association.

The Town of Henrietta will provide road maintenance and snow removal for East River Road, a dedicated road. Water, and sanitation services will also be provided by the Town of Henrietta. Police protection will be provided by the Monroe County Sheriffs Department. Fire protection will be provided by the Henrietta Fire Department. The Association will provide road maintenance for and snow removal from the roads owned by the Association as described in the Projected Budget. The Association will contract with a private disposal company for the collection and removal of refuse from the development.

Water will be supplied by the Monroe County Water Authority. All water mains and hydrants are owned by and will be maintained by the Town of Henrietta in easements granted to the Town. Electricity and natural gas will be provided by Rochester Gas and Electric Corporation.

Sanitary sewer collectors are connected to the Town of Henrietta sewer main at East River Road. All sewers and manholes in easements will be dedicated to the town of Henrietta. Sewer and water laterals are the responsibility of lot owners.

The property to be developed is in the Rush-Henrietta School District.

The property which is subject to this Offering Plan is bounded on the north by approximately ten (10) acres of vacant land being purchased by Sponsor. This land is designated wetland and may be used for recreational purposes, such as hiking trails, only. Land to the east is being purchased by Sponsor and is intended to be improved by a three (3) story residential building for seniors (55 years and older). This building will be built as a rental apartment building with no entrance fee required for occupancy. Property to the south, owned by Eastman Kodak Company, is partially vacant farm land and partially improved by a training facility. To the west the property is bounded in part by the Genesee River and by various uses including a boat house owned by RIT and individually owned residences fronting on the east bank of the Genesee River.

There will be a permanent easement over the private road through the Rivers Run providing access to those parcels not owned by Sponsor fronting on the east bank of the Genesee River.

As an added feature in this development the Sponsor has arranged for a variety of programs to be made available through cooperation with RIT.

The programs are being designed and developed by an Advisory Committee which was formed in October of 2003. The Advisory Committee includes designated members of RIT, including representatives of Administration and Finance, Student Affairs, Food Service, NTID (National Technical Institute for the Deaf), Community Affairs, Graduate Enrollment Services, Academic Affairs, Alumni Relations, Athenaeum, Hospitality and Services Management Faculty, students and Sponsor.

The goal of the Advisory Committee is to connect residents at Rivers Run with the many aspects of university life including but not limited to social, academic, intellectual and spiritual events and services. The Advisory Committee has put together a package of "no cost", "reduced cost" and "full cost" items that will be offered to community members. Services and events are offered in academics, cultural activities, dining and shopping, fitness and volunteering and mentoring.

The following is a brief summary of current offerings. Academic opportunities are offered on both the RIT campus as well as on the Rivers Run campus. "Listening-In" courses, that is, a no cost opportunity to sit in on select college courses with prior approval from faculty and based upon availability are offered to residents on a quarterly basis, on the RIT campus. Mini-courses will be offered on the Rivers Run campus and a fee will be charged based upon the fees charged by adjunct professors. It is anticipated, based on current negotiations, that the range of price for an adjunct professor will be \$230.00 - \$670.00 per hour subject to change with prior notice.

Cultural activities vary from art exhibits, theatre and concerts to guest speakers, ballet and modern dance. Tickets will be available at the faculty and staff rate, ranging from no cost to \$35.00 per ticket, subject to change with prior notice.

There are many dining and shopping venues to enjoy on the RIT campus. RIT has made available to residents the opportunity to have a Tiger Bucks campus debit account that is accessed through using an RIT ID card. By depositing money into this account, whenever a purchase is made using one's card, the purchase amount will be deducted from the available balance. When using this card, residents are eligible for a 10% discount on most on-campus Food Service locations and purchases at the college book store. These discounts are not available if cash is used.

The new Gordon Field House and Activities Center on the RIT campus will be made available to residents. The "Friends" membership fee will be \$320.00 per year, subject to change with prior notice. All RIT athletic events are open to residents. It is anticipated that the price to residents for tickets to athletic events will range from no cost to \$10.00 per ticket, subject to change with prior notice.

Volunteering and Mentoring opportunities are available throughout the RIT campus for Rivers Run Community Members. These opportunities range from assisting at orientation and commencement to mentoring students in many of the colleges or assisting in college events.

The purpose of this Offering Plan is to set forth all of the terms of the offer concerning the Association. This plan may be altered from time to time by proper amendments filed with the Department of Law. All amendments will be served on lot purchasers and members of the Association.

The plan as presented to prospective purchasers contains all of the detailed terms of the transaction as it relates to the Association. Certain exhibits designated Parts A, B, and C have been delivered to the Department of Law. These exhibits contain all of the documents referred to in the plan. Copies of the plan and Parts A, B, and C of the exhibits will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers and their attorneys at the office of the Sponsor and at the Department of Law.

**THE PURCHASE OF A LOT ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOMEOWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.**

There is no minimum number of contracts which must be signed before sponsor subjects the property to the covenants, easements and restrictions as set forth in this plan, records the declaration, and establishes the Association.

DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE OWNED AND MAINTAINED BY THE HOMEOWNERS' ASSOCIATION

The common areas to be owned by the HOA consist of approximately fourteen (14) acres of vacant land. This land will be improved only by twelve (12) parking spaces, two gazebos and internal private roads for access to the individual units. The road will meet the construction requirements of the town of Henrietta for private roads. A more detailed description of the common areas is included as Exhibit C in Part II of this Plan.

At the time of filing the subdivision plan, the common area will be comprised of all lands not included in a block or lot as shown on the Subdivision Plan entitled Rivers Run Section 2 (Environmental Design & Research, P.C. Resub Map Drawing Job #1170). Blocks shown on the referenced drawing represent proposed building locations and the number of lots (units) within the block. Following construction of each building, the actual building walls, exterior and common interior, will be located by an Instrument Survey. A resubdivision map will then be prepared and filed by Sponsor defining the lots according to the actual building wall locations. The resubdivided lots will then be conveyed to the unit purchasers and the land located between the exterior walls as built and shown on the resubdivision plan and the original block line will be transferred from the Sponsor to the Homeowners' Association, or from the Association to the unit purchaser if necessary.

The roads to be constructed will be twenty feet (20') wide and will consist of a twelve inch (12") crushed stone base, a three inch (3") concrete and asphalt binder and a one and one-half inch (1-1/2") concrete top coat. There is no intention to dedicate the private roads. Therefore, it is not built to town specifications for public roads.

There will be a total of twelve (12) parking spaces provided. These spaces are located along the private roads in three (3) groups of four (4) spaces each as shown on the Subdivision map. No parking spaces will be assigned and they will be used on an "as available basis" by unit owners and their guests.

There will be two gazebos, one located west of the residential units close to the river and the second being at the east edge of the development between building blocks 2 and 17.

Water, sanitary sewer and storm sewer service will be constructed by the Sponsor within the HOA property. Each of these systems will be dedicated to the Town of Henrietta. The description of the water and sewer system is set forth in the Property Description included as Exhibit C, in Part II of this Plan. The Sponsor has posted a letter of credit with the Town to cover the cost of construction and a bond equal to 10% of the cost of construction will be posted with the Town for a one year period following dedication of the water and sewer systems to the Town. No certificate of occupancy will be issued until the water and sewer systems have been accepted for dedication.

All homes being sold under this Plan are being built by Sponsor or its affiliated companies and upon completion will be in compliance with all Town of Henrietta building and zoning ordinances. It is contemplated that the first homes will be ready for occupancy by April, 2006 with all homes completed by December, 2007.



SCHEDULE A

RIVERS RUN  
 BUDGET FOR FIRST YEAR OF HOA OPERATION<sup>1</sup>  
 BEGINNING APRIL, 2006

|                                  |  |                     |
|----------------------------------|--|---------------------|
| Projected Income                 |  |                     |
| Maintenance Charges <sup>2</sup> |  | \$153,190.00        |
| Other Income                     |  | -0.00-              |
| <br>                             |  |                     |
| TOTAL                            |  | <u>\$153,190.00</u> |

|  |                 |                     |
|--|-----------------|---------------------|
| Projected Expenses                             |                 |                     |
| Electricity <sup>3</sup>                       |                 | 2,844.00            |
| Repairs, Maintenance and Supplies <sup>4</sup> |                 | -0.00-              |
| Landscaping (mowing and trimming) <sup>5</sup> |                 | 17,850.00           |
| Snow removal <sup>6</sup>                      |                 | 47,000.00           |
| Refuse Removal <sup>7</sup>                    |                 | 12,462.00           |
| Insurance <sup>8</sup>                         |                 | 28,000.00           |
| Management Fee <sup>9</sup>                    |                 | 13,863.00           |
| Legal Fees <sup>10</sup>                       |                 | <u>700.00</u>       |
| Accounting Fees <sup>11</sup>                  |                 | 2,000.00            |
| Taxes:   |                 |                     |
| Real Property taxes <sup>12</sup>              |                 | 1,302.00            |
| Franchise and Corporate Taxes                  |                 | -0.00-              |
| Reserves: <sup>13</sup>                        |                 |                     |
| Exterior Painting                              | \$ 4,000.00     |                     |
| Roofing  | 5,863.00        |                     |
| Asphalt Sealing                                | 3,266.00        |                     |
| Resurface                                      | 10,500.00       |                     |
| Sidewalks                                      | <u>3,540.00</u> | 27,169.00           |
| <br>   |                 |                     |
| TOTAL  |                 | <u>\$153,190.00</u> |

## FOOTNOTES TO SCHEDULE A

1. At this time the Sponsor expects to begin construction in February, 2006 with first sales in April, 2006. If the first sale is delayed beyond October 2006, this Plan will be amended to disclose then current budget projections. If the revised projections exceed the original projections by more than 25%, Sponsor will offer all purchasers the right to rescind their contracts with return of their deposits for a period not less than fifteen (15) days after receipt of any revised budget.
  
2. Allocation of Maintenance Charges  

The maintenance charges will be allocated equally to each unit and shall be paid to the Association monthly. The estimated annual maintenance charge for each unit is \$2,287.00, which will be paid monthly in the amount of \$191.00.
  
3. Electricity. Each residential unit is separately metered and each unit owner will pay electricity consumed in his unit. There will be 27 single lamp fixtures and 6 dual lamp fixtures throughout the common area. ME Engineering, P.C., 150 North Chestnut Street, Rochester, New York 14604, by estimate dated September 23, 2005 has calculated the annual electricity cost at \$2,844.00 or \$236.89 per month.
  
4. Repairs, Maintenance and Supplies  

The Sponsor estimates that there will be no repair, maintenance or supply charges initially incurred by the HOA. All common area expenses are included in estimates from those contractors or vendors providing landscaping, ground maintenance, snowplowing, insurance and trash collection. Any postage and stationery costs associated with billing and notices to homeowners will be borne by Integrated Facilities Solutions under its management contract and will be minimal in any event.
  
5. Landscaping  

Lawn care and landscape services which will include lawn care, spring clean up, grass pick-up and trimming, mulching as needed, fall leaf raking, spring and fall fertilizing, weed control and care of all landscaped areas in the subdivision will be provided under the management contract with Integrated Facilities Solutions, as set forth in its contract dated November 21, 2005 (the "Management Contract").
  
6. Snow Removal  

Snow removal services consisting of plowing and shoveling snow from the private road, all parking areas, individual driveways garage entrances and sidewalks, as well as salting as needed will be provided under the Management Contract at an annual cost of \$47,000.
  
7. Refuse Removal  

Waste Management, 4521 Steelway Boulevard North, Liverpool, New York 13090, will provide refuse removal and disposal and re-cycling services on a weekly basis as

set forth in its quote received August 21, 2005. The budgeted figure is based on weekly pick up of the Waste Management 96 gallon toter from each unit.

8. Insurance

The insurance cost of \$28,000.00 is based on the quote from First Niagara Risk Management, Inc. dated November 29, 2005. Blanket property insurance on all buildings will be carried at full replacement value in the total amount of \$8,700,000.00. This amount is based on the review of the project by Lombard Insurance Agency. With full replacement value coverage the insured will not be a co-insurer in the event of a partial loss. The policy shall provide that each homeowner is an additional insured party and there will be no cancellation without notice to the Board of Directors and that there shall be a waiver of subrogation, a waiver of invalidity because of the acts of the insured homeowners and a waiver of pro-rata reduction if homeowners obtain additional coverage.

In addition, there is general liability coverage for the Association in the amount of \$2,000,000.00. The unit owners shall carry insurance to cover interior improvements, personal property and general personal liability coverage.

9. Management Fee

Integrated Facilities Solutions, 841 Holt Road, Webster, New York 14580, will provide management services, including calculation of the budget, dealing with all service providers, billing and collecting all maintenance charges and general administrative services for a total annual charge of \$13,863 as set forth in the Management Contract.

10. Legal Fees

An estimate of \$700 for legal fees dated November 15, 2005 has been provided by Harris Beach PLLC for general consultation which is expected to be minimal during the first years of operation.

11. Accounting Fees

Rotenberg & Co. LLP, Certified Public Accountants, has provided an estimate for accounting service dated November 2, 2005 in the amount of \$1,500.00 to \$2,000.00 for the first year of operation. These services will include providing an annual audit of the Association activities.

12. Taxes

The property will be assessed by the Town of Henrietta. The Town of Henrietta Assessor has stated by letter dated October 25, 2005 that the common area of Rivers Run Subdivision will be assessed at approximately \$3,000 per acre and that the current tax rate is approximately \$31.00 per \$1,000 of assessment. There is a total of approximately 14 acres which will be owned by the Association resulting in a total estimated assessment of \$42,000.00 and a tax of approximately \$1,302.00. It is estimated by Harris Beach PLLC, attorney for Sponsor, that the Association will

incur no liability for State or Federal corporate taxes or franchise taxes based on projected budget for the first year (see opinion letter dated December, 2005). The HOA will be liable for normal New York State sales taxes on goods and services purchased. Sales taxes would be included in budget estimates for the various line items.

13. The estimated reserves are based on replacement costs (including labor) provided by Sponsor's architect and engineer. The following is a further breakdown of those costs:

| Item  | Cost                 | Life Cycle      | Annual Contribution |
|---|----------------------|-----------------|---------------------|
| Exterior Painting   | \$20,000             | 5 yrs           | \$4,000             |
| Roofing   | \$175,875            | 30 yrs          | \$5,863             |
| Asphalt (140,000sf)<br>Sealing @ .07/sf<br>Resurface @ .75/sf | \$9,800<br>\$105,000 | 3 yrs<br>10 yrs | \$3,266<br>\$10,500 |
| Concrete Sidewalks<br>(11,800 sf) 6/sf                        | \$70,800             | 20              | \$3,540             |

## PROCEDURE TO PURCHASE

A prospective purchaser ("Purchaser" or "Purchasers") shall execute and deliver the Purchase and Sale Contract on the form set forth as Exhibit A of Part II of this Offering Plan. Once executed by Purchaser and Sponsor, the agreement becomes a binding obligation on both parties subject only to those contingencies set forth in the contract. As set forth in the contract, all deposits shall be made payable to Harris Beach, PLLC as Escrow Agent to be held in escrow as set forth below.

The Sponsor will comply with the escrow and trust fund requirements of General Business Law Section 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

Any provision of any contract or agreement, whether oral or in writing, by which a purchaser or subscriber purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any conflicting or inconsistent provision in this Offering Plan or in a purchase agreement. Purchasers shall not be obligated to pay any legal or other expense of the Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

All deposits, down payments, or advances made by Purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, will be placed, within five business days after the agreement is signed by all necessary parties, in a segregated special escrow account of Harris Beach, PLLC, the Escrow Agent, whose address is 99 Garnsey Road, Pittsford, New York 14534 and whose telephone number is (585) 419-8800.

The signatories on this account authorized to withdraw funds are: Timothy M. Fitzgerald and Leon T. Sawyko, both of whom are partners at Harris Beach, PLLC with offices set forth above.

The name of the account is "Rivers Run Subdivision Special Escrow Account" located in Canandaigua National Bank and Trust Company at 7979 Pittsford-Victor Road, Victor, New York 14564. This bank is covered by the federal deposit insurance corporation (FDIC) to a maximum at any given time of \$100,000 per individual Account. (If total deposits in the account exceed \$100,000 at any given time, it is a special risk of this offer that such deposits will not be federally insured in excess of \$100,000)

The escrow account will be an Interest On Lawyer's Account (IOLA) pursuant to Judiciary Law Section 497 and no interest shall be earned by Purchaser or Sponsor.

All instruments shall be made payable to or endorsed to the order of Harris Beach, PLLC, as escrow agent.

Within ten business days after tender of the deposit submitted with the purchase agreement, the escrow agent will notify the Purchaser that such funds have been deposited into the escrow account and will provide the account number. If the Purchaser does not receive notice of such deposit within fifteen business days after tender of the deposit, the Purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety days after tender of the deposit or Purchaser may apply to the Attorney General for relief. Rescission may not be afforded

where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the Purchaser in conformity with the Attorney General's regulations.

Since all contracts are contingent upon the plan's becoming effective, under no circumstances shall Sponsor apply for release of the escrowed funds of a defaulting purchaser until after consummation of the plan.

The escrow agent will hold funds in escrow until otherwise directed in

- (a) a writing signed by both Sponsor and purchaser; or
- (b) a determination of the Attorney General pursuant to the dispute resolution procedures contained in the Attorney General's regulations; or
- (c) a judgment or order of a court of competent jurisdiction.

If there is no written agreement between the parties to release the escrowed funds, the escrow agent will not pay the funds to the Sponsor until the escrow agent has given the purchaser written notice of not fewer than ten business days. Thereafter, the funds may be paid to the Sponsor unless the purchaser has already made application to the Department of Law pursuant to the dispute resolution provisions of the Attorney General regulations and has so notified the escrow agent in accordance with such provisions.

The Sponsor will not object to the release of the escrowed funds to

- (i) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan;
- (ii) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.

Purchasers, and the escrow agent may apply to the Attorney General in the event of a dispute for a determination on the disposition of the down payment and any interest thereon. The Sponsor must avail itself of this procedure if there is a dispute which needs to be resolved. A form for this purpose is attached as an exhibit to this amendment. The party applying for determination must send all other parties a copy of the application.

Pending the determination of the Attorney General to grant or deny the application, the Sponsor, the purchaser, and the escrow agent shall abide by any interim directive issued by the Attorney General.

If the Application requesting release of funds is granted, the deposit shall be disposed of in accordance with the determination of the Attorney General subject to any court action in which preliminary relief is granted. The Attorney General is expected to act upon the Application within thirty (30) days after its submission to the Department of Law by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit until: (1) both the Sponsor and Purchaser direct payment to a specified party in accordance with a written direction signed by both the Sponsor and Purchaser; (2) a judgment or order of a court of competent jurisdiction is served on the escrow agent; or (3) the escrow agent deposits the disputed amount into court.

In no event shall the escrow agent release funds in dispute other than a payment of such funds into court until such dispute is finally resolved, either by determination of the Attorney General, by order or judgment of a court of competent jurisdiction or by written agreement from the Sponsor and the Purchaser.

The escrow agent will maintain all records concerning the escrow account for seven years after the release of funds.

It is expected that the first closing of a unit will occur approximately April, 2006. If the first closing is delayed for any reason whatsoever beyond December, 2006, Purchaser, will be offered the right to rescind any purchase contract.

There shall be no forfeiture of any deposit unless all contingencies have been satisfied, the closing date set forth in the contract has passed and Sponsor has made a written demand that closing take place. Sponsor's written demand for the balance due shall allow Purchaser at least thirty (30) days from receipt of the demand for performance before Purchaser forfeits its deposit.

At Sponsor's option, Purchasers who have received the plan and all filed amendments will be afforded:

1. not fewer than seven (7) days after delivery of an executed purchase agreement together with the required deposit to rescind the purchase agreement, and have the full deposit refunded promptly. The Purchaser must either personally deliver a written notice of rescission to the Sponsor within the seven (7) day period or mail the notice of rescission to the Sponsor and have the mailing post-marked within the seven (7) day period; or
2. not fewer than three (3) business days to review the offering plan and all filed amendments prior to executing the purchase agreement.

The risk of loss from fire or other casualty remains with Sponsor unless and until a Purchaser takes actual possession of the unit pursuant to an interim lease (or written agreement with the Sponsor) or legal title to the home has been conveyed to the Purchaser.

The purchase contract provides that it may be submitted subject to the Purchaser obtaining mortgage financing. If the Purchaser fails to obtain the required financing within the time period stated, either Purchaser or Sponsor may terminate the contract, all deposits will be returned and neither party will have any further liability under the contract. The time period within which the Purchaser must obtain financing will be negotiated between Purchaser and Sponsor on an individual basis. All financing will be negotiated directly by Purchasers independent of the Sponsor and the terms and conditions of any financing are the responsibility of the Purchaser. If the Purchaser elects not to make the contract contingent on financing, or if the Purchaser's financing commitment contains conditions which Purchaser has accepted but is unable to meet, the Purchaser may be in default under the purchase contract and may forfeit the deposit if it is unable to complete the closing.

If a Purchaser's obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to closing, and the Purchaser has made a good faith effort to extend the commitment, Sponsor will grant to such Purchaser a right of rescission and a reasonable period of time to exercise that right.

The purchase agreement and Plan do not contain and may not be modified to contain any provision waiving purchaser's rights or abrogating Sponsor's obligations under Article 23-A of the General Business Law.

The purchase contract provides that it is personal to the parties and may not be assigned by Sponsor or Purchaser without the consent of the other party.

Any conflict between this Offering Plan and the contract of sale will be resolved according to the terms of this Plan.

The Sponsor must either accept the contract and return a fully-executed counterpart to the Purchaser or reject the contract and refund the full deposit previously tendered within five (5) business days after a Purchaser delivers an executed contract of sale, together with the required deposit to the Sponsor. Failure by the Sponsor to respond to an executed purchase contract within such time period will be considered rejection of the offer and any deposits tendered shall be returned immediately.

#### TERMS OF SALE

All property to be conveyed to the Homeowners Association will be conveyed by a full warranty deed. A copy of the proposed deed is included in Part II of this plan as Exhibit C. The Sponsor is obligated to repair any damage to the property to be conveyed to the HOA from a casualty or any other cause which occurs prior to the transfer of the property to the HOA. Title to the HOA property will be conveyed to the HOA free and clear of all liens and encumbrances and title exceptions other than those described in this Offering Plan and the proposed HOA deed. Title exceptions will include such state of facts shown on the site plan included in Part II as Exhibit D including those easements set forth on the site plan. In addition, the Declaration of Covenants, Conditions and Restrictions set forth in Part II as Exhibit F in this Plan shall be recorded prior to the first conveyance of title to a home in accordance with the disclosure set forth in this Offering Plan. That declaration shall be recorded in the Monroe County Clerk's Office.

The transfer of title of individual units shall take place only after or concurrently with the issuance of the certificate of occupancy for the unit being conveyed.

The Sponsor will provide a Limited Warranty with respect to each residential unit and complete all units in accordance with the Limited Warranty and Residential Construction Performance Guidelines prepared by the Rochester Home Builders' Association, Inc. A copy of the Warranty is included as Exhibit O in Part II of this Plan. This Warranty sets forth the scope and limitations of the Sponsor's warranties which apply to each townhouse unit.



## RIGHTS AND OBLIGATIONS OF THE SPONSOR

1. The Sponsor will defend any suits or proceedings arising out of Sponsor's acts or omissions and indemnify the Board of Directors in any of said suits or proceedings.
2. All obligations pursuant to the General Business Law and such additional obligation under the Offering Plan which are to be performed subsequent to the closing date will survive delivery of the deed.
3. This Offering Plan is for sixty-seven (67) lots which are all included in one Phase. The Sponsor will complete the Common Properties which consist of the roads, parking areas (12 paved parking spaces), private driveways and landscaped areas. Roads, driveways and landscaped areas will be completed in the vicinity of completed units as needed to serve completed units. All common improvements will be completed (weather permitting) at such time as the final units are completed, estimated as December, 2007.
4. The Sponsor has obtained construction mortgage financing for completion of the project through M&T Bank.
5. The Sponsor will complete all Association property in accordance with the specifications identified in this Plan. Sponsor reserves the right to substitute materials and make modifications in design provided it does not substitute materials of lesser quality or design.
6. Sponsor will pay for all improvements in the development and for the installation of all Association property that Sponsor is obligated to complete under the Plan and will cause all mechanic's liens with respect to such construction to be promptly discharged or bonded.
7. The Sponsor will file the declaration and will convey the Association property to the Association prior to closing title to the first lot. The sponsor will complete the construction of all roads serving the lots, excepting the finished surface, and any other facilities that are vital to the health and safety of the owners prior to closing title of the first lot. Some final Association landscaping and completion of the finished surface of the road may not be completed at the time of transfer of title to the lots. The HOA property will be released from the provisions of Sponsor's construction loan mortgage prior to closing title to the first home and conveyance of the HOA property to the HOA.
8. Upon completion of the development the Sponsor will deliver a set of "as built" plans of common property improvements to the Board of Directors including specifications of roads, and a representation that the plans and specifications are in substantial compliance with the terms of the Offering Plan. If the plans or specifications, as built, are not in substantial compliance with the terms of the Offering Plan, the plan will be amended and rescission will be offered to all purchasers and members.
9. The Sponsor does not intend to furnish any bond or other security to secure its obligation to complete the Association property except for those bonds required by the Town of Henrietta in connection with dedication of the water and sewer systems.

10. For so long as Sponsor is in control of the Board of Directors, it will procure and maintain fire and casualty insurance for all residential units pursuant to an agreed amount replacement cost policy or in an amount sufficient to avoid co-insurance, as reflected in Schedule A.

11. In the event of the dissolution or liquidation of the Sponsor or the transfer of three or more units to a Purchaser who is not purchasing for occupancy by the Purchaser or one or more members of his or her immediate family, the principals of the Sponsor will provide financially responsible entities or individuals who at the time of engaging in sales activity will assume the status and all of the obligations of the Sponsor for those transferred units under the Offering Plan applicable laws or regulations. If the original Sponsor is dissolved or liquidated, the principals of the original Sponsor will guarantee the obligations of the new Sponsor.

12. As long as Sponsor has unsold units which are offered for sale pursuant to this Offering Plan, Sponsor shall amend the Plan whenever there is a change in the budget or when one (1) year has passed since the budget was last updated. The prior years' certified financial statements for the HOA will be included even if Sponsor assumes responsibilities for all HOA operating expenses. The financial statements will be submitted within three (3) months after the end of the latest fiscal year of operation of the HOA.

13. Sponsor will retain the right of access through the property being offered under this Plan to complete all units offered under this Plan. Sponsor will remain liable for any damage caused to the Association's access roads during the period of improvement of the lots. At no time will Sponsor obstruct the Association member's access to their lots over the common roadway or other parts of the Association property.

14. Title to common property will be insured at the time of transfer to the Association by Commonwealth Title Insurance Corporation, a company authorized to do business in the State of New York through its agent, Metro Real Estate Services of Western New York, LLC. The title insurance policy will be written in the amount of \$70,000.

15. If any mortgages or liens remain on the property covered by this Plan following the conveyance of the first lot the lien or mortgage will be subordinate to the Declaration.

16. The Sponsor will be obligated for the difference between the actual Association expenses including reserves applicable to completed improvements as provided for in the Association's budget, and the Association charges levied on owners who have closed title to their homes or lots as projected in Schedule A of the Offering Plan which shall be paid to the Association on a monthly basis.

17. The Sponsor will complete landscaping of the common areas. The Sponsor does not guarantee the continued health or vigor of any plants or trees.

18. The Sponsor will amend this Plan after completion of the water and sewer systems, prior to the conveyance of the common property to the HOA, to include certification by an engineer or architect registered to practice in New York State stating that the water and sewer systems have been constructed in accordance with local government specifications and stating the date of completion.

## CONTROL BY SPONSOR

The Sponsor will retain control of the Board of Directors for a period of up to five (5) years after the transfer of the first lot. This control is retained through the power to designate the Directors of the Association. At such time as all lots and phases have been transferred or five (5) years after the closing of the first lot, whichever is first, all lot owners shall have an equal vote, in the election of the Directors and all other matters as defined by the By-Laws. The Sponsor may not exercise his control of the Board to reduce the level of services described in the Offering Plan, prevent expenditures required to comply with applicable laws and regulations, fail to remedy any notice of violation or fail to remedy any work order by an insurer. A meeting of all homeowners will be held to elect new board members unrelated to Sponsor within thirty (30) days after Sponsor has relinquished control of the Association.

During the period that the Sponsor is empowered to elect the Directors, no mortgage liens will be placed on the Association property without the consent of at least fifty-one percent (51%) of the lot owners excluding the Sponsor or Sponsor's nominees. Certified financial statements for Association activities will be provided to members each year for so long as the Sponsor remains in control of the Board of Directors.

As long as Sponsor has unsold lots which are offered for sale pursuant to this Plan the Sponsor shall amend the Plan whenever there is a change in the budget or when one (1) year has passed since the last budget was updated. The amendment shall include the prior year's certified financial statements.

## THE HOMEOWNERS ASSOCIATION

Prior to the conveyance of the first lot in Rivers Run the Sponsor will record the Declaration of Covenants, Conditions and Restrictions ("Declaration") which will affect all the land in the Subdivision. Each lot in the Subdivision will be conveyed subject to the Declaration and each purchaser will become a member of the Homeowners Association. The Association is formed for the purpose of owning all HOA property, governing its use and maintenance and carrying out those responsibilities assigned to it under this Plan, the Declaration and By-laws. By its terms ownership of a lot mandates membership in the Association. The only members of the Association will be lot owners and all lot owners will automatically become members.

All lots are subjected to the Declaration to provide lot owners with assurance that certain services and amenities are provided for all owners in the project. There will be sixty-seven (67) lots whose owners are members of the Homeowners Association. Although the Sponsor contemplates completion of the entire development within two (2) years after commencement of construction there is no time limit placed on the Sponsor for completion.

The Declaration shall run with the land and be effective for a thirty (30) year period following the recording of the Declaration. The Declaration will automatically be extended for additional successive ten (10) year periods unless the owners of at least seventy-five percent (75) of the lots elect to terminate the covenants.

There are no restrictions on who may purchase a lot and become a member of the Homeowners' Association except that occupancy is limited to single family residential use and all purchasers need be at least 55 years of age. A married couple may qualify to occupy a unit provided

at least one person is 55 years old as of the date of occupancy. Upon the death of a spouse, the survivor may retain the unit and remain in possession even if that survivor is not yet 55 years old. The premises may also be occupied by one adult child (over 21 years of age) so long as a qualified parent occupies the unit. No alterations may be made to the exterior of the dwelling or to the fences, mailboxes or walls, without prior consent of the Board of the Association. No large motor vehicles (excluding small private passenger vehicles), trailers, boats or campers, may be stored at the premises except within the garages. Small private passenger vehicles shall be stored and parked only in the garage or on the driveways. No motorized vehicle of any kind shall be allowed on any pedestrian path, except for maintenance vehicles, and motorized assistance given to disabled people.

Each lot shall be conveyed subject to certain easements as more particularly set forth in the Declaration. An easement is reserved to all public authorities and utility companies over any part of the property provided it does not interfere with any improvements. A blanket easement is established over all the property subject to the Declaration for the installation, maintenance, and repair of all utilities and for the entry by the Association or its agent to provide the services as needed. Each lot and the Association itself will benefit from the permanent easement conveyed by RIT for access to River Road over the private road from the Association property to River Road.

Any land or construction loan mortgage on any part of the planned development will be subordinate to the Declaration.

The Association will obtain and maintain fire insurance on all dwellings. Members are responsible for the purchase and maintenance of all other insurance on their units. Liability insurance will be maintained by the Association for Association properties, and the cost of all insurance obtained by the Association will be included in the common charges.

Any purchaser of property in the development will take title subject to the Declaration. However, any mortgagee who acquires title through foreclosure or by Deed in Lieu of Foreclosure will take title free and clear of the lien for delinquent common charges. It will be liable, however, for common charges which accrue after it takes title.

The Association was incorporated in November 2005 under the New York State Not-for-Profit Corporation Law. The Association is governed by the Declaration and by the By-Laws which set forth the rules for the operation of the Association.

The Association will be run by a Board of Directors consisting of at least three (3) but not more than five (5) members. Initially these directors need not be members of the Association. The initial directors will be selected by the Sponsor who will have the power to elect the directors until all lots in all phases are transferred or five (5) years after the first unit is transferred, whichever first occurs, at which time the Sponsor will only have one vote for as long as it owns at least one lot which vote will be similar to the vote of any other member. After the Sponsor's right to select the directors has terminated, directors will be members of the Association in good standing, and will serve for a three (3) year term. Board members may be removed with or without cause by a majority vote of the members of the Association. The Board of Directors shall 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 regular meetings. The directors' regular meeting time and place shall be determined by them. The first meeting of the Board of Directors will be held within ninety (90) days after the transfer of title to the first lot.

The officers of the Association shall be a President, Secretary and Treasurer. The term for an officer shall be one (1) year. Officers may be removed and replaced by vote of the directors at any meeting.

Each member of the Association shall be entitled to one vote in the operation of the Association. A member is the owner of any lot or lots. If more than one person owns a lot jointly, they shall jointly be considered a member and they shall share one vote. Prior to the transfer of all lots and phases or five(5) years after the sale of the first lot, whichever first occurs, the Sponsor shall have one vote and it alone shall designate the directors. After all of the lots are transferred or five (5) years after the first unit is transferred, the Sponsor shall have only one vote if the Sponsor owns a lot, which will be on a par with the vote of all other lot owners.

The activities of the Association shall be governed by a majority vote of the members. However, special assessments may be made only with the concurrence of two-thirds of the votes of the members. The Declaration may be amended only by favorable vote of not less than eighty percent (80%) of the members until thirty (30) years after the recording of this Declaration and seventy-five percent (75%) of the members thereafter. The initial Board of Directors shall consist of:

Patrick Tobin  
71 Linden Street  
Rochester, New York 14620

Claudia Blumenstock  
407 Taylor Road  
Honeoye Falls, New York 14472

Julie Fenske  
44 Mill Valley Road  
Pittsford, New York 14534

Mr. Tobin is Vice-President of and a partner in Christa Construction, LLC, one of the principals of Sponsor.

Ms. Blumenstock is the Executive Vice-President of Sponsor and has worked closely with RIT in the development of Rivers Run.

Ms. Fenske is Vice-President of Operations of Sponsor.

Each lot will be subject to an annual assessment for common area maintenance, insurance, and related expenses as of the date of closing. Special assessments will be charged as needed if approved by association members.

The assessments will be levied on an annual basis as set by the Association's Board of Directors. The assessments will be calculated by the Board no later than December 1st of each year for the succeeding year. The annual assessment shall be paid by each owner on the first day of each month or as determined by the Board of Directors. Assessments will be pro-rated for each purchaser based on the date of closing.

Special assessments may be imposed by the Board only with the assent of at least two-thirds of the Association members.

The annual assessments, and any special assessments shall be paid equally by all lot owners.

All common assessments and special assessments are the personal obligation of the lot owner and, in addition, are liens against a lot owner's lot. If the assessment is not paid when due the lot owner is in default and the assessment will bear interest at a rate equal to the prime rate as stated in the Wall Street Journal from time to time plus 3 percentage points after thirty (30) days following the due date. In addition, the lot owner will be liable for any cost and expense incurred by the Association in collecting delinquent assessments including reasonable attorney's fees. The Association may enforce the lien for assessments through a foreclosure action similar to a mortgage foreclosure which may result in the eventual sale of the property to pay for delinquent charges, interest and expenses.

The lien for assessments shall be subordinate to the lien of any first mortgage. The obligation to pay assessments is personal to the lot owner and will not pass to subsequent owners unless specifically assumed. The lien for the assessments will, however, continue even after transfer of title except in the event of foreclosure of a first mortgage lien or transfer of title to a first mortgagee by deed in lieu of foreclosure.

Owners who are delinquent in charges may be prohibited by the Association from using any common facilities other than the access road while they are delinquent. A lot owner's voting rights will not be suspended even though he is delinquent in payment of assessments.

The Board of Directors may levy fines for the violation of the Restrictions as stated in the Declaration, for violations of the By-Laws, and for violations of the rules and regulations promulgated by the Homeowners' Association. Unpaid fines will become unpaid assessments and will become a lien upon the property. A fine is not to exceed 10% of the annual assessment.

Sponsor agrees that after the first closing has occurred it will be obligated for the difference between the actual Association expenses, including reserves applicable to completed improvements as provided for in the projected Association's budget, and the Association charges levied on owners who have closed title to their lots as projected in Schedule A of this Plan which shall be paid to the Association on a monthly basis.

#### OPINION OF COUNSEL

The opinion of counsel to the Sponsor is on the following pages.

December \_\_, 2005

Patrick Tobin  
Rivers Run, LLC  
50 Fairwood Drive  
Henrietta, NY 14623

Re: Rivers Run Homeowners Association, Inc.

Dear Mr. Tobin:

You have asked us to render an opinion as to the various legal matters described below for inclusion in an Offering Plan for Rivers Run Homeowners Association, Inc. (the "Association") which will be filed with the New York Attorney General pursuant to Part 22 of Volume 13 of the New York Codes, Rules and Regulations.

As the basis for our opinion, we have examined the Offering Plan for the Association dated December \_\_, 2005 (and the Exhibits referred to therein and attached thereto, including the Association's Certificate of Incorporation and By-Laws and the Declaration of Covenants, Conditions and Restrictions governing the Association's property. We have also examined the applicable federal and New York State tax laws, regulations, rulings and judicial decisions relevant to our opinion.

Under present law, regulations, rulings and judicial decisions and based on the terms of the Offering Plan, it is our opinion that:

1. The Declaration of Covenants, Conditions and Restrictions, when recorded in the office of the Clerk of Monroe County, will be legal and valid.
2. The members of the Association will not be entitled to deduct any portion of Association membership dues, fees or assessments for federal or New York State income tax purposes.
3. Assuming that the Association duly elects such status by annually filing a Form 1120-H U.S. Income Tax Return with the appropriate office of the Internal Revenue Service on or before the fifteenth day of the third month after the end of its taxable year and further assuming that, in accordance with the projected schedules of receipts and expenses appearing in the Offering Plan, 60% or more of the gross income of the Association for each taxable year will consist solely of amounts received as membership dues, fees or assessments and 90% or more of its expenditures each taxable year will be for the acquisition, construction, management, maintenance, and care of Association property, the Association will qualify as a tax-exempt homeowners organization described in section 528 of the Internal Revenue Code of 1986, as amended. However, such an organization is exempt only to the extent of its exempt function income, defined by section 528(d)(3) to mean any amounts received as membership dues, fees, or assessments from owners of real

property within the Association. Net income of other types as described in section 528(d)(1) and subject to the modifications set forth in section 528(d)(2), will be taxable at a flat rate of 30% pursuant to section 528(b).

4. Section 277 of the Internal Revenue Code applies only to organizations which are not exempt from taxation and will not apply to the Association if it qualifies under section 528, as described above.

5. All Association property and the lots sold in conjunction with the Association with the presently existing homes will conform to applicable zoning ordinances and statutes.

6. Even if it qualifies under section 528 of the Internal Revenue Code as described above, the Association will not be exempt from New York State and local sales taxes.

7. Even if it qualifies under section 528 of the Internal Revenue Code as described above, the Association will not be exempt from New York State corporate franchise taxes. The Association's franchise tax liability will be determined by making several alternative calculations, with the one producing the highest tax controlling. However, federal taxable income as determined under section 528(d) of the Internal Revenue Code will be used in making the alternative franchise tax calculations based on the net income or taxable income of the Association. Thus, those computations will exclude from franchise taxes the exempt function income the Association derives from membership dues, fees and assessments. Moreover, if, in a particular taxable year, the Association has no taxable income as determined under section 528(d) of the Internal Revenue Code, the Association will not be subject to the fixed dollar minimum corporate franchise tax that would otherwise apply.

Our opinion is based solely on the facts and documents referred to above. Although we have assisted in the preparation of the Offering Plan and the Exhibits referred to therein and attached thereto, we have not independently verified the accuracy, completeness and fairness of the factual information contained therein.

No warranties are made that the laws, regulations, rulings or judicial decisions upon which we have based our opinion will not change. In no event will the sponsor, the sponsor's counsel, the Association, the Association's counsel, the selling agent or any other person be liable if, by reason of future changes in fact or applicable law, regulations, rulings or judicial decisions, the status of, or the rules governing, the Association shall cease to be as opined above.

Very truly yours,  
HARRIS BEACH PLLC

By: \_\_\_\_\_  
Leon T. Sawyko



## LOCAL GOVERNMENT APPROVAL

On January 13, 2004 the Town of Henrietta Planning Board granted authorization to allow the development of Seventy (70) residential units on this parcel. The final plan consisting of Sixty-Seven (67) units and the final Subdivision map have not yet been approved. A copy of the Subdivision Plan will be filed in the Monroe County Clerk's Office prior to conveyance of the first townhouse and a copy will be provided to the HOA.

### RESERVE FUND

The Board of Directors shall establish a General Reserve Fund for exterior painting, roofing, road sealing, road resurfacing and sidewalk replacement. As shown on the proposed budget the General Reserve Fund will initially be based on \$27,169 annually or \$405 per lot. There will be no initial contribution from the Sponsor, although the Sponsor will contribute on an ongoing basis for unsold completed Townhouse units. It is estimated that sufficient funds will be available for road maintenance. If additional funds are needed the Association's Board of Directors is empowered to levy special assessments subject to a two thirds (2/3) vote of approval by the membership. While the Sponsor is in control of the Board of Directors, the General Reserve fund shall not be used to reduce projected maintenance charges or to fulfill Sponsor's obligation to pay a deficit. Neither the Department of Law nor any other government agency has passed on the adequacy of the General Reserve fund.

### WORKING CAPITAL FUND

There will be no Working Capital Fund. The HOA Board of Directors may, in its discretion, establish such a fund at some future time.

### MANAGEMENT AGREEMENT, CONTRACTS AND LEASES

Integrated Facility Solutions ("Integrated"), 50 Fairwood Drive, Rochester, New York 14623, a company owned in part by David Christa, one of the principals of the Sponsor, will provide for the management of the Association. This will be under a one (1) year agreement with an annual fee of \$13,863. The major duties will be the collection of Association assessments, payment of bills for services rendered, purchase supplies, bookkeeping, provide budgets and operating statement and employ contractors for common area maintenance services, trash removal, and driveway plowing.

The Association will be liable for reimbursement of any expenses incurred by Integrated under the agreement and will indemnify Integrated against liability for any acts properly performed by it under the agreement.

The management agreement is not assignable by Integrated to any other party. The Board of Directors may terminate the management agreement at the end of the initial one (1) year term and at any time for cause. Integrated has not reserved the right to cancel the management agreement.

There are no other contracts or leases which bind the HOA.

## IDENTITY OF PARTIES

1. The Sponsor, Rivers Run, LLC, is a New York limited liability corporation formed in 2002 specifically to develop Rivers Run Subdivision. The principal offices of the corporation are at 50 Fairwood Drive, Rochester, New York 14623. The Sponsor is owned by Living Communities, LLC, a corporation owned in equal part by Christa Communities, LLC and by Living Communities of Rochester, LLC. The only members of Sponsor who are principals of Sponsor in that they both (i) own an interest in or control Sponsor and (ii) actively participate in the planning and consummation of the offering are David Christa and Patrick Tobin. Mr. Christa is the President and owner of Christa Development Corp. and has been involved in real estate development and general contracting for more than 25 years. Mr. Tobin is a vice president of Christa Development Corp., employed by the company developing various projects since 2001. Prior to that time, he worked on the planning and development of various residential projects for The DePaul Group, Inc., a not for profit corporation. The Sponsor has not been involved with any other development or offer of cooperative interest in real estate in New York State. David Christa and Patrick Tobin are principals of The Sagamore on East Condominiums, located on East Avenue in the City of Rochester. As of this date, condominium units at The Sagamore East continue to be offered for sale. Sponsor principals are current with their obligations to that condominium.

2. This Offering Plan has been prepared by Leon T. Sawyko, a partner in the law firm of Harris Beach PLLC, 99 Garnsey Road, Pittsford, New York 14534. Leon T. Sawyko, and Timothy M. Fitzgerald, also a partner in the same law firm, will represent the Sponsor at closings.

3. Initially, Sponsor, will retain Integrated Facility Solutions ("Integrated"), as managing agents for the property. Its office is at 841 Holt Road, Webster, New York 14580. Integrated currently manages over two million square feet of office, retail and health related properties in approximately 200 locations across New York State. David Christa is one of the owners of Integrated.

4. The Sponsor has retained Gar Lowenguth of Remax Realty as selling agent. Both GAR Lowenguth and Remax Realty are real estate brokers licensed by New York State. Their principal offices are at 40 Grove Street, Pittsford, New York 14534.

5. The Sponsor has retained Environmental Design & Research, P.C., 274 North Goodman Street, Rochester, New York 14607, to advise it with respect to all engineering municipal approval and architectural matters.

Except as in paragraph 3 above, neither the Sponsor nor any principal of Sponsor have any control over or interest in the management company, the selling agent or the engineering and design firm described above except for prior arms length business dealings.

## REPORTS TO MEMBERS

The Homeowners Association through its Board of Directors will deliver a financial statement prepared by a certified public accountant or a public accountant to all members on an annual basis no later than sixty (60) days after the end of the Association's fiscal year. Such statement shall be a certified statement for so long as Sponsor is in control of the Board of Directors.. In addition, all members will have notice at least thirty (30) days prior to the annual members meeting. A copy of the proposed annual budget of the HOA will be delivered to all unit owners at least five (5) days prior to date set for adoption of that budget by the Board of Directors. The budget shall be certified in the same manner as the certification in this Plan (See Exhibit L-1) for so long as Sponsor is in control of the Board of Directors.

## DOCUMENTS ON FILE

The Sponsor shall retain copies of the Offering Plan and parts A, B and C of the Exhibits and documents referred to in the plan on file at 50 Fairwood Drive, Rochester, New York 14623 for at least six (6) years after the closing of the first lot. These documents will be available for inspection and copying at a minimal charge during normal business hours. Sponsor shall deliver to the Board of Directors of the HOA a copy of all documents filed with the Monroe County Clerk at the time of closing for the first townhome unit.

## GENERAL

There are no lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, Sponsor's capacity to perform all of its obligations under the Plan or operation of the Homeowners Association.

The property offered under this Plan is not the subject of any prior offering and no preliminary nonbinding agreements have been entered into, nor money collected from prospective purchasers as of the date of this Plan.

The Sponsor and its agents will not discriminate against any person based on race, creed, color, sex, national origin or any other basis prohibited by state or federal civil rights laws.

If Sponsor files a material amendment to this Offering Plan which adversely affects the Purchasers, Sponsor will grant Purchasers a right of rescission to be exercised by Purchaser within fifteen (15) days of the date of delivery to Purchaser of the copy of the amendment the explanation of the right to exercise the right to rescind. If a contract is rescinded pursuant to this paragraph, the Sponsor will return any deposit or down payment to the Purchaser who rescinds.

No contracts or agreements have been entered into and no deposits or advances of funds have been accepted as of the date this Plan was accepted for filing with respect to this offering by the Sponsor.

## SPONSOR'S STATEMENT OF SPECIFICATIONS

Sponsor has reviewed the Description of HOA Property and Specifications set forth as Exhibit C, Part II of the Plan and represents that it accurately discloses the HOA property. All improved HOA property will be newly constructed by the Sponsor. Therefore, there are no material defects or need for major repairs to the HOA property. The number of homes offered under this Plan is identical to the number of homes shown on the approved Site Plan.

Dated: February 21, 2006

RIVERS RUN, LLC,  
SPONSOR

By: Living Communities, LLC  
Managing Member

By: s/David Christa  
Managing Member

## PART II

- A. Contract of Sale
- B. Form of Deed to HOA Property
- C. Description of HOA Property and Specifications
- D. Site Plan and Subdivision Map
- E. Location Map
- F. Declaration of Covenants, Conditions and Restrictions
- G. Certificate of Incorporation of HOA
- H. HOA By-Laws and Rules
- I. Escrow Agreement
- J. Form Requesting Dispute Resolution by Attorney General concerning Downpayments
- K. Certification of Sponsor and Principals
- L. Certification of Sponsor's Expert Concerning Adequacy of Budget
- M. Certification of Sponsor's Architect
- N. Management Contract
- O. Sponsor's Limited Warranty



EXHIBIT A

PURCHASE AND SALE CONTRACT FOR RESIDENCE IN CONDOMINIUM OR HOMEOWNER'S ASSOCIATION (HOA)



Plain English Form published by and only for use of the Greater Rochester Association of REALTORS®, Inc. and the Monroe County Bar Association.

COMMISSIONS OR FEES FOR THE REAL ESTATE SERVICES TO BE PROVIDED ARE NEGOTIABLE BETWEEN REALTOR® AND CLIENT.

When Signed, This Document Becomes A Binding Contract. Buyer or Seller May Wish To Consult Their Own Attorney.

TO: \_\_\_\_\_ (Seller) FROM: \_\_\_\_\_ (Buyer)

OFFER TO PURCHASE

Buyer offers to purchase the property described below from Seller on the following terms:

1. Property.

A. Description. Property known as \_\_\_\_\_ in the \_\_\_\_\_ State of New York, Zip \_\_\_\_\_ also known as Tax No. \_\_\_\_\_

□ Condominium: Name \_\_\_\_\_ Bldg. No. \_\_\_\_\_ Unit No. \_\_\_\_\_ % Interest \_\_\_\_\_

□ Townhouse/Residence w/HOA: Name \_\_\_\_\_ Lot No. \_\_\_\_\_ Dimensions \_\_\_\_\_ X \_\_\_\_\_

Property Includes: Limited use common elements (if condominium) not accessible from unit:

□ Dock Space # \_\_\_\_\_ Fee, if any \$ \_\_\_\_\_ □ Parking Space # \_\_\_\_\_

□ Garage # \_\_\_\_\_ □ Storage Bin # \_\_\_\_\_

□ Other \_\_\_\_\_

B. Common Charges, Services and Amenities. Buyer agrees to pay a □ Monthly fee of \$ \_\_\_\_\_ □ Quarterly fee of \$ \_\_\_\_\_

□ Annual fee of \$ \_\_\_\_\_ (the "Common Charges") currently required for the items and services checked below. Buyer understands that these fees may change. Seller represents to Buyer as of the date of acceptance that Seller has not received any written notice of a proposed increase in Common Charges, which representation shall survive closing.

- Clubhouse □ Maintenance of Exterior of Buildings □ Reserves
□ Common Area Snow Removal □ Management Fee □ Security
□ Common Area Taxes □ Master Hazard Insurance □ Tennis
□ Deck Maintenance □ Playground □ Trash Collection
□ Exercise □ Pool □ Water/Sewer

□ Maintenance of Common Elements and Common Areas

□ Other \_\_\_\_\_

C. Current Special Assessments. Seller represents to Buyer that there are total special assessments in the amount of \$ \_\_\_\_\_ ("Current Special Assessment") as of the date of acceptance owing to the Condominium or Association Board for \_\_\_\_\_, which representation shall survive closing. Seller represents to Buyer as of the date of acceptance that there are no other unpaid special assessments owing to the Condominium or Association Board which are or may become liens against the property and that Seller has not received written notice of any other special assessments, or proposed capital improvements, or construction by the Condominium or Association Board, which representations shall survive at closing. The Current Special Assessments shall be the responsibility of, and paid for by:

- 1. Seller, by final payment to the Condominium or Association Board prior to closing.
□ 2. Buyer.
□ 3. Other \_\_\_\_\_

D. Post-Contract Assessments. If a(n) special assessment, capital improvement, other construction, or increase in Common Charges is imposed or proposed by the Condominium or Association Board at any time after the date of acceptance (collectively, "Post-Contract Assessment") for which Post-Contract Assessment Seller has not received any written notice prior to acceptance, then Buyer agrees and acknowledges to Seller that Buyer will not have the right to cancel this Contract by virtue of such Post-Contract Assessment.

E. Restrictions. Property is subject to the following restrictions: □ Exterior Alterations □ Parking □ Pets □ Rental □ Other \_\_\_\_\_

2. Other Items Included in Purchase. Unless a part of the common elements, the following items, if any, now in or on the property are included in this purchase and sale, which Seller represents are owned by Seller: All heating, plumbing, septic and private water systems, lighting fixtures, flowers, shrubs, trees, window shades and blinds, curtain and traverse rods, storm windows, storm doors, screens, awnings, TV antennae, satellite dish and all related equipment and accessories, water softeners, sump pumps, window boxes, mail box, shed, fences, underground pet containment fencing with control devices, wall-to-wall carpeting and runners, exhaust fans, hoods, garbage disposal, electric garage door opener and remote control devices, intercom equipment, humidifier, security systems and security codes, carbon monoxide detectors; smoke detectors, all fireplace screens and enclosures, swimming pool and all related equipment and accessories, central vacuum and all related equipment and accessories, and the following, if built-in: cabinets, mirrors, microwave ovens, stoves, ovens, dishwashers, trash compactors, shelving, basketball apparatus, outdoor playsets, and air conditioning (except window units). Buyer agrees to accept these items in their present conditions.

Seller's Initials

Buyer's Initials

Other items to be included in the purchase and sale are: \_\_\_\_\_

Items not included are: \_\_\_\_\_

Seller represents that Seller has good title to all of the above items to be transferred to Buyer, and will deliver a Bill of Sale for the above items at closing.

Seller shall cause any heating, plumbing, air conditioning, electrical systems and included appliances to be in working order at the time of closing, except for \_\_\_\_\_ and common elements. The prior sentence shall not be construed as a warranty or guarantee after closing.

**3. Price & Payment.** The purchase price is \_\_\_\_\_ Dollars \$ \_\_\_\_\_. Buyer shall receive credit at closing for any deposit made hereunder. The balance of the purchase price shall be paid as follows: (Check and complete applicable provisions.)

- (a) Seller agrees to pay a loan fee of:  \_\_\_\_\_% of the mortgage amount,  \_\_\_\_\_% of the purchase price, or  \$ \_\_\_\_\_ toward any of the following applicable expenses as authorized by the Buyer's mortgage lender (not to exceed actual expenses paid): closing costs, prepaid items/escrows, points, buy down fees, FHA up front MIP, or VA funding fee.
- (b) Official bank draft or certified check at closing.
- (c) Mortgage Assumption pursuant to the terms and conditions of the Mortgage Assumption Addendum.
- (d) Seller Financing pursuant to the terms and conditions of the Seller Financing Addendum.

**4. Contingencies.** Buyer makes this offer subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified, then either Buyer or Seller may cancel this contract by written notice to the other. (Check and complete applicable provisions.)

- (a) **Mortgage Contingency.** This offer is subject to Buyer obtaining and accepting a \_\_\_\_\_ mortgage loan commitment in an amount not to exceed \$ \_\_\_\_\_ at an interest rate not to exceed \_\_\_\_\_%, for a term of \_\_\_\_\_ years. Buyer shall immediately apply for this loan and shall have until \_\_\_\_\_, 20\_\_ to obtain and accept a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this contract but shall be the sole responsibility of Buyer. If the loan commitment requires repairs, replacements, or improvements to be made, or painting to be done, before closing, then Seller shall do the work and install the materials and improvements needed or have the same done, at Seller's expense. However, if the cost of doing so exceeds \$ \_\_\_\_\_, Seller shall not be obligated to have such work done, and Buyer will be allowed either to receive credit at closing for the above amount and incur any necessary expenses to comply with the loan commitment requirements, or to cancel this contract by written notice to Seller, and any deposit shall be returned to Buyer. Acceptance of a written mortgage commitment by Buyer shall be deemed a waiver and satisfaction of this contingency.
- (b) **Sale and Transfer of Title Contingency.** This offer is contingent upon the sale and transfer of title of Buyer's existing property pursuant to the terms and conditions of the Sale and Transfer of Title Contingency Addendum.
- (c) **Attorney Approval.** This contract is subject to the written approval of attorneys for Buyer and Seller within \_\_\_\_\_ calendar days, *excluding Sundays and public holidays*, from date of acceptance (the Approval Period). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the Objections) the contract within the Approval Period and the Objection is not cured by written approval by both attorneys and all of the parties within the Approval Period, then (A) either Buyer or Seller may cancel this contract by written notice to the other and any deposit shall be returned to the Buyer or (B) the approving attorney may notify the other party (with a copy to any attorney listed below) in writing that no approval has been received and that the noticed party has five (5) calendar days, *inclusive of Sundays and public holidays*, from receipt of the notice (Grace Period) to provide written attorney approval or disapproval of the contract. The approving attorney shall provide to the noticed party (with a copy to any attorney listed below) a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, then this Attorney Approval contingency shall be deemed waived by the noticed party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed party.
- (d) **Waiver of Attorney Approval.** This offer is not subject to the Buyer's attorney approval.
- (e) **Property Inspection Contingency.** This offer is contingent upon inspection(s) of the property pursuant to the terms and conditions of the Property Inspection Addendum.
- (f) **Association Documents Approval Contingency.** Seller agrees to provide all of the documents set forth in numbers 3, 5 and 7 of Paragraph 8C. below (collectively, the "Association Documents") to Buyer within ten (10) calendar days of acceptance. This offer is contingent upon Buyer's approval of the Association Documents within five (5) calendar days of Buyer's receipt of the Association Documents.
- (g) **Other Contingencies.** \_\_\_\_\_

**5. Closing Date and Place.** Transfer of title shall take place at the \_\_\_\_\_ County Clerk's Office or at the offices of Buyer's lender on or before \_\_\_\_\_, 20\_\_.

Seller's Initials

Buyer's Initials

**6. Possession of Property.**

- (a) Buyer shall have possession of the property on the day of closing, in broom-clean condition, with all keys to the property delivered to Buyer at closing.
- (b) Seller shall have the right to retain possession for \_\_\_\_ calendar days after closing at the cost of \$ \_\_\_\_\_ per day inclusive of real property taxes and common charges, plus utilities. At closing, a key to the property shall be delivered to Buyer. At delivery of possession to Buyer, the property shall be in broom-clean condition and the remaining keys to the property shall be delivered to Buyer.
- (c) Buyer shall have right of early possession for \_\_\_\_ calendar days prior to closing at the cost of \$ \_\_\_\_\_ per day inclusive of real property taxes and common charges, plus utilities. At possession, the property shall be in broom-clean condition and a key to the property shall be delivered to Buyer; the remaining keys shall be delivered to Buyer at closing.

In the event of retained possession or early possession, the parties shall enter into a written possession agreement, the form of which shall be the Monroe County Bar Association's recommended form, which agreement shall require a security deposit of \$ \_\_\_\_\_.

**7. Seller's Representations & Covenants.**

**A.** Seller represents that Seller has made no interior or exterior alterations or improvements to the unit except with the consent or approval of the Condominium or Association Board if required and in full compliance with the Declaration, By-Laws and Rules and Regulations of the Association.

**B.** There are no unpaid common charges or other items owed to the Condominium or the Association Board which are or may become liens against the property, or if there are any such unpaid common charges or other items owed to the Condominium or Association Board, then Seller shall pay all such unpaid common charges or other items on or before the closing date.

**C.** Seller has notified the Association Board of this sale or will do so promptly after acceptance if required by the Declaration, By-Laws or Rules and Regulations.

**D.** Seller represents that Seller has not received any written notice of any change or proposed change to the Declaration or By-Laws, and Seller will give Buyer prompt notice of any written notice received by Seller of any change or proposed change to the Declaration or By-Laws.

**8. Title and Related Documents.** Seller shall provide the following documents in connection with the sale:

**A. Deed.** Seller will deliver to Buyer at closing a properly signed and notarized Warranty Deed with lien covenant (or Executor's Deed, Administrator's Deed or Trustee's Deed, if Seller holds title as such).

**B. Abstract, Bankruptcy and Tax Searches, Instrument Survey Map.** Seller will furnish and pay for and deliver to Buyer or Buyer's attorney at least 15 calendar days prior to the date of closing, fully guaranteed tax, title and United States Court Searches dated or re-dated after the date of this contract with a local tax certificate for Village, or City taxes, if applicable. Seller will pay for continuing such searches to and including the day of closing. If the property includes an interest in a Homeowner's Association, as owner of common areas, the searches shall also be certified as to the common areas and shall show good title in the Homeowner's Association, and Seller shall also provide an instrument survey map of the lot dated after date of this contract, made and certified to meet the standards and requirements of Buyer's mortgage lender and the Monroe County Bar Association. If the property is a condominium, then Seller agrees to furnish a County Clerk certified copy of the filed condominium map.

**C. Condominium or Homeowner's Association Documents.** Seller shall furnish to Buyer or Buyer's attorney at least 15 calendar days prior to closing (or sooner if otherwise required in this contract):

1. Statement from Condominium, Homeowner's or Community Association, or its managing agent, setting forth the present status of common charges or assessments against the property;
2. If any alterations, improvements or additions have been made on the exterior of the property, a statement from the secretary of the Association or the managing agent certifying that the same have been approved by the Board of Managers or Directors;
3. Copy of the latest financial statement of Homeowner's Association or Condominium;
4. Name and address of insurance agent administering the master insurance policy;
5. Copies of the Declaration, By-Laws, Rules and Regulations, currently in effect, including all amendments;
6. Certificate of Waiver of Right of First Refusal from board of managers if required by Declaration;
7. Copies of the current or adopted budget and any other communications, information or directives regarding future budget, assessments, or other matters;
8. Upon request, a copy of current management agreement;
9. Upon request, copy of title insurance policy on common areas;
10. If the sponsor has not transferred all lots or units to third party purchasers, a copy of the current Offering Plan and all amendments;
11. Copy of plans in Seller's possession showing the unit;
12. \_\_\_\_\_

**D. Other Documents.** Seller agrees to furnish a carbon monoxide detector affidavit and a smoke alarm affidavit at closing and to cooperate in executing any other documents required by federal or state laws for transfer of title to residential property.

**9. Marketability of Title.** The deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the property in fee simple, free and clear of all liens and encumbrances, subject to Condominium or Homeowner's Association Declaration, By-Laws, Rules and Regulations, and Current Special Assessments for which Buyer is responsible pursuant to Paragraph 1C. and all Post-Contract Assessments. However, Buyer agrees to accept title to the property subject to restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these restrictions have not been violated, or if they have been violated, that the time for anyone to complain of the violations has expired. Buyer also agrees to accept title to the property subject to public utility easements along lot lines as long as those easements do not interfere with any buildings now on the property or with any improvements Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the property.

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Purchase and Sale Contract for Residence in Condominium or HOA (Revised 8/03)

Seller's Initials

Buyer's Initials



Except for waterfront property, Buyer also agrees to accept title to the property subject to fence encroachments of less than one foot onto the property, as long as the fence placement does not: (i) impair access to the property from a public or private right of way and/or (ii) render the property in violation of (a) any applicable building, zoning and/or subdivision requirements and/or (b) any easements, agreements, or restrictive covenants of record.

**10. Objections to Title.** If Buyer raises a valid written objection to Seller's title which indicates that the title to the property is unmarketable, Seller may cancel this contract by giving prompt written notice of cancellation to Buyer and Buyer's deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable and Buyer is willing to accept insurable title, then this contract shall continue in force until the closing date, subject to the Seller curing the title objection and/or providing insurable title at Seller's expense. If Seller fails to cure the title objection on or before the closing date, or if Buyer is unwilling to accept insurable title, Buyer may cancel this contract by giving prompt written notice of cancellation to Seller and Buyer's deposit shall be returned.

**11. Recording Costs, Mortgage Tax, Transfer Taxes and Closing Adjustments.** Seller will pay the real property transfer tax, and special additional mortgage recording tax, if applicable. Buyer will pay mortgage assumption charges, if any, and will pay for recording the deed and the mortgage, and for the mortgage tax. The following, as applicable, will be prorated and adjusted between Seller and Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil on the property, water charges, pure waters charges, sewer charges, mortgage interest, current Common Charges, prepaid FHA Mortgage Insurance Premium (MIP) of approximately \$ \_\_\_\_\_, with the exact amount to be calculated at closing in accordance with FHA formulae. Any FHA insurance premium which is not prepaid, but rather paid monthly, shall be adjusted at closing. If there is a water meter at the property, Seller shall furnish an actual reading to a date not more than 5 days before the closing date set forth in this contract. At closing the water charges and any sewer rent shall be apportioned on the basis of such actual reading. There shall be no adjustment for any capital reserves held by the Association or Condominium.

**12. Zoning.** Unless the property is a condominium, Seller represents that the property is in full compliance with all zoning and building ordinances for use as a \_\_\_\_\_. If applicable laws require it, the Seller will furnish at or before closing, a Certificate of Occupancy for the property, dated within 90 days of the closing, with Seller completing the work and installing the materials and improvements needed to obtain a Certificate of Occupancy. However, if the cost of obtaining a Certificate of Occupancy exceeds \$ \_\_\_\_\_, Seller shall not be obligated to have such work done, and Buyer will be allowed either to receive credit at closing for the amount recited above, and incur the necessary expenses to obtain the Certificate of Occupancy, or to cancel this contract by written notice to Seller, and any deposit shall be returned to Buyer.

**13. Risk of Loss.** Risk of loss or damage to the property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the property by fire or such other casualty occurs prior to transfer, Buyer may cancel this contract without any further liability to Seller and Buyer's deposit is to be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

**14. Condition of Property.** Buyer agrees to purchase the property and any items included in the purchase "AS IS" except as provided in paragraph 2, subject to reasonable use, wear, tear, and natural deterioration between now and the time of closing. However, this paragraph shall not relieve Seller from furnishing a Certificate of Occupancy as called for in paragraph 12, if applicable. Buyer shall have the right to inspect the property within 48 hours before the time of closing, and Seller agrees that all utilities shall be on at that time.

**15. Services.** Seller represents that the property is serviced by:  Public Sewers,  Septic System,  Public Water,  Private Well,  Other \_\_\_\_\_.

**16. Deposit to Listing Broker.** Buyer  has deposited  will deposit within two calendar days of acceptance \$ \_\_\_\_\_ in the form of a \_\_\_\_\_ with \_\_\_\_\_ (Escrow Agent) at \_\_\_\_\_ (Bank), which deposit is to become part of the purchase price or returned if not accepted or if this contract thereafter fails to close for any reason not the fault of the Buyer. If Buyer fails to complete Buyer's part of this contract, Seller is allowed to retain the deposit to be applied to Seller's damages, and may also pursue other legal rights Seller has against the Buyer, including but not limited to a lawsuit for any real estate brokerage commission paid by the Seller.

**17. Real Estate Broker.**

(a) The parties agree that \_\_\_\_\_ brought about this purchase and sale.  
 (b) It is understood and agreed by Buyer and Seller that no broker brought about this purchase and sale.

**18. Life of Offer.** This offer shall expire on \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ m.

**19. Responsibility of Persons Under This Contract; Assignability.** If more than one person signs this contract as Buyer, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Buyer in this contract. If more than one person signs this contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. However, this contract is personal to the parties and may not be assigned by either without the other's consent.

Seller's Initials

Buyer's Initials

20. **Entire Contract.** This contract when signed by both Buyer and Seller will be the record of the complete agreement between the Buyer and Seller concerning the purchase and sale of the property. No oral agreements or promises will be binding. Seller's representations in this contract shall not survive after closing except the representations of Seller set forth in paragraphs 1 and 7.

21. **Notices.** All notices under this contract shall be in writing and deemed delivered upon receipt. Any notices relating to this contract may be given by the attorneys for the parties.

22. **Seller's Property Condition Disclosure Statement (check one).**

- (a) Seller has provided Buyer with the attached Seller's Property Condition Disclosure Statement.
- (b) Seller has not provided Buyer with Seller's Property Condition Disclosure Statement, and Seller shall credit Buyer \$500.00 at closing in lieu of such Statement.
- (c) Is not applicable.

23. **Addenda.** The following Addenda are incorporated into and attached to and made a part of this contract:

- Agricultural/Farming Disclosure       Mediation       Seller Financing
- All Parties Agreement (FHA/VA)       Mortgage Assumption       Services (Septic & Water)
- Electric Availability       Property Inspection       Utility Surcharge
- Lead Compliance       Sale & Transfer of Title Contingency

Other: The Seller will provide the limited warranty in the form attached as Exhibit A.

Dated: \_\_\_\_\_ BUYER \_\_\_\_\_

Witness: \_\_\_\_\_ BUYER \_\_\_\_\_

**ACCEPTANCE OF OFFER BY SELLER**     **COUNTER OFFER BY SELLER**

Seller certifies that Seller owns the property and has the power to sell the property. Seller accepts the offer and agrees to sell on the terms and conditions above set forth.

Waiver of Seller's attorney approval. This offer is not subject to Seller's attorney approval.

Dated: \_\_\_\_\_ SELLER \_\_\_\_\_

Witness: \_\_\_\_\_ SELLER \_\_\_\_\_

Seller's Initials

Buyer's Initials

ADMINISTRATIVE INFORMATION

|                              |                              |            |
|------------------------------|------------------------------|------------|
| Property Address: _____      |                              | MLS# _____ |
| <b>Seller:</b> _____         | <b>Buyer:</b> _____          |            |
| Address: _____               | Address: _____               |            |
| _____ Zip: _____             | _____ Zip: _____             |            |
| Phones: (H) _____ (W) _____  | Phones: (H) _____ (W) _____  |            |
| <b>Attorney:</b> _____       | <b>Attorney:</b> _____       |            |
| Address: _____               | Address: _____               |            |
| _____ Zip: _____             | _____ Zip: _____             |            |
| Phone: _____ Fax: _____      | Phone: _____ Fax: _____      |            |
| <b>Listing Broker:</b> _____ | <b>Selling Broker:</b> _____ |            |
| Address: _____               | Address: _____               |            |
| _____ Zip: _____             | _____ Zip: _____             |            |
| Phone: _____ Fax: _____      | Phone: _____ Fax: _____      |            |
| <b>Listing Agent:</b> _____  | <b>Selling Agent:</b> _____  |            |
| Other: _____ ID # _____      | Other: _____ ID# _____       |            |
| <b>HOA Manager:</b> _____    | <b>HOA Phone:</b> _____      |            |

# LIMITED WARRANTY

**WARRANTOR:** The Warrantor \_\_\_\_\_ is the Seller identified in the RESIDENTIAL CONSTRUCTION AND PURCHASE CONTRACT ("Contract") to which this LIMITED WARRANTY is appended, with an address of \_\_\_\_\_

**HOME WARRANTED:** The Dwelling warranted is the Dwelling constructed by the Seller as identified in the Contract.

**TO WHOM WARRANTED:** The Dwelling is warranted to the person or persons identified as the Buyers in the Contract.

**WARRANTY DATE:** This Limited Warranty is effective upon transfer of title to or possession by the Buyer or Buyer's agent, whichever is earlier (Warranty Date).

**THIS LIMITED WARRANTY EXCLUDES ALL OTHER WARRANTIES ON THE CONSTRUCTION AND SALE OF THE DWELLING AND ITS COMPONENTS, BOTH EXPRESS AND IMPLIED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. THIS LIMITED WARRANTY IS MADE PURSUANT TO GENERAL BUSINESS LAW §777-b AND EXCLUDES/MODIFIES THE HOUSING MERCHANT IMPLIED WARRANTY SET FORTH IN GENERAL BUSINESS LAW §777-a**

**SELLER'S LIMIT OF TOTAL AGGREGATE LIABILITY:**

The maximum total aggregate liability of the Seller under this Limited Warranty shall be equal to a maximum of \_\_\_\_\_ percent of the full contract price of the Property (as defined in the Contract) paid by the Buyer to the Seller for the first year of warranty coverage and \_\_\_\_\_ percent in years 2 through 6.

**CONSEQUENTIAL DAMAGES:**

This Limited Warranty excludes all consequential and incidental damages, except as otherwise required by New York State law.

1. **TO WHOM GIVEN.** This Limited Warranty is extended solely to the Buyer named in the Contract and solely during the time the Buyer owns the Property. It does not extend to subsequent owners of the Property or to other persons.

2. **BY WHOM MADE.** This Limited Warranty is made exclusively by the Seller whose name and address appear on the Contract.

WARRANTY DEED

THIS INDENTURE, made \_\_\_\_\_, 2005 between RIVERS RUN, LLC, a New York limited liability company having an office at 50 Fairwood Drive, Rochester, New York 14623 ("Grantor") and RIVERS RUN HOMEOWNERS ASSOCIATION, INC., having an office at 50 Fairwood Drive, Rochester, New York 14623 ("Grantee");

WITNESSETH, that Grantor, in consideration of One Dollar lawful money of the United States and other good and valuable consideration paid by Grantee, does hereby grant and release unto Grantee, Grantee's successors and assigns forever, the premises set forth and described in Schedule A attached hereto and made a part hereof, said premises bearing the following tax map number and tax mailing address:

Tax Map Number: \_\_\_\_\_  
Tax Mailing Address: 50 Fairwood Drive  
Rochester, New York 14623

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to said premises.

SUBJECT TO all covenants, easements, encumbrances and restrictions of record affecting said premises, if any.

Hereby intending to convey part of the same premises conveyed to the Grantor by deed recorded in the Monroe County Clerk's Office on \_\_\_\_\_, 2005 at Liber \_\_\_\_\_ of Deeds, page \_\_\_\_\_.

TO HAVE AND TO HOLD the premises herein granted unto Grantee, Grantee's heirs, successors and assigns forever.

GRANTOR covenants as follows:

FIRST, Grantee shall quietly enjoy said premises;

SECOND, Grantor will forever warrant the title to said premises; and

THIRD, Grantor, in compliance with Section 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of any cost of any improvement before using any part of the total of the same for any other purpose.

FOURTH, the premises conveyed hereunder does not constitute all or substantially all of the Grantor's assets and such conveyance is made in the ordinary course of Grantor's business.

IN WITNESS WHEREOF, Grantor has executed this Indenture as of the day and year first above written.

RIVERS RUN, LLC

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

\_\_\_\_\_  
Managing Member

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**  
**Description**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Henrietta, County of Monroe and State of New York more particularly described as Lot 69 of the Rivers Run Section 2 Subdivision as shown on the map filed in the Monroe County Clerk's Office in Liber \_\_\_\_ of Maps, page \_\_\_\_ excepting Blocks 1 through 18 as shown on said subdivision map.

TOGETHER with the right of ingress and egress over that part of Lot 68 designated "proposed 50' wide ingress/egress easement" shown on the map referred to above.

ALSO, TOGETHER with the right of ingress and egress as set forth in the permanent easement from Rochester Institute of Technology to Rivers Run, LLC dated \_\_\_\_\_ and recorded \_\_\_\_\_ in the Monroe County Clerk's Office in Liber \_\_\_\_ of Deeds, page \_\_\_\_\_.

February 10, 2006

Engineers Report and Description for  
The Cottages at Rivers Run  
Henrietta, New York

**1. Location of the Property**

The Cottages at Rivers Run is located on Fairwood Drive, which is off East River Road, in the Town of Henrietta, Monroe County, State of New York. The site was previously student housing for the Rochester Institute of Technology, the existing structures and infrastructure will be demolished as part of this project. The parcel is shown as lot 69 on the subdivision map prepared by EDR dated October, 13 2005.

**2. Site**

- a. The site features are shown on site plans entitled Rivers Run prepared by Environmental Design & Research, P.C. dated May 27, 2003 and last revised June 11, 2004. The project area is 18.021 acres.
- b. The existing buildings on the property will be demolished prior to the redevelopment of the site. The existing buildings being demolished include a maintenance garage and storage shed located in the southwest corner of the site adjacent to the Genesee River. The project involves the construction of 18 buildings, which will have 67 individually owned and maintained cottage homes. The existing buildings and parking lots located east of the project on Fairwood Drive are located on property owned by the Rochester Institute of Technology and will remain under their ownership.
- c. The proposed roadways within the project area are described as follows:

Fairwood Drive is a 2770-foot long private roadway, to be owned and maintained by the Home Owners Association (HOA) Access to East River Road is provided by the remaining 900 feet of Fairwood Drive, which is located in a easement on lands owned by the Rochester Institute of Technology.

- i. It is to be twenty (20) feet wide on a base of 12-inches of No. 2 Crusher Run Stone, on Mirafi 500X Geotextile, which extends under the concrete gutters on either side of the roadway. 2-inches compacted depth of asphalt concrete binder conforming to New York State Department of Transportation (NYSDOT) Item No. 403.13, and topped with 1-inch compacted depth of asphalt concrete top coarse conforming to NYSDOT Item No. 403.16.
- ii. 2.5-foot wide concrete gutters are the proposed edge treatment.



- iii. An underground piping system will convey stormwater from catch basins and inlet manholes to a proposed discharge point on the Genesee River, which is adjacent to the property. Some of the proposed drainage structures will direct stormwater into proposed wet ponds located in the center of the project. The outfall of the proposed wet ponds is connected to the proposed underground piping system along Fairwood Drive. All drainage inlet structures are to be precast concrete structures with reticuline grates. The piping system will be high-density polyethylene pipe. The storm piping system will be owned and maintained by the HOA.
- iv. A five (5) foot wide asphalt sidewalk will be installed throughout the project as shown on the site plans.
- v. Fairwood Drive will be constructed in accordance to the plans approved by the Town of Henrietta as well as, the Director of Engineering and Planning. The portion of Fairwood Drive within Lot 69 of the Rivers Run Section 2 subdivision, Liber 322 of maps, page 60, will be privately owned and maintained by the HOA.

Fairwood Circle is a 1534-foot long private roadway. The HOA will own and maintain 248-feet of Fairwood Circle as shown on the approved plans.

- i. It is to be twenty (20) feet wide on a base of 12-inches of No. 2 Crusher Run Stone, on Mirafi 500X Geotextile, which extends under the concrete gutters on either side of the roadway. 2-inches compacted depth of asphalt concrete binder conforming to New York State Department of Transportation (NYSDOT) Item No. 403.13, and topped with 1-inch compacted depth of asphalt concrete top coarse conforming to NYSDOT Item No. 403.16.
- ii. 2.5-foot wide concrete gutters are the proposed edge treatment.
- iii. An underground piping system will convey stormwater from catch basins and inlet manholes to a proposed discharge point on the Genesee River, which is adjacent to the property. The underground piping system will be connected to the proposed underground piping system along Fairwood drive. All drainage structures are to be precast concrete structures with reticuline grates. The piping system will be high-density polyethylene pipe. The storm piping system will be owned and maintained by the HOA.
- iv. Fairwood Circle will be constructed in accordance to the plans approved by the Town of Henrietta as well as the Director of Engineering and Planning. The portion of Fairwood Circle within Lot 69 of the Rivers Run Section 2 subdivision, Liber 322 of maps, page 60, will be privately owned and maintained by the HOA.
- d. There will be 49 driveways which are connected to common access drives and the private roadways within the project. The driveway and common access drives consisted of 9-inches of No. 2 Crusher Run Stone, followed by 2-inches compacted depth of asphalt concrete binder conforming to NYSDOT Item No. 403.13, and topped with 1-inch

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- compacted depth of asphalt concrete top coarse conforming to NYSDOT Item No. 403.19. Previously referenced drainage structures and underground piping system will collect storm runoff from drives and convey it to storm piping system along the roadways.
- e. The roadway has been designed to allow use by emergency vehicles and will be constructed in accordance to plans approved by the Town of Henrietta Fire Marshall.
  - f. Roadway lighting will be provided as shown on plans approved by the Town of Henrietta Planning Board. There will be thirty (30) 150-watt high-pressure sodium light fixtures on metal poles installed along the parking and roadway system for this project.
  - g. The project will maintain riparian rights to the Genesee River through access points located at the western end of the project, which is directly adjacent to the River.
  - h. There will be no commonly maintained components on the individually owned residences.

### 3. Subsoil Conditions

A geotechnical evaluation was performed by Empire GEO-Services, Inc. dated June 2003 for the proposed Rivers Run Project. The underlying soils near the Cottages consist of a non-engineered fill material that ranges in depth of 2 to 8 feet. This fill material generally includes mixtures of non-cohesive silt and sand, and cohesive clayey-silt with varying amounts of organics and gravel. Below the fill material, the native material consists of mixtures of silt, sand, and clay with varying amounts of gravel. Some areas of glacial till were encountered. Freestanding ground water was encountered in soil borings. A temporary monitoring well was installed and indicated that groundwater may be encountered at an elevation of 520 feet. Bedrock was encountered at depths ranging 24.4 to 29.4 feet below the existing ground surface.

- a. A portion of the existing site is below the 100 year flood elevation, based on the flood insurance rate map for the Town of Henrietta, community panel no. 360419-0005 Dated February 5, 1992. Areas of the project site below the 100 year flood elevation will be raised by placing an acceptable fill material, to bring the ground elevation up to the proposed finish grade as shown on the approved plans. The existing 100-year flood boundary will be revised as in conformance with a Conditional Letter of Map Revision based on fill that was granted by the Federal Emergency Management Agency on July 3, 2003. The final letter of map revision will be issued once the fill has been placed and certified in accordance with the conditional LOMR.
- b. During construction the potential for erosion is significant, this will be addressed by the use of temporary and permanent erosion control measures as shown on the approved plan. Appropriate erosion control measures include, but are not limited to silt fence, inlet protection, staked slope protection, and siltation basins.

- c. The buildings will be constructed in accordance with Town of Henrietta building regulations with floor elevations constructed above the base 100-year flood elevations. Once the site construction is complete and all unpaved areas have been stabilized with vegetation, minimal erosion will occur on the site. The approved grading plan for the site provides positive surface water drainage away from structures to the storm systems and pond system shown on the plans.

#### 4. Landscaping and Enclosures

A landscaping plan was developed by Environmental Design & Research, P.C. for the Rivers Run project.

- a. All disturbed areas that are not buildings, walks, and pavement, shall be restored to lawn areas. The lawn areas will be established by use of rockhounds, york rakes, and other such equipment prior to hydroseeding with the approved seed mixture. The contractor is required to establish a full stand of grass.
- b. Landscape plantings are shown on the Landscape Plan on sheets L-8, L10 and L-12. All plantings and lawn area will be maintained by the HOA. The Town of Henrietta requires a two (2) year warranty period on all plantings.
- c. Plantings include: American Sycamore, Serbian Spruce, Dark Green Arbovitae, Autumn Purple Ash, Shadblow Service Berry, Heritage River Birch, Green Vase Zelkova, Black Tupelo, and Black Hills Spruce. These trees and plantings will be located on the exterior of the buildings and along walks and roadways. Trees and plantings within the aforementioned lot 69 of the Rivers Run Section 2 subdivision will be maintained by the HOA.
- d. There is no permanent fencing proposed as part of this project. Any temporary fencing will be installed, maintained and removed by the contractor.
- e. The emergency access gate located on the access road in the northwest corner of the site will be maintained by the HOA.
- f. There is no garden wall proposed for this project.
- g. New segmental block retaining walls that are constructed within the aforementioned lot 69 of the Rivers Run Section 2 subdivision will be maintained by the HOA.
- h. The proposed wet ponds will be maintained by the HOA.
- i. Gazebos will be polygon shaped wood structures with wooden handrails and a metal roof.

## 5. Utilities

- a. Natural gas is to be supplied by Rochester Gas & Electric Corporation (RG&E). Services and mains will be placed within an easement along the proposed roadways, these services and mains will be the property of and maintained by RG&E.
- b. Electrical service is to be supplied by RG&E within an easement to their company. Electric lines and services will be the property of and maintained by RG&E.
- c. Cable will be supplied by Time Warner Communications. These will be within a shared utility easement with RG&E, the cable and services will be owned and maintained by Time Warner Communications.
- d. Telephone service will be provided by Frontier Telephone of Rochester. Telephone cable and services will be placed within a shared utility trench of RG&E. Telephone cables and services will be the property of and maintained by Frontier Telephone of Rochester.

## 6. Sewers

### a. Sanitary Sewer System

The sanitary sewer pipes and manholes installed will be owned and maintained by the Town of Henrietta. The system consists of four (4) and five (5) foot diameter precast concrete manholes connected by an 8-inch diameter PVC sanitary sewer pipe. Service laterals beyond the easement line shall be maintained by the HOA and consists of four (4) or six (6) inch PVC, SDR 21 laterals at 1% minimum slope.

- b. There are no sewerage pumps proposed for this project.

### c. Storm Drainage System

The storm drainage system will be made up of catch basins and inlet manholes connected to an underground storm piping system. There are thirty-eight (38) drainage structures proposed within the aforementioned lot 69 of the Rivers Run Section 2 subdivision, as shown on sheet L-4 of the approved plans. The entire storm drainage system consisting of drainage structures, underground piping, laterals, end sections and open channels will be maintained by the HOA.

## 7. Water

A portion of the proposed water system will be installed and dedicated to the Monroe County Water Authority (MCWA) and located within their easement. It will consist of 8-inch ductile

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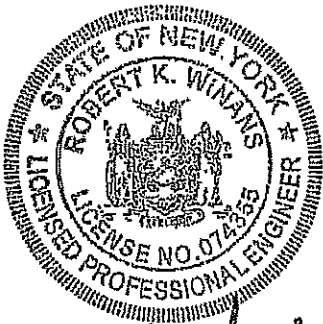
iron; class 51 mains with cement lining shall meet the latest AWWA and New York State Health Department Standards. The system also includes 8-inch gate valves, and appurtenances, and hydrants with guard valves that are to be located as shown on the approved plans. Individual water services shall be 1-inch copper type k service or 1.5 inch PE service to each unit. The water services beyond the MCWA easement line will be maintained by the HOA.

#### 8. Refuse Disposal

The HOA will arrange for weekly refuse disposal with a private refuse disposal contractor. The refuse shall be picked up and transported offsite to an approved landfill.

#### 9. Parking Areas

- a. Each cottage will be provided two (2) parking spaces on the exterior of the structure within the driveway area. There are five (5) visitor parking spaces as part of the park area on the west side of Fairwood Drive. An additional sixteen (16) parking spaces along Fairwood Drive. These 20-foot by 10-foot parking spaces are on 9-inches of type 2 subbase course, conforming to NSYDOT Item No. 304.03 and 2-inches compacted depth of asphalt concrete binder conforming to NYSDOT Item No. 403.13, and topped with 1-inch compacted depth of asphalt concrete top coarse conforming to NYSDOT Item No. 403.19. These visitor-parking areas will be owned and maintained by the HOA. The parking areas will not be attended.
- b. The stormwater runoff from these parking areas will drain into the previously referenced drainage structures.



*Robert K. Winans*

Robert K. Winans, P.E.  
License # 074355



EXHIBIT E

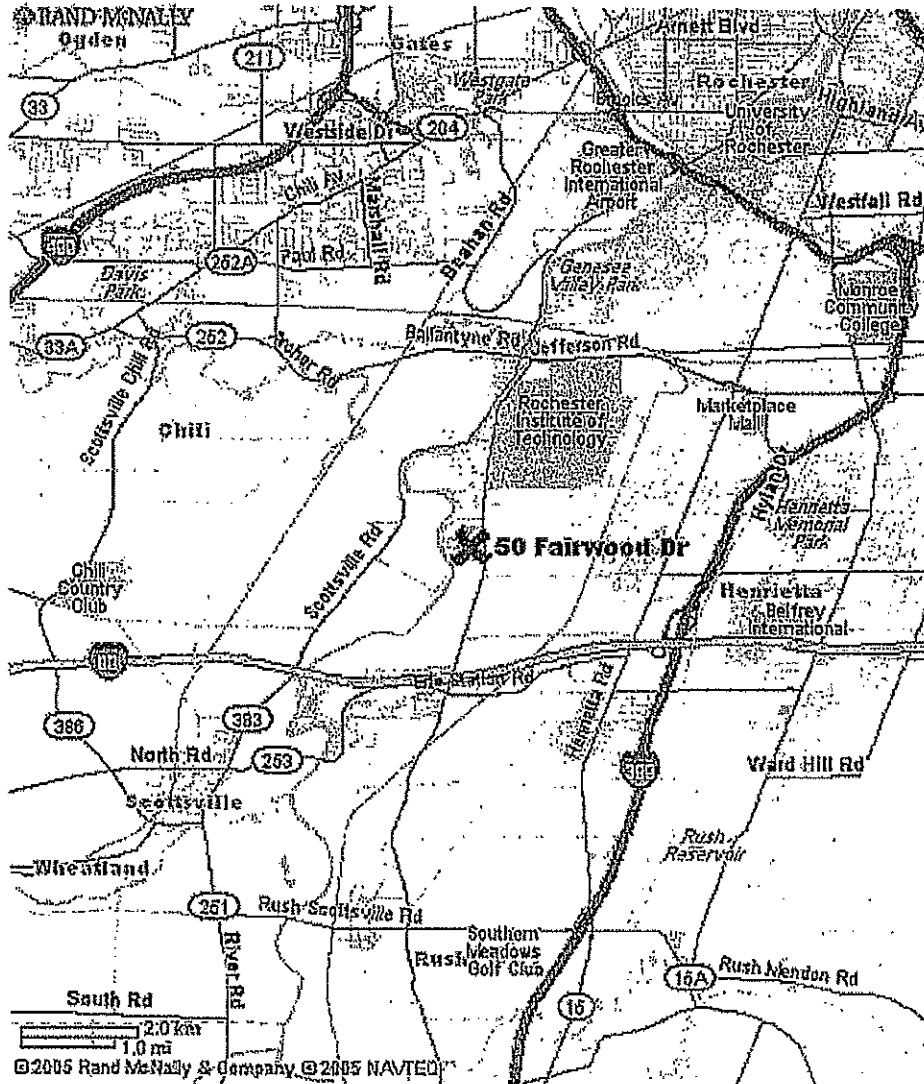


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Find it in the 2006 Road Atlas

•page 70, grid section NI-7

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EXHIBIT F

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

RIVERS RUN HOMEOWNERS ASSOCIATION, INC..

THIS DECLARATION, made the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Rivers Run, LLC, hereinafter called "Declarant".

WHEREAS, Declarant is the owner of certain subdivided real property in the Town of Henrietta, Monroe County, New York, more particularly described in Schedule "A" attached hereto and made a part hereof, said land in its entirety being hereinafter referred to as all of the premises herein described as "Properties"; and

WHEREAS, Declarant desires to subject the Properties to those certain covenants, agreements, easements, restrictions, charges, and liens as hereinafter set forth; and

WHEREAS, the RIVERS RUN HOMEOWNERS ASSOCIATION, INC. is a New York Not-for-Profit Corporation formed for the purpose described in its Certificate of Incorporation;

NOW, THEREFORE, Declarant hereby declares that all of the Properties (and the common area herein described) shall be subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Properties for and during the period of time specified hereafter, and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
NAME AND LOCATION

The name of the corporation shall be Rivers Run Homeowners Association, Inc., located at 50 Fairwood Drive, in the town of Henrietta, Monroe County, New York.

ARTICLE II  
DEFINITIONS

SECTION 1: "Association" shall mean and refer to Rivers Run Homeowners Association, Inc., its successors and assigns.

SECTION 2: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

The Common Area to be owned by the Association at the time of the conveyance of the first lot shall include all of the premises described as "Properties", excepting therefrom the townhome lots, as shown on the map or maps of the Properties filed in the Monroe County Clerk's Office.

SECTION 3: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties; including contract



sellers, excluding those having such interest merely as security for the performance of an obligation.

SECTION 4: "Declarant" shall mean and refer to Rivers Run, LLC, its successors and assigns if such successors or assigns shall acquire more than one undeveloped lot from Declarant for the purpose of development.

SECTION 5: "Properties" shall mean and refer to Schedule A, which includes all lots and common areas, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 6: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the Properties, with the exception of the Common Areas.

SECTION 7: A "Fine" shall be a sum of money not to exceed ten percent (10%) of the total annual common assessment for an individual lot. A fine may be a penalty.

### ARTICLE III PROPERTY RIGHTS

SECTION 1: Owner's Easements of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress to owner's property over the Common Area, which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association, pursuant to its By-Laws, to adopt rules and regulations governing the use of the Common Area and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.
- (b) The right of the Association to suspend the right to the use of the Common Area other than the common access road, by an owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to grant easements in, dedicate or transfer title to the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members approving such transfer. No such dedication or transfer shall be effective unless an instrument agreeing to such a dedication or transfer has been signed by 85% of each class of members and their mortgagees has been recorded.
- (d) The right of the Association to designate certain portions of the Common Area as paths, community gardens, specific recreation areas, and parking areas for the use of owners, their invitees and guests. However, invitees and guests are restricted from the use of garden areas, and the parking of trailers, except as permitted under the Rules and Regulations.
- (e) The right of invitees and visitors of any owner to ingress and egress over the Common Area.

SECTION 2: Delegation of Use: Owners may delegate, in accordance with the By-Laws and Rules and Regulations, their right of enjoyment to the Common Area to family members, tenants, or contract purchasers who reside on the property.

#### ARTICLE IV EASEMENTS

SECTION 1: EASEMENTS for UTILITIES. The Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Properties.

SECTION 2: OTHER EASEMENTS. There is hereby created a blanket easement, provided use of said easement does not interfere with any improvements, upon, across, over and under all of the Properties, for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, wastewater, surface water, gas, telephones, electricity, Cable TV, and a master TV antenna system.

By virtue of this easement, it is expressly permissible to erect and maintain the necessary equipment on the Properties, and to affix and maintain electrical or telephone wires and conduits, wastewater, surface water, and water lines, on, above or below any land owned by the Association and/or owners.

An easement is hereby reserved to the officers, agents, or employees of the Association, including the employees of any management company under contract with the Association, over all of the Common Areas, to protect its interest by entrance to any Common Area, and to maintain any utilities for which an easement has been granted.

An easement is hereby reserved to Declarant to enter the Common Areas and Lots during the period of development and sale of the Properties, or any additions to the Properties, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the development and sale of lots, including, without limitation, a sales office, storage area, and signs, provided that this does not unreasonably obstruct access by members of the Association.

#### ARTICLE V MEMBERSHIP & VOTING RIGHTS

SECTION 1: MEMBERSHIP - Every owner of a Lot which is subjected by this Declaration to assessment by the Association shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

SECTION 2: The Association shall have two CLASSES OF VOTING MEMBERSHIP -

CLASS A. Class A members shall be all Owners, with the exception of Declarant. Each Class A member shall be entitled to one vote. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member (s) shall be the Declarant or its successors or assigns and shall be entitled to one vote for so long as one lot is owned by Declarant. The Class B membership shall cease and be converted to Class A membership when title to all Lots in all phases has been transferred, or 5 years after the first Lot has been conveyed by Declarant, whichever occurs first. Class A members shall not be entitled to vote for members of the Board of Directors until all lots in all phases have been transferred or 5 years after the first Lot is transferred, whichever occurs first.

## ARTICLE VI COVENANT FOR ASSESSMENTS

SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance, of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual common assessments and special assessments. Annual common assessments are for maintenance charges including real estate tax charges for the Common Area. Special assessments shall include the cost of reconstructing those portions of the Common Areas which can not be repaired, and for emergencies as the need therefor arises. All assessments shall be established and collected as hereinafter provided. The covenant in this Section shall not constitute, a guarantee, or promise of any kind by Declarant to pay any assessment, or any other obligation of any Owner, other than Declarant.

The annual common maintenance assessments and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, late charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.

In spite of any provision to the contrary in this Article VI, the Declarant shall be obligated to pay only the difference between the amount collected on transferred Lots (which amount will not exceed the budgeted amount per transferred Lot) and the actual cost of operation of the Association.

SECTION 2: PURPOSE OF ASSESSMENTS. Assessments levied by the Association shall be used exclusively (i) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees, and (ii) to provide service for the individual Lots as described further in this Declaration.

SECTION 3: SPECIAL ASSESSMENTS. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, emergency repair, service or replacement of any improvement upon the Common Area, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly called for this purpose.

SECTION 4: NOTICE AND QUORUM. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article VI shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of Members, in person or by proxy, entitled to cast two-thirds (2/3) of all the votes of the membership shall constitute a quorum.

SECTION 5: RATE OF ASSESSMENT. Annual common and special assessments, shall be fixed at a uniform rate for all Lots, and may be collected on a quarterly or annual basis.

SECTION 6: DUE DATES FOR ANNUAL COMMON & SPECIAL ASSESSMENTS. The Board of Directors shall annually fix the amount of the assessments against each Lot. Written notice of any change in the assessments shall be sent to every owner subject thereto not less than thirty (30) days prior to the effective date of such change.

Due date(s) for payment of assessments shall be the first day of each month or as established by the Board. Payments received after the 10th of the month may, at the discretion of the Board, be subject to a late charge, which charge shall be a percentage of the assessment not to exceed the prime lending rate charged by M&T Bank at the time of the charge plus three (3) percent.

The Association shall, upon demand of a buyer or seller or their attorney, furnish a certificate signed by an officer of the Association or the Managing Agent, setting forth whether the assessments on a specified Lot have been paid. The Association may assess a reasonable charge for the preparation of any such certificate.

SECTION 7: EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the date said assessment is due shall become a lien against the Lot, and shall bear interest as set forth in Section 6 above from its due date. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.

The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the Lot, and interest, late charges, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment.

Each such owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such owner personally for the collection of such charge, and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such owner hereby expressly grants to the Association the power of sale in connection with such lien.

The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all owners. The Association, acting on behalf of the owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

SECTION 8: SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become

due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

SECTION 9: RESERVES AND SURPLUSES. The Association's Board shall establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary or desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

SECTION 10: In spite of any provision to the contrary in this Article VI, the Declarant shall not be liable for the payment of common charges for unsold Lots owned by it. The Declarant shall, however, contribute to the Association that amount equal to the difference between the cost of operating the Association and the assessments collected from owners as set forth in the projected budget.

SECTION 11: CONTRACTUAL AUTHORITY. The Association shall be entitled to contract with any corporation, firm or other entity in the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

#### ARTICLE VII MAINTENANCE

Assessments levied by the Association shall be used exclusively (1) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees; and (2) to provide the following services:

- maintenance, repair, improvement, and snow plowing of driveways and parking areas;
- garbage and trash removal;
- snow shoveling of sidewalks and steps;
- landscape and maintenance of common areas; and
- maintenance of Common Area drainage swales and retention areas for surface water.

The above obligation does not include any maintenance or repairs caused by fire or other casualty to the premises owned individually by members of the Association.

#### ARTICLE VIII USE OF PROPERTY

The use of the properties shall be restricted to and in accordance with the following provisions:

- A. A Lot shall be used for single family residential purposes for seniors (55 years of age or older) only. While any person or entity may acquire title to a lot, that lot may be used only for single-family residential purposes for seniors (55 years of age or older) only. For the purpose of

this section, a qualified occupant shall include single persons 55 years of age or older and couples, one of whom is 55 years of age or older. A surviving occupant who is not yet 55 years of age may continue his or her occupancy. In addition, one adult child, 21 years of age or older may reside with a qualified parent.

B. The Common Areas shall be used for the use and enjoyment of the Owners, their guests, invitees and assigns.

C. The Board of Directors is empowered to serve written notice of any violations of these restrictions. Such written notice shall be given at least two (2) times. If an Owner fails to comply within five (5) days after receipt of the second notice, the Board of Directors is empowered to assess a fine. A separate fine may be imposed for each violation. Unpaid fines will be considered additional assessments and will become a lien upon the property.

D. THE FOLLOWING SHALL APPLY TO ALL LOTS AND COMMON AREAS

(1) Only one (1) single-family dwelling and garage shall be erected, altered, placed or permitted to remain on any Lot.

(2) Each Member's dwelling and Lot shall be maintained in good repair and overall appearance. The Board of Directors shall contract for exterior maintenance and any expenses incurred shall be considered common area charges.

(3) All private passenger motorized vehicles will be parked and stored in garages or on driveways and not on any other portion of the Lot. Trailers and boats shall be stored in garages or in designated areas. Large vehicles and trailers, other than small private passenger types, shall be parked and stored only at the direction of and with prior written approval of the Board of Directors. Motor vehicles making deliveries or providing services to the Lots are permitted as needed. No part of any Lot or Common Area shall be used continuously for tent camping or the parking of sleeper vans, campers or tent trailers.

(4) The Board of Directors may designate certain portions of the Common Area for use as paths, restricted common areas, community garden areas, specific recreation areas, and parking areas for the use of Owners, their invitees and guests. Invitees and guests may use community garden areas and designated parking areas only as provided in the Rules.

(5) Garbage and rubbish shall not be dumped or allowed to remain on any Lot or Common Area except in accordance with the rules of the Association.

(6) No radio, television or similar towers or antennae shall be erected on any Lot or attached to the exterior of any dwelling except that one (1) TV antenna may be attached to the exterior of any dwelling in the event that the Association fails to install and maintain a master TV antenna system. TV Dishes will be allowed only with prior permission of the Board of Directors.

(7) Nothing shall be stored in the Common Areas except with the prior written consent of the Board of Directors.

(8) Motorized vehicles of any kind shall not be allowed on any pedestrian path, except for maintenance vehicles employed by the Association, and except for motorized assistance given to disabled people.

- (9) Mobile homes are not permitted on the Properties.

ARTICLE IX  
ARCHITECTURAL & LANDSCAPE CONTROL

SECTION 1: Landscape care of the Common Area and the landscaped area of each Lot is the responsibility of and shall be controlled by the Association.

No fence, mailboxes, or walls shall be erected or maintained upon the Properties except those erected at the time of the original construction of the buildings located thereon, or of a substantially similar nature, without the written application to and approval by the Board of Directors.

SECTION 2: No alterations, additions, rebuilding, exterior modification of any kind, or repainting of the exterior of any building shall be made except by or at the direction of the Board of Directors of the Association.

SECTION 3: No building, fence, wall or other structure or change in landscaping, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made, except by the Board of Directors of the Association.

If an individual Owner wishes to maintain the landscaping of that part of the Owner's Lot within ten (10) feet of the Owner's townhouse foundation that Owner must submit a written request for approval along with a proposed landscape plan to the Board of Directors.

In the event that the Board of Directors fails to approve or disapprove any such request, design or location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made.

ARTICLE X  
INSURANCE & CASUALTY DAMAGE

A. The Association will obtain and maintain in force and effect policies of liability, casualty, and other necessary insurance, in amounts, and with such coverages as are acceptable to the Association. This insurance shall include property casualty insurance in full replacement amounts for all townhome units.

B. An annual evaluation shall be made by the Board of Directors to determine the adequacy of the insurance.

C. The Owner of any Lot shall be solely responsible for securing public liability, fire, and all insurance necessary to protect his interests as he shall be so advised.

ARTICLE XI

GENERAL PROVISIONS

SECTION 1: Duration & Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, the Association, or the owner of any land subject to this Declaration, their respective heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change such covenants and restrictions, in whole or part.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than eighty percent (80%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendments must be recorded in the Ontario County Clerk's office to become effective.

SECTION 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

SECTION 3: Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Expenses of enforcing the covenants herein contained shall be chargeable to the Owner violating these covenants and the expense so incurred by the Association shall constitute a lien on such Owner's Lot, collectible in the same manner as assessments under the prior provisions hereof.

RIVERS RUN, LLC  
DECLARANT

By: \_\_\_\_\_  
Managing Member



STATE OF NEW YORK     )  
COUNTY OF MONROE    ) SS:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF INCORPORATION**

**OF**

**RIVERS RUN HOMEOWNERS ASSOCIATION, INC.**

**Under Section 402 of the Not-For-Profit Corporation Law**

The undersigned, for the purpose of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law, does hereby certify:

1. The name of the corporation is RIVERS RUN HOMEOWNERS ASSOCIATION, INC. (the "Corporation").
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
3. The purpose or purposes for which the Corporation is formed are: To promote and protect the interests of the owners of property in Rivers Run Subdivision; to provide for the acquisition, development, construction, management, maintenance and preservation of Corporation property; to enforce all covenants, easements, restrictions and agreements within the subdivision; and to do any act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under the Not-For-Profit Corporation Law.
4. The Corporation shall be a Type A corporation under Section 201 of the Not-For-Profit Corporation Law.
5. The office of the Corporation shall be located in the County of Monroe, State of New York.
6. The names and addresses of the initial directors of the Corporation are as follows:

Patrick Tobin

71 Linden Street  
Rochester, New York 14620

Claudia Blumenstock

407 Taylor Road  
Honeoye Falls, New York 14472

Julie Fenske

44 Mill Valley Road  
Pittsford, New York 14534

7. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the Corporation which may be served upon him is 50 Fairwood Drive, Rochester, New York 14623.

IN WITNESS WHEREOF, I have signed this Certificate this 15<sup>th</sup> day of November, 2005.



---

Leon T. Sawyko  
Incorporator  
99 Garnsey Road  
Pittsford, New York 14534

**CERTIFICATE OF INCORPORATION  
OF  
RIVERS RUN HOMEOWNERS ASSOCIATION, INC.**

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

**HARRIS BEACH PLLC  
99 Garnsey Road  
Pittsford, New York 14534**

FILING RECEIPT

ENTITY NAME: RIVERS RUN HOMEOWNERS ASSOCIATION, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: A COUNTY: MONR

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC.

SERVICE CODE: AL

FILED:11/16/2005 DURATION:PERPETUAL CASH#:051116000462 FILM #:051116000420

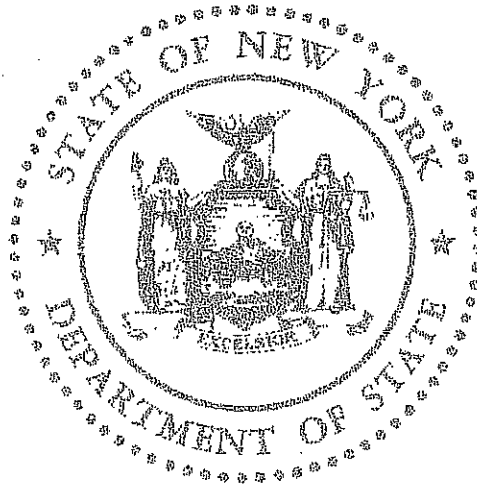
ADDRESS FOR PROCESS

EXIST DATE

THE CORPORATION  
50 FAIRWOOD DRIVE  
ROCHESTER, NY 14623

11/16/2005

REGISTERED AGENT



| FILER               | FEES     |        | PAYMENTS |        |
|---------------------|----------|--------|----------|--------|
|                     |          | 110.00 |          | 110.00 |
|                     | FILING   | 75.00  | CASH     | 0.00   |
|                     | TAX      | 0.00   | CHECK    | 0.00   |
| HARRIS BEACH PLLC   | CERT     | 0.00   | CHARGE   | 0.00   |
| 99 GARNSEY ROAD     | COPIES   | 10.00  | DRAWDOWN | 110.00 |
|                     | HANDLING | 25.00  | OPAL     | 0.00   |
| PITTSFORD, NY 14534 |          |        | REFUND   | 0.00   |

EXHIBIT H  
BY-LAWS OF  
RIVERS RUN HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
IDENTITY

These are the By-Laws of Rivers Run Homeowners Association, Inc.

These By-Laws provide the method by which Rivers Run Homeowners Association, Inc. (herein the "Association"), a homeowners association in the Town of Henrietta, Monroe County, New York, organized under the Not-For-Profit Corporation Law, shall be governed.

The office of the Association shall be as designated by the Board of Directors, or at the address of Rivers Run, LLC, (herein the "Declarant") 50 Fairwood Drive, Rochester, New York 14623.

The fiscal year of the Association shall be the calendar year.

ARTICLE II  
DEFINITIONS

A. "Association" shall mean and refer to Rivers Run Homeowners Association, Inc., its successors and assigns.

B. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions, and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

C. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

D. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

F. "Declarant" shall mean and refer to Rivers Run, LLC, its successors and assigns.

G. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Properties and recorded in the Monroe County Clerk's Office.

H. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

I. A "Fine" shall mean a sum of money determined and levied by the Board of Directors or their agent on an Owner for the violation of the Declaration, By-Laws, or Rules of the Association. A fine can not exceed 10% of the total annual common assessment.

### ARTICLE III BOARD OF DIRECTORS

A. Membership and Initial Selection. The Association shall be governed by a Board of Directors consisting of not less than three (3) nor more than five (5) persons. These directors shall be members in good standing of the Association. The initial Board of Directors shall be designated by Declarant who is authorized to choose the directors until all Lots in all phases have been transferred or until five (5) years after the transfer of the first unit, whichever first occurs. The directors designated by the Declarant need not be members of the Association.

B. Term and Election. At such time as the members become empowered to elect the Board of Directors they shall elect three (3) directors, the person receiving the greatest number of votes serving three (3) years, the person receiving the next highest number of votes serving two (2) years, and the person receiving the next highest number of votes serving one (1) year. Thereafter, at each annual meeting the members shall elect one (1) director to serve for three (3) years.

C. Removal. Any director may be removed from the Board with or without cause by a majority vote of the members of the Association. In the event of death, resignation, or removal of a director his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

D. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

E. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining approval of all the directors. Any actions so approved shall be in writing and have the same effect as though taken at a meeting of the directors.

F. Powers and Duties. The Board of Directors shall exercise all the powers and duties permitted the governing body of the Association, including those existing under the Not-For-Profit Corporation Law of New York State. Such powers and duties shall be exercised in accordance with the provisions of the Declaration of Covenants, Conditions, and Restrictions applicable to the property recorded in the Monroe County Clerk's Office (herein the "Declaration") which govern the use of the land, and shall include but shall not be limited to the following powers and duties:

1. To make and collect assessments, including special assessments, against members to defray the costs of the Association. To file a lien against any property for which assessments are not paid within thirty-one (31) days after due date, or to bring an action at law against the Owner personally obligated to pay the same.

2. To establish reserve funds for such lawful purposes as it, in its sole discretion, may determine necessary or desirable for the financial security of the Association, including capital reserve accounts.

3. To use the proceeds of assessments in the exercise of its powers and duties.

4. To issue or cause to be issued upon demand of a buyer or seller or their attorney or mortgagee, a certificate setting forth whether or not an assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

5. To assure the maintenance and repair of the exterior of all residential units and the maintenance, repair, replacement and operation of all Association property for the common use and enjoyment of the lot owners.

6. To adopt, publish, and distribute to members rules and regulations governing the use of the Common Areas, and the personal conduct thereon of members and their guests, and to establish penalties or fines for the infraction thereof. The initial rules are attached hereto as Schedule "A".

7. To enforce by legal means the provisions of the Declaration, By-Laws, and Regulations for the use of the Properties.

8. To procure and maintain adequate property casualty insurance on all townhome units and liability and casualty insurance on property owned by the Association. The Board of Directors shall annually review the amount of insurance coverage to assure that the Association and its members are fully protected. The Board shall also procure insurance on all directors, officers or employees having fiscal responsibility as it may deem appropriate.

9. To authorize the officers to enter into management agreements with third parties in order to facilitate the efficient operation of the facilities and services of the Association. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of the facilities, and all improvements included therein, designated as Common Areas, and the receipt and disbursement of such funds as may be authorized by the Board of Directors. The term of these management agreements shall be as determined by the Board to be in the best interests of the Association.

10. To employ personnel for reasonable compensation to perform, or to retain and/or contract for, the services required for proper administration of the purposes of the Association.

11. To pay the cost of all snow plowing, lawn care and other lot services rendered to the Association.

12. To receive, consider, and act upon any application which pertains to the building, rebuilding, or any alteration of a structure, and landscape of property in accordance with Article IX of the Declaration.



13. 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 regular meetings of the Board of Directors.

G. Method of Calling Meetings.

1. The first meeting of the Board of Directors shall take place within six (6) months after the closing of the first Lot and thereafter regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board. Notice of regular meetings shall be given to each director personally or by mail, telephone or telegram at least three (3) days prior to the day named for the meeting unless such notice is waived. The first regular meeting held in each calendar year shall be the annual, meeting of the Board.

2. Special meetings of the Board of Directors may be called by the President and must be called by the Secretary at the written request of three directors. No less than three (3) days notice of the meeting shall be given personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting.

3. Any director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

H. Quorum. A quorum at the Board of Directors meeting shall consist of a director or directors present in person, holding at least a simple majority of the eligible votes. The acts of the Board approved by a majority of the directors present in person or by proxy at a meeting at which a quorum is present shall constitute the acts of the Board of Directors except as specifically otherwise provided in the Declaration. If at any meeting of the Board of Directors there be fewer than a quorum present, the directors present shall adjourn the meeting from time to time until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

I. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the members of the Board of Directors consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors.

J. Officers. The officers of the Association shall be a President, Secretary, and Treasurer. They shall be elected at the annual meeting by the Board of Directors from among the members of the Board and shall hold office for a term of one (1) year or until the next annual meeting. Officers may be removed and replaced by vote of the directors at any meeting. Any person may hold two (2) offices except that the President shall not be the Secretary. The Board of Directors may from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

1. The President shall be the chief executive officer of the Association and shall preside over the meetings of the Board of Directors and of the members. He shall have all the powers and duties which are usually vested in the office of the president, including but not limited to the power to appoint committees from among the directors, members and residents of the subdivision from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

2. The Secretary shall keep the minutes of all proceedings of the Board of Directors and of members. He shall attend to the giving and serving of all notices to the directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary, and as may be required by the directors or the President. The Secretary shall keep a current record containing the names, alphabetically arranged, of all persons who are members of the Association, showing their place of residence. Such record shall be open for inspection as prescribed by law. In the absence or disability of the President, he shall exercise the powers and perform the duties of the President.

3. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members including an account for each Lot in the subdivision; he shall keep the books of accounts of the Association in accordance with good accounting practices. The Treasurer shall receive and deposit, in appropriate bank accounts as shall be designated as depository by the Board of Directors all monies of the Association; disburse funds of the Association as directed by action of the Board of Directors; sign with the President all checks and promissory notes of the Association; cause an annual audit of the accounts of the Association to be made by an accountant, selected by the Board of Directors, at the completion of each fiscal year; and prepare an annual budget and statement of income and expense at the inception of each fiscal year. Upon adoption of said budget and financial statement by the Board of Directors, the Treasurer shall deliver a copy of same to each member of the Association. The fiscal year shall be the calendar year.

4. Compensation. The officers shall not receive any salary for their services. However, an officer may be reimbursed for actual expenses incurred in the performance of his duties.

5. Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors. The premium on such bonds shall be a common expense and be paid by the Board of Directors.

6. Vacancies. A vacancy in any office may be filled by appointment by the remaining members of the Board of Directors. The officer so appointed to such vacancy shall serve for the remainder of the term of the office to which they are appointed.

#### ARTICLE IV ANNUAL MEETINGS OF THE HOMEOWNERS' ASSOCIATION AND POWERS OF MEMBERS

A. Meetings. Meetings of the members shall be held annually and when called by the Board of Directors, or by the President, or by any three (3) members. Board members shall be elected at the Annual Meeting. Special assessments shall have the assent of two-thirds (2/3) of the votes of the Members. All meetings shall be held at the principal office of the Association or at such other place in the Town of Henrietta, or any immediately adjacent town, as may be fixed by the President. The meeting notice shall state the time, date, place and purpose of the meeting.

B. Notice of Meeting. The Secretary shall give not less than seven (7) days notice of any meeting of members personally, or by mail, or telegram, which notice shall state the time,

date, place, and purpose of the meeting. Any member may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

C. Quorum. A quorum at members meetings shall consist of a simple majority of the eligible members present by proxy or in person. The acts of the members must be approved by vote of a simple majority of the eligible members except as specifically otherwise provided in these By-Laws, the Declaration, or the Not-For-Profit Corporation Law.

## ARTICLE V ARCHITECTURAL & LANDSCAPE CONTROL

A. The maintenance, repair and replacement of the exterior of all townhome units and garages, including all roofs and landscaping and lawn maintenance are the responsibility of the Association.

B. No fences, or walls shall be erected or maintained upon the Properties except those erected at the time of the original construction of the buildings located thereon, or of a substantially similar nature, without the written application to and approval by the Board of Directors.

C. No alterations, additions, building, rebuilding, or any exterior modification of any kind, or re-painting of the exterior of any building shall be made except by the Board of Directors.

D. No building, fence, wall or other structure or change in landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made, except by the Board of Directors of the Association.

E. If an individual Owner wishes to maintain the landscaping of that part of the Owner's Lot within ten (10) feet of the Owner's townhouse foundation that Owner must submit a written request for approval along with a proposed landscape plan to the Board of Directors.

In the event that said Board of Directors fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, no approval will be required and compliance with this Article will be deemed to have been made.

## ARTICLE VI LIABILITY OF BOARD OF DIRECTORS

In order to limit the liability of the Owners, any contract, agreement, or commitment made by the Board of Directors shall state that it is made by the Board of Directors as agent for the Owners as a group only and that no member of the Board of Directors nor individual Owner shall be liable for such contract, agreement, or commitment. The Board of Directors shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith and the Owners shall severally indemnify all members of the Board of Directors in accordance with their duties as such members except for acts of willful misconduct or acts made in bad faith. Such several liability of the Owners shall, however, be limited to the extent that his proportionate interest in the common area bears to the total liability of the members of the Board of Directors.

## ARTICLE VII H-6

AMENDMENTS

A. These By-Laws may be amended at a regular or special meeting of the members by a vote of two-thirds (2/3) of a quorum of members is present in person or by proxy.

B. In case of any conflict between the Articles of Incorporation and these By-Laws the Articles shall control and in the case of any conflict between the Declaration and these By-Laws the Declaration shall control.

This is a true copy of the By-Laws of Rivers run Homeowners Association, Inc. as of this \_\_\_ day of \_\_\_\_\_, 200\_\_.

RIVERS RUNHOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_, Secretary

SCHEDULE A  
RULES AND REGULATIONS

In addition to the other provisions of the By-Laws, the following rules and regulations, together with such additional rules and regulations as may hereafter be adopted by the Board of Directors, shall govern the use of the Lots and Common Areas.

1. The Common Area pathways must not be obstructed or encumbered.
2. Parking on the Common Areas will be in Board designated areas only.
3. The landscaping of the Common Area is for the enjoyment of the Owners. Trees, shrubs, bushes, and all landscaping shall not be cut, tampered with, or harmed in any way.
4. Garbage, trash, and cuttings shall not accumulate on Lots and the Common Area. Collection of garbage and trash from Lots shall be at the direction of the Board of Directors.
5. A maximum of two (2) pets, in the aggregate, may be kept in any dwelling or on any Lot. No animals of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose(s). No Owner or resident shall allow any pet to run free in the Common Areas. Pets on the Common Areas shall be leashed. Owners shall be responsible for picking up after pets.
6. Motor vehicle repair is to be carried out in an enclosed garage.
7. Boats, trailers and large vehicles shall be stored inside garages.
8. Storage of equipment, supplies and firewood shall be in garages only.

EXHIBIT I

ESCROW AGREEMENT

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2005, between RIVERS RUN, LLC ("SPONSOR") as sponsor of the offering plan and HARRIS BEACH PLLC ("ESCROW AGENT") as escrow agent.

WHEREAS, Rivers Run, LLC is the sponsor of an offering plan for Homeowners Association ownership if the premises located at Fairwood Drive, Rochester, New York 14623 which premises are known as Rivers Run Townhouses Subdivision; and

WHEREAS, Harris Beach, PLLC is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-E(2-b) and the Attorney General's regulations promulgated thereunder; and

WHEREAS, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers and subscribers, pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW ACCOUNT

- 1.1 SPONSOR and ESCROW AGENT hereby establish an escrow account with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers or subscribers. The escrow account has been opened with Bank of America at its branch located at Two State Street, Rochester, New York 14614. The depository bank account number is \_\_\_\_\_.
- 1.2 The name of the account is Rivers Run Townhouses Subdivision Special Escrow Account.
- 1.3 ESCROW AGENT is the sole signatory on the account.
- 1.4 The escrow account shall be a non interest-bearing account as disclosed in the offering plan.
- 1.5 The escrow account is an IOLA established pursuant to Judiciary Law §497.

2. DEPOSITS INTO THE ESCROW ACCOUNT

- 2.1 All funds received from prospective purchasers or subscribers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be deposited in the escrow account. All instruments to be deposited into the escrow account shall be made payable to, or endorsed by the purchaser or subscriber to the order of Harris Beach LLP as escrow agent for The Drumlins II HOA offering plan. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such escrow account, shall be returned to the prospective purchaser or subscriber promptly, but in no event more than five business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 Within ten (10) business days after tender of the deposit submitted with the subscription or purchase agreement, ESCROW AGENT shall notify the purchaser of the deposit of such funds in the bank indicated in the offering plan, provide the account number, and disclose the initial interest rate. If the purchaser does not receive notification of such deposit within fifteen (15) business days after tender of the deposit, the purchaser may cancel the purchase and rescind within ninety (90) days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with the regulations and requisite notice was timely mailed to the subscriber or purchaser.

3. **RELEASE OF FUNDS**

- 3.1 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser until after consummation of the plan as defined in the Attorney General's regulations. Consummation of the plan shall not relieve SPONSOR of its fiduciary obligations pursuant to GBL Section 352-h.
- 3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in (a) a writing signed by both sponsor and purchaser or (b) a determination of the Attorney General or (c) a judgment or order of a court of competent jurisdiction or until released pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.
- 3.3 SPONSOR shall not object to the release of the escrowed funds to (a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan or (b) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.
- 3.4 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT has given the purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the Department of Law pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.

4. **RECORDKEEPING**

- 4.1 ESCROW AGENT shall maintain all records concerning the escrow account for seven years after release of the funds.
- 4.2 Upon the dissolution of a law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer.
- 4.3 ESCROW AGENT shall make available to the Attorney General, upon his request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

5. **GENERAL OBLIGATIONS OF ESCROW AGENT**

5.1 ESCROW AGENT shall maintain the accounts called for in this Agreement under the direct supervision and control of ESCROW AGENT.

5.2 A fiduciary relationship shall exist between ESCROW AGENT and Purchasers, and ESCROW AGENT acknowledges its fiduciary obligations.

6. **RESPONSIBILITIES OF SPONSOR**

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT.

6.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT's performance of its fiduciary duties and compliance with the Attorney General's regulations.

7. **TERMINATION OF AGREEMENT**

7.1 This Agreement shall remain in effect unless and until it is cancelled, by either:

(a) Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; or

(b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; and

(c) all shares or units offered pursuant to the plan have been sold and all sales transactions have been consummated.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1 above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any and all contracts or documents maintained by ESCROW AGENT to the new escrow agent.



8. **SUCCESSORS AND ASSIGNS**

8.1 This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.

9. **GOVERNING LAW**

9.1 This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

10. **ESCROW AGENT'S COMPENSATION**

10.1 SPONSOR agrees that ESCROW AGENT's compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by any financial institution under any circumstance.

11. **SEVERABILITY**

11.1 If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12. **ENTIRE AGREEMENT**

12.1 This Agreement, read together with GBL Section 352-e(2-b) and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as to the day and year first written above.

ESCROW AGENT

HARRIS BEACH PLLC

By: \_\_\_\_\_  
Leon T. Sawyko, a member

SPONSOR

RIVERS RUN, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Managing Member

ETF-1

APPLICATION TO THE ATTORNEY GENERAL  
FOR A DETERMINATION ON THE  
DISPOSITION OF DOWNPAYMENTS

[Send this application to the reviewing attorney assigned to the subject plan.]

Re: \_\_\_\_\_  
Address of Building or Name of Project

File Number: \_\_\_\_\_

Application is made to the Attorney General to consider and determine the disposition of down payments held pursuant to GBL Sections 352-e(2-b) and 352-h. The following information is submitted in support of this application:

1. Name of Applicant \_\_\_\_\_

2. Address of Applicant \_\_\_\_\_

3. Name, Address, and Telephone Number of Applicant's Attorney (if any) \_\_\_\_\_

4. This is an application for  
[ ] return of downpayment.  
[ ] forfeiture of downpayment.  
[ ] other: \_\_\_\_\_

5. The project is [ ] a conversion of occupied premises.  
[ ] newly constructed or rehabilitated.  
[ ] vacant (as is).

6. The project is structured as  
[ ] a cooperative.  
[ ] a condominium.  
[ ] a homeowners association.  
[ ] a timeshare.  
[ ] other: \_\_\_\_\_

2/6/92

7. **Name and Address of Sponsor:** \_\_\_\_\_  
\_\_\_\_\_
8. **Name and Address of Escrow Agent:** \_\_\_\_\_  
\_\_\_\_\_
9. **If downpayments are maintained in an escrow account:**
- (a) **Name of account** \_\_\_\_\_
  - (b) **Name and address of bank** \_\_\_\_\_
  - (c) **Account number (if known)** \_\_\_\_\_
  - (d) **Initial interest rate (if known)** \_\_\_\_\_
10. **If downpayments have been secured by bonds:**
- (a) **Name and address of bond issuer or surety:** \_\_\_\_\_  
\_\_\_\_\_
  - (b) **Copy of bond included in this application. (DO NOT SEND ORIGINAL BOND). If not included, explain:**  
\_\_\_\_\_  
\_\_\_\_\_
11. **If downpayments have been secured by a letter of credit:**
- (a) **Name and address of bank which issued the letter of credit:** \_\_\_\_\_  
\_\_\_\_\_
  - (b) **Date of expiration of the letter of credit, if known:**  
\_\_\_\_\_
12. **Plan information:**
- (a) **Date of filing of plan:** \_\_\_\_\_

(b) Plan  
 has been declared effective. Approximate date: \_\_\_\_\_  
 has not been declared effective.

(c) If effective, the plan  
 has closed or the first unit has closed. Approximate date: \_\_\_\_\_  
 has not closed.  
 don't know.

(d) Downpayments are secured by  
 escrow account.  
 bonds.  
 letter of credit.

13. Contract information:

(a) Copy of contract and of all riders or modification letters are attached. (DO NOT SEND ORIGINALS.)

(b) Date on which subscription or purchase agreement was signed: \_\_\_\_\_

(c) Date(s) of downpayment(s): \_\_\_\_\_

(d) Total amount of downpayment(s): \_\_\_\_\_

(e) Names and addresses of subscribers or purchasers affected by this application:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. State the basis for your claim. Please be as specific as possible. You may add additional sheets. Attach copies of any relevant documents.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. I am contemporaneously sending a copy of this application to the following persons:

---

---

**Note:** You are required to mail a copy of this Application to all other affected parties.

In filing this application, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities I may contact a private attorney. The above application is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Telephone: (Home)** \_\_\_\_\_ **(Business)** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

---

2/6/92

SPONSOR'S CERTIFICATION

RE: RIVERS RUN TOWNHOUSES SUBDIVISION, HENRIETTA, NEW YORK  
RIVERS RUN HOMEOWNERS ASSOCIATION, INC.

We are the sponsor and 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 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 raise, 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.

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: \_\_\_\_\_

RIVERS RUN, LLC,  
SPONSOR

By: \_\_\_\_\_  
David Christa, Managing Member

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_

LIVING COMMUNITIES, LLC,  
Principal

By: \_\_\_\_\_  
David Christa, Managing Member

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_

Additional Principals:

\_\_\_\_\_  
David Christa

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Patrick Tobin

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public



December 2, 2005

The sponsor of the homeowners association offering plan for Rivers Run Homeowners Association, Inc. retained Mayzon to review Schedule A containing projections of income and expense for the first year of operation. Our firm currently manages 2,800 residential rental units. The size of each property ranges from 80 units to 500 units. We have been in the management business for over 30 years.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law 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 them with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential 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 first year of operation as a homeowners association.

We certify that the Schedule:

- 1) sets forth in detail the projected income and expense for the first year of HOA operation;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;
- 3) does not omit any material fact;
- 4) does not contain any untrue statement of material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) does not contain any representation or statement which is false, where I (a) knew a truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

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







274 North Goodman Street

Rochester, NY 14607

585.271.0040

F: 585.271.0042

www.edrpc.com

Engineers Certification  
The Cottages at Rivers Run  
Henrietta, New York

The sponsor of the offering plan to develop the captioned property and form a Home Owners Association has retained our firm to prepare a report describing the proposed property (The "Report"). We have visually inspected the existing parcel of land on numerous occasions and have examined the Site Construction Drawings prepared by our firm dated May 27, 2003, last revised June 11, 2004 and have prepared the Report dated November 2, 2005, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

I am a licensed professional engineer in the State of New York 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 Department of Law 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 the construction provided that construction is in accordance with the plans 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 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 development of the project, forming of the Home Owners Association 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.

November 2, 2005

Robert K. Winans, P.E.

Sworn to before me

This 11<sup>th</sup> day of November 2005

JEAN MARIE SAK  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN MONROE COUNTY 4658334  
MY COMMISSION EXPIRES APRIL 14, 2006

Environmental Design & Research, P.C.

Syracuse

Rochester

Buffalo

M-1

EXHIBIT N



Phone: 585.872.4611

Fax: 585.872.7674

info@integratedfacilitiesolutions.com

841 Holt Road • Webster, New York 14580

**Integrated Facility Solutions  
Contract for Services**

Date: November 21, 2005  
Contract Number: RR110105  
Property Name: River's Run  
Property Location: 50 Fairwood Drive, Rochester, NY 14623  
OWNER Representative: Julie Fenske

THIS AGREEMENT made at Integrated Facility Solutions, 841 Holt Road, Webster, New York 14580, on this 21<sup>st</sup> day of November, 2005 by and between Integrated Facility Solutions, hereinafter referred to as the CONTRACTOR, and

River's Run Homeowner Association, Inc.  
50 Fairwood Drive  
Rochester, NY 14623

hereinafter referred to as the OWNER, to perform services at the following Locations:

**Rivers Run  
50 Fairwood Dr.  
Rochester, NY 14623**

OWNER REPRESENTATIVE: Julie Fenske

CONTRACTOR REPRESENTATIVE: James P. Warner

**JOB SPECIFICATIONS:**

As per contract documents as prepared by Integrated Facility Solutions, entitled as above, consisting of specifications contained in this document.

This contract is to provide all labor, materials and equipment necessary (*with exceptions noted*) to perform the following scope of work per your request, and all work as outlined in Exhibit I, Rivers Run Common Charges worksheet, at the above referenced location(s).

Work scope:

CONTRACTOR will provide a qualified staff and or SUBCONTRACTOR(s) to perform the services outlined herein.

PLOWING SERVICES (Includes Labor and Equipment): Per 2" accumulation

Option i : per trip plowing : \$ n/a

(or)

Option ii: per season plowing: \$20,000

1. Any request for moving, stacking, hauling, drifting, or cleanup of snow or plowing services requested under 3.0" , on holidays or in storm conditions will be billable at the following hourly rates:

|                      |              |
|----------------------|--------------|
| 10 wheeler dump      | \$ 50.00/hr  |
| 6 wheeler dump       | \$ 40.00/hr  |
| Loaders and backhoes | \$ 80.00/hr  |
| Pusher blades        | \$ 15.00/hr. |
| Bobcats              | \$ 55.00/hr  |
| Pickup truck         | \$ 60.00/hr  |
| Shovelor's           | \$ 30.00/hr. |

2. CONTRACTOR and its SUBCONTRACTOR will not be responsible for any damage done to lawn, curb or asphalt areas where customer requests snow to be plowed, pushed or stacked or to any pavement/concrete or granite areas that are loose or broken. Snow will be plowed and pushed on asphalt surface only during normal plowing.

3. Storm conditions will consist of snowfall of 12" or more within an 18 hour period.

ii. Sidewalk services: (includes labor & equipment)

Service i – snow removal from walks: \$ 5,000.00 per season (includes salting main door entries only)

Service ii – salting only of walks as needed: \$ 30.00 per manhour + salt material

4. Sidewalk services will be performed any time snow accumulates 2" or more. Initial services will be completed by 7:00 am; any services during daytime hours must be requested. Salting of the sidewalks will be done as needed at door entrances only, any salt requested on walking trails will be billable @ \$9.00 per bag used + labor to place product.

5. Bulk salting services: (includes labor, equipment and material)

Service - per ton service: \$ 85.00 per ton for requested services, minimum 2 ton per trip.

Service - per season: \$ 22,000 - includes salting all main roadways and parking lots as needed for season.

6. Bulk salting services will be performed as needed and dispatched at the discretion of SUBCONTRACTOR and will be completed by as needed seven days a week.

Single Source Responsibility & Accountability Page 2 of 6

www.integratedfacilitysolutions.com

General terms and conditions of snow removal proposal:

Services will be billed after service is performed, seasonal contracts will be billed in five installments with first installment billed upon commencement of this contract. All billings will be due net 30 days from receipt of invoice and are subject to finance charges. Any unsatisfied service or report of damage to property must be reported within 24 hrs of service performed via fax to: 585-872-7674 and or called into our office: 585-872-4611.

OWNER and CONTRACTOR and SUBCONTRACTOR, shall indemnify, defend and hold each other harmless from and against all claims, injuries, damages and expenses arising from injury or damages to persons or property incurred by acts to each other, except in the case of gross negligence. \*\* Pricing prepared off proposed plans July 2005, subject to changes \*\*

**TOTAL SNOWPLOWING/SALTING/SHOVELING SERVICES – SEASONAL**

Cost: \$47,000.00

**LAWN CARE**

- Supply labor and equipment to mow finished lawn areas, string trim curbs, trees, signs and sidewalks and use blower on walkways and parking lot edges to blow off lawn clippings and remove debris from beds on a weekly basis – approximately 16 acres finished lawn area.
  - Cost: \$14,000.00
- Lawn fertilization and weed control for 16 acres of fine lawn area: Spring application, April, 13-2-5 fertilization with pre-emergent, 86 Pendimethalin for crab grass control.
  - Cost - \$1500.00
- Fall fertilization application 18-24-12
  - Cost - \$1500.00
- Lesco Three Way broadleaf liquid weed application for fine lawn areas
  - Cost - \$850.00

Payment will be made as follows: **Monthly, on the last day of the month of which the work is being performed.** Invoices will be sent on the first day of the month that the work is being performed (i.e. work performed in November will be billed on November 1<sup>st</sup>). Terms will be NET 30.

*At any time the OWNER may request additional services that will be quoted, performed and billed upon agreement. Some items may be added to the standard monthly billing if so requested by the OWNER.*

**All Other Facility Maintenance Services**

All other services are listed on Exhibit 1 - Rivers Run Common Charges with their associated costs. Any additional services will be quoted to and approved by the OWNER'S representative. Service rates will be consistent with the rates quoted in this document for the first year of this contract and adjusted annually as the market dictates.

**Emergency Response**

IFS will provide 24-hour emergency response service. Phone response will be provided 30 minutes upon receipt of the call. On-site response will be within 4 hours of phone response.

**Service Management Fees**

Management fees will be calculated at 6.5% of the annual contract amount as listed in Exhibit 1 - Rivers Run Common Charges.

**Budgeting, AP/AR, Bank Account Management**

CONTRACTOR will provide budgeting for services, accounts receivable (fee/rent collection), accounts payable (bill payment), and bank account management services to include reporting at an agreed upon interval. This fee does not include professional fees for annual audit by CPA. It does include any services CONTRACTOR has to perform to prepare for and distribute audit. Cost: \$12.00 per unit, per month.

**Insurance**

CONTRACTOR and SUBCONTRACTOR agree to maintain during the term all insurance or bonds required by law or this Agreement, including, but not limited to (i) Worker's Compensation and related insurance as prescribed by the law of the state in which Services are performed; (ii) employer's liability insurance with limits of at least five hundred thousand dollars (\$500,000) for each occurrence, and (iii) comprehensive general liability insurance with limits of at least two million dollars (\$2,000,000) for combined single limit for bodily injury, including death, and/or property damage and, if the use of motor vehicles is required, comprehensive motor vehicle liability insurance, with limits of at least one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage. CONTRACTOR shall, prior to rendering Services hereunder, furnish certificates or evidence of the foregoing insurance indicating the amount and nature of such coverage, the expiration date of each policy, and stating that no material change or cancellation of any such policy shall be effective unless thirty (30) days' prior written notice is given to Customer.

**Indemnification**

Each party shall defend, indemnify and hold the other harmless from and against any and all claims and actions, and all costs and expenses (including reasonable attorney's fees) incidental to such claims or actions, to the extent proximately and proportionately caused by the negligence or willful misconduct of the indemnifying party or anyone acting under that party's direction, control, or in its behalf in the course of the performance of its obligations under this Agreement. The indemnifying party shall conduct the defense and shall have control of the litigation; the indemnified party shall give prompt notice of claims and shall cooperate in defending against the claim.

**Disclaimer**

The pricing quoted in this contract is based on information provided by the OWNER. Most of the information and drawings provided were preliminary. If square footages, finishes, specifications or scope of work changes, we reserve the right to adjust our numbers to reflect the changes. Our pricing structure will remain unchanged for the 2006 calendar year. Pricing will be adjusted to reflect current market rates at the time of startup of the contract if necessary.



**Integrated Facility Solutions  
Contract for Services**

Date: November 21, 2005  
Contract Number: RR110105  
Contract Type: Property Management/Maintenance  
Property Name: River's Run  
Property Location: 50 Fairwood Drive, Rochester, NY 14623  
Owner's Representative: Julie Fenske  
Approximate Annual Contract Value: \$78,713.00

THIS AGREEMENT made at Integrated Facility Solutions, 841 Holt Road, Webster, New York 14580, on this 21<sup>st</sup> day of November, 2005 by and between Integrated Facility Solutions, and River's Run Homeowner Association, Inc., to perform services as documented in this agreement at the following locations:

IFS PROJECT # RR110105  
Rivers Run  
50 Fairwood Drive  
Rochester, NY 14623

This contract will remain in force for a period of one (1) year from the date of the first occupant move in. Either party may terminate this contract 90 days after the contract start date by providing written notice 30 days in advance of the requested termination date. If no written termination notice is received 30 days prior to the normal termination date, this contract will automatically renew one (1) year after commencement date. Terms for billing are NET 30.

*Any additional services requested by OWNER during the term of the contract will be quoted and billed as separate line items on the normal monthly billing or separately based on the agreement with the OWNER.*

CONTRACTOR REPRESENTATIVE: James P. Warner

OWNER Representative: Rivers Run, LLC

\_\_\_\_\_  
Signature / Title Date

CONTRACTOR Representative: Integrated Facility Solutions (IFS,LLC)

\_\_\_\_\_  
Signature / Title Date

**Please return one signed copy of this agreement.**

\_\_\_\_\_ *Single Source Responsibility & Accountability* <sup>Page 6 of 6</sup>

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# Rivers Run Common Charges

## Exhibit 1

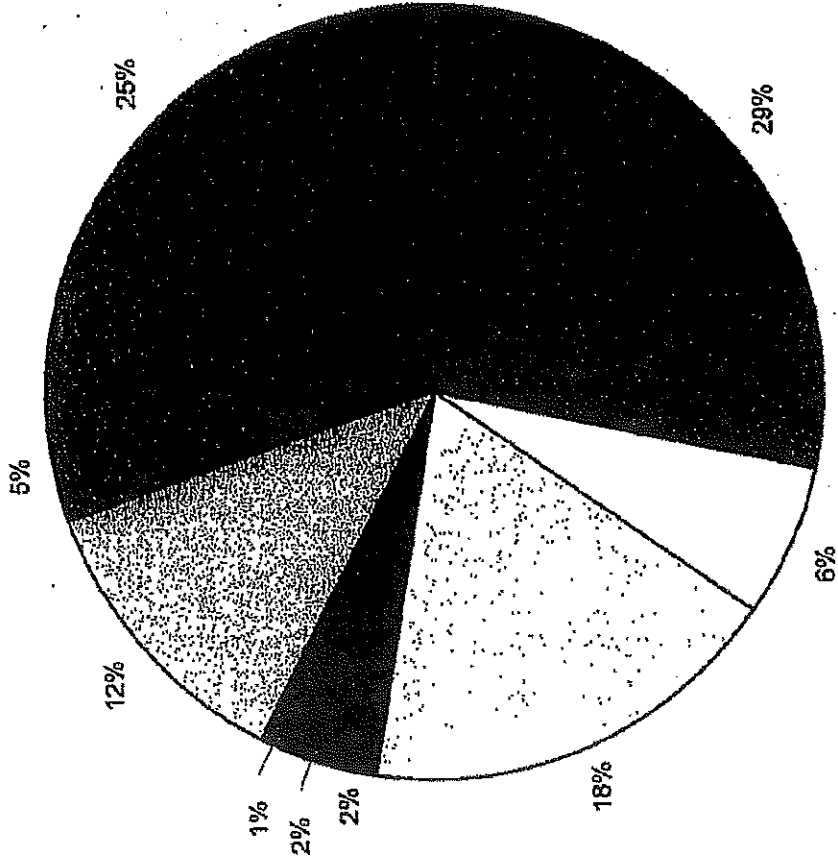
| Service   | Costs Daily                  | Weekly | Monthly        | Quarterly | Semi Annual | Annual   |
|---|------------------------------|--------|----------------|-----------|-------------|--|
| Snow Removal (3" Contract)  |                              |        |                |           |             | \$20,000   |
| Lawn Maintenance  |                              |        |                |           |             | \$22,000   |
| Budgeting, API/AR, Account Management<br>Service Management Fees (6.5%)   |                              |        | \$804<br>\$351 |           |             | \$5,000<br>\$14,000<br>\$1,500<br>\$1,500<br>\$850<br>\$9,648<br>\$4,215 |
| Budgeting, API/AR, Act. Mgmt. Cottages/Month<br>Service Management Fees per cottage per month<br>Total Management Fees per cottage per month<br>Budget Totals | \$12.00<br>\$5.24<br>\$17.24 |        | \$1,155        |           |             | \$78,713   |
| Cottages  | 67                           |        |                |           |             |  |
| CAM Charges   |                              |        | \$97.90        |           |             | \$1,174.82   |
| ***NOTE*** ( The items below - NOT INCLUDED IN PRICING)   |                              |        |                |           |             |  |
| Snow hauling, moving, stacking  |                              |        |                |           |             |  |
| Window Cleaning (Exterior)  |                              |        |                |           |             |  |
| Waste Removal   |                              |        |                |           |             |  |
| Back flow testing   |                              |        |                |           |             |  |
| Building Maintenance  |                              |        |                |           |             |  |
| Painting  |                              |        |                |           |             |  |
| Materials   |                              |        |                |           |             |  |
| HVAC PM   |                              |        |                |           |             |  |
| HVAC Filter Change  |                              |        |                |           |             |  |
| Smoke Head (Smoke Head Testing)   | -8540                        |        |                |           |             |  |

Modification Date: 11/22/2005

Prepared By: Integrated Facility Solutions



**Rivers Run**  
Anticipated CAM Budget  
Monthly Cost Per Unit \$97.90



- Mowing Services
- Bulk Salting
- Sidewalks & Path
- Lawn Cutting & Maintenance
- Spring Fertilization
- Fall Fertilization
- Weed Control
- Budgeting, API/AR, Act. Mgmt.
- Service Management Fees

# LIMITED WARRANTY

**WARRANTOR:** The Warrantor \_\_\_\_\_ is the Seller identified in the RESIDENTIAL CONSTRUCTION AND PURCHASE CONTRACT ("Contract") to which this LIMITED WARRANTY is appended, with an address of \_\_\_\_\_

**HOME WARRANTED:** The Dwelling warranted is the Dwelling constructed by the Seller as identified in the Contract.

**TO WHOM WARRANTED:** The Dwelling is warranted to the person or persons identified as the Buyers in the Contract.

**WARRANTY DATE:** This Limited Warranty is effective upon transfer of title to or possession by the Buyer or Buyer's agent, whichever is earlier (Warranty Date).

**THIS LIMITED WARRANTY EXCLUDES ALL OTHER WARRANTIES ON THE CONSTRUCTION AND SALE OF THE DWELLING AND ITS COMPONENTS, BOTH EXPRESS AND IMPLIED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. THIS LIMITED WARRANTY IS MADE PURSUANT TO GENERAL BUSINESS LAW §777-b AND EXCLUDES/MODIFIES THE HOUSING MERCHANT IMPLIED WARRANTY SET FORTH IN GENERAL BUSINESS LAW §777-a**

**SELLER'S LIMIT OF TOTAL AGGREGATE LIABILITY:**

The maximum total aggregate liability of the Seller under this Limited Warranty shall be equal to a maximum of \_\_\_\_\_ percent of the full contract price of the Property (as defined in the Contract) paid by the Buyer to the Seller for the first year of warranty coverage and \_\_\_\_\_ percent in years 2 through 6.

**CONSEQUENTIAL DAMAGES:**

This Limited Warranty excludes all consequential and incidental damages, except as otherwise required by New York State law.

**1. TO WHOM GIVEN.** This Limited Warranty is extended solely to the Buyer named in the Contract and solely during the time the Buyer owns the Property. It does not extend to subsequent owners of the Property or to other persons.

**2. BY WHOM MADE.** This Limited Warranty is made exclusively by the Seller whose name and address appear on the Contract.

3. **FINAL INSPECTION OF DWELLING.** Before the Buyer moves into the Dwelling or accepts the deed, the Seller will set up an appointment for final inspection of the Dwelling with the Buyer. The purpose of this final inspection is to discover any defects or flaws of a visible or obvious nature -- such as cracks, chips, dents, stains, or marks -- that may have occurred during the final stages in finishing the Dwelling, or any unfinished work caused by circumstances beyond the Seller's control.

All defects or flaws found on final inspection of the Dwelling will be itemized on a **FINAL INSPECTION BEFORE POSSESSION** Sheet, which will be signed by the Buyer and the Seller before occupancy of the Dwelling or transfer of title.

The purpose of the Limited Warranty is to identify the Seller's responsibilities for construction defects of a latent or hidden kind that would not have been found or disclosed on final inspection of the Dwelling.

The Seller's responsibility is limited to:

a. Completion of items shown on the **FINAL INSPECTION BEFORE POSSESSION** Sheet, as provided in said Sheet; and

b. Performance of warranty obligations under the provisions of this Limited Warranty, as set out below.

4. **WARRANTY COVERAGE AND PERIODS.** The Warranty Period for all coverage begins on the Warranty Date, which shall be conclusive for all purposes. The Warranty Date is the date that the Buyer takes title to the Dwelling, or the Buyer or any person authorized by the Buyer, begins residential occupancy of the Dwelling, whichever date is earlier.

a. **First Year Basic Coverage:** For one year from the Warranty Date, the Dwelling will be free from latent defects that constitute:

(1). Defective workmanship performed by the Seller, an agent of the Seller, or an employee or subcontractor of the Seller;

(2). Defective materials provided by the Seller, an agent of the Seller, or an employee or subcontractor of the Seller; and

(3). Defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Seller.

Workmanship, materials and design will be considered to be defective under this Limited Warranty if they fail to meet or exceed the relevant standards and specifications of the New York State Uniform Fire Prevention and Building Code ("Building Code"); or if the Building Code does not provide a relevant specific standard, if they fail to meet or exceed the Residential Construction Performance Guidelines ("Guidelines") attached hereto, and which Guidelines are expressly made a part hereof; or if neither the Building Code nor the Guidelines provide a relevant specific standard, if they fail to meet or exceed locally accepted building practices.

In the case of goods sold incidentally with or included in the sale of the Dwelling, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers, and dryers, workmanship will be considered to be defective if the Seller, an agent of the Seller, or an employee or subcontractor of the Seller, fails to install such goods in accordance with the manufacturer's standards and specifications, and the New York State Uniform Fire Prevention Building Code, or in accordance with the Guidelines, or locally accepted building practices, as applicable. As hereinafter set out (see Exclusions from All Coverage), merchantability, fitness and all other implied warranties with respect to such goods shall be governed by applicable laws and statutes.

**b. Two Year Major Systems Coverage:** For two years from the Warranty Date, the Plumbing, Electrical, Heating, Cooling and Ventilation Systems of the Dwelling which have been installed by the Seller, an agent of the Seller, or an employee or subcontractor of the Seller, are warranted to be free from latent defects that constitute defective installation by the Seller, an agent of the Seller, or an employee or subcontractor of the Seller.

Installation will be considered to be defective if the workmanship in such installation fails to meet or exceed the relevant standards and specifications of the New York Uniform Fire Prevention and Building Code; or if the Building Code does not provide a relevant specific standard, if it fails to meet or exceed the Guidelines, or if neither the Building Code nor the Guidelines provide a relevant specific standard, if they fail to meet or exceed locally accepted building practices.

The Plumbing System means gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system.

The Electrical System means all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

The Heating, Cooling and Ventilation System means all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

All systems are exclusive of appliances, fixtures and items of equipment.

**c. Six Year Major Structural Defect Coverage:** For six years from the Warranty Date, the Dwelling will be free from latent defects that are Major Structural Defects, as defined below, and that constitute:

(1). defective workmanship performed by the Seller, an agent of the Seller, employee or subcontractor of the Seller;

(2). defective materials provided by the Seller, an agent of the Seller, employee or subcontractor of the Seller; or

(3). defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Seller.

Workmanship, materials, and design will be considered to be defective if they fail to meet or exceed the relevant standards and specifications of the New York State Uniform Fire Prevention and Building Code; or if the Building Code does not provide a relevant specific standard, if they fail to meet or exceed the Guidelines; or if neither the Building Code nor the Guidelines provide a relevant specific standard, if they fail to meet or exceed locally accepted building practices.

A Major Structural Defect is a defect resulting in actual physical damage to the following load-bearing portions of the Dwelling caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the Dwelling becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

**5. WARRANTY.** If a defect occurs in an item covered by this Limited Warranty, the Seller will repair, replace or pay the Buyer the reasonable cost of repairing or replacing the defective item (s), within a reasonable time after the Seller's inspection or after the Seller's testing confirms the defect, as provided in Paragraph 7, below. Repair, replacement or payment of the reasonable cost for any Major Structural Defect is further limited to (1) the repair of damage to the Load-bearing portions of the Dwelling which is necessary to restore their load-bearing function, or the reasonable cost thereof; and (2) the repair of those

components of the Dwelling (exclusive of personal property) damaged by the Seller's defect which made the Dwelling unsafe, unsanitary or otherwise unlivable, or the reasonable cost thereof. The choice among repair, replacement or payment is solely that of the Seller.

When the Seller finishes repairing or replacing the defect or pays the reasonable cost of doing so, the Seller shall be fully released and discharged from any liability for said defect, and upon the request of the Seller, a full release of all legal obligations with respect to the defect shall be signed by the Buyer and delivered to the Seller.

**6. EXCLUSIONS FROM ALL COVERAGE.** The following are excluded from the Basic Coverage, Major Systems Coverage, and Major Structural Defect Coverage:

**a. Magnuson-Moss Warranty Act.** Except as otherwise provided under FIRST YEAR BASIC coverage, above, this Limited Warranty does not cover manufacturing defects or loss or damage resulting from or to items excluded within the definition of "consumer products" under the Magnuson-Moss Warranty Act, Pb.L. 93-637, 15 U.S.C. 2301, which was signed into law in January 1975. The Act applies to written warranties on tangible personal property which is intended to be attached to or installed in a dwelling, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers and dryers, furnaces, water heaters, and appliances. Merchantability, fitness, and all other implied warranties with respect to such goods shall be governed by the Magnuson-Moss Warranty Act, the New York Uniform Commercial Code, and other applicable statutes.

**b Defects in Outbuildings and Structures.** This Limited Warranty does not cover defects in landscaping (including sodding, seeding, shrubs, trees and plantings), offsite improvements, or outbuildings and structures not constructed by the Seller, an agent of the Seller, or an employee or the subcontractor of the Seller.

**c. Obvious Defects.** This Limited Warranty does not cover any item of defective workmanship or materials which were obvious during Final Inspection and were not included in the FINAL INSPECTION BEFORE POSSESSION form, including, without limitation, any cracks, chips, dents, stains or marks on kitchen cabinets, plumbing fixtures, electrical fixtures, mirrors, glass, appliances, micas, vinyls, ceramics, painted/stained surfaces, doors, woodwork and carpeting.

**d. Alteration or Modifications.** This Limited Warranty does not cover any item of defective workmanship or materials for any material, system, or work which has been altered, modified, or supplemented in any material way, or which was performed or installed by any person other than the Seller, an agent of the Seller, employee or subcontractor of the Seller.

**e. Consequential Damages.** Except as otherwise required by the law, this Limited Warranty does not cover any injury to persons or damages to personal or real property, in whole or in part, which may be a consequence of, incident to or result from any defect in materials or performance of the work. That is, the Seller is responsible only for correcting the defect, and is not liable for any personal injury or property damages resulting from any such defect.

**f. Other Exclusions from Coverage.**

(1). Loss or damage caused by workmanship performed by any person other than the Seller, an agent of the Seller, or an employee or subcontractor of the Seller;

Pg. (1) Site Work. Article:1-1  
Contractor is to provide up to 5 yards of  
topsoil delivered to property edge 1x only.  
Owner responsible for filling affected areas

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Pg. (43) Landscaping. Article: 12-5  
No plants or trees native or planted will be  
covered under this warranty.

(2). Loss or damage caused by defective materials supplied by any person other than the Seller, an agent of the Seller, or an employee or subcontractor of the Seller;

(3). Loss or damage caused by defective design provided by any person other than a design professional retained exclusively by the Seller;

(4). After the First Year Basic Coverage, loss or damage caused by non-load bearing concrete floors of basements and concrete floors of attached garages and porches;

(5). Loss or damage of real property which is not part of the Dwelling and which is not included in the purchase price of the Dwelling;

(6). Loss or damage to the extent that is caused or made worse by:

(a). negligence, improper maintenance, or improper operation by anyone other than the Seller, its employees, agents, or subcontractors; or

(b). failure by the Buyer or anyone other than the Seller, Seller's employees, agents, or subcontractors, to comply with the warranty requirements of manufacturers or supplier of appliances, fixtures, or items of equipment; or

(c). failure of the Buyer to give notice to the Seller of any defects or damage within a reasonable time; or

(d). changes in the grading of the ground by anyone other than the Seller, Seller's employees, agents, or subcontractors; or

(e). changes, alterations or additions made to the Dwelling by anyone after the Warranty Date; or

(f). dampness or condensation due to the failure of the Buyer or occupant to maintain adequate ventilation;

(7). Conditions, loss or damage caused by or resulting from accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, ground water springs, ground gas emissions, changes not reasonably foreseeable in the underground water table, and generally, caused by or resulting from acts of commission or omission beyond the Seller's control;

(8). Loss or damage caused by the seepage of water, unless caused by a construction defect;

(9). Loss or damage caused by the failure of Buyer to take timely action to minimize any such loss or damage;

(10). Loss or damage caused by insects;

(11). Loss or damage resulting from failure of the Seller to complete construction of the Dwelling, or to complete the construction timely;

(12). Loss or damage caused by or which arises while the Dwelling is being used primarily for nonresidential purposes;

(13). Loss or damage resulting from abnormal loading on floors by the Buyer which exceeds design loads as mandated by the Building Code.

(14). Any condition which does not result in actual physical damage to the Dwelling;

(15). Normal wear and tear and normal deterioration;

(16). Costs of shelter, transportation, food, moving, storage or other expenses associated with or related to any defect, or the repair or replacement of any defect in workmanship, materials or design.

(17). Any claim not filed in a manner set forth below in Paragraph 7, "Step-by-Step Claims Procedures."

**7. STEP-BY-STEP CLAIMS PROCEDURES.** As noted in Paragraph 4, this Limited Warranty has three separate periods of coverage: Defects which are covered for one year; Defects which are covered for two years; and Defects which are covered for six years.

The Buyer may make a claim for a defect at any time during the appropriate period of coverage. Any such claim must be in writing and shall be made on a Notice of Warranty Claim Form provided by the Seller. A sample claim form is attached hereto. If the Seller does not provide such a form, the Buyer's claim must nevertheless be in writing and shall include a description of the defect (referred to herein as Notice of Warranty Claim, or simply Notice of Claim). However, in order for the Buyer to preserve Buyer's rights under this Limited Warranty, the Seller must receive the Notice of Warranty Claim no later than the first business day after the expiration of the warranty coverage under which the claim is made. If the Seller does not receive such Notice of Claim by the specified deadline, the Buyer will forever be barred from making any claim for any defect under this Limited Warranty for which the coverage period expired.

The Notice of Claim must be made by personal delivery or United States certified mail, and shall be deemed to have been received either at the time of personal delivery or in the case of mail, as of the date of first attempted delivery at the address of the Seller and in the manner provided herein.

**IT IS EMPHASIZED THAT RECEIPT BY THE SELLER OF NOTICE OF WARRANTY CLAIM ON A TIMELY BASIS AS PROVIDED ABOVE IS A NECESSARY CONDITION TO PROTECT THE BUYER'S RIGHTS TO WARRANTY PERFORMANCE UNDER THIS LIMITED WARRANTY.**

No steps taken by the Seller, Buyer or any other person to inspect, test or correct defects will extend any time period under this Limited Warranty. The Seller's response to any complaint or request, other than a timely and properly completed Notice of Warranty Claim, will not impair, prejudice or otherwise affect any right of the Seller, including but not limited to the Seller's right to receive a timely and properly completed Notice of Warranty Claim.

The Buyer shall follow the following claim procedure for each separate defect which the Buyer claims is covered under this Limited Warranty:

a. The Buyer shall give Notice of Claim to the Seller, to be received by the Seller not later than the first business day after the expiration of the appropriate warranty period under which the claim is made, by written Notice of Warranty Claim.

b. The Seller shall have thirty (30) days from the date it receives Notice of Claim, not counting the day the notice is received, within which to inspect and/or test that part of the Dwelling for which the claim is made, and within a reasonable time not to exceed thirty (30) days from the date of such inspection and/or test (weather permitting and assuming required materials are available) within which to correct the defects for which notice was received. The Buyer or other occupants of the Dwelling must provide reasonable access to the Seller and its agents during normal business hours, for the purpose of such inspection, testing



and corrective work. Failure by the Buyer to provide such reasonable access to the Seller will extend the time within which to perform the work.

(1). In the event:

(a). The Seller denies the claim or fails to make such inspection or tests within said thirty (30) days, although reasonable access was provided to the Seller for such inspection; or

(b). If so inspected or tested, the Seller fails to perform the corrective work within a reasonable time not to exceed thirty (30) days (weather permitting and assuming required materials are available), although reasonable access was provided to the Seller for the performance of the corrective work; or

(c). The Seller has corrected the defect and the Buyer is unsatisfied with the corrective action;

then, within thirty (30) days following any such event, but in no event later than six months following receipt by the Seller of the Notice of Claim, regardless of the denial of the claim or status of the corrective work or lack thereof in order to preserve Buyer's rights, the Buyer must commence, and diligently prosecute, a conciliation proceeding ("Conciliation Proceeding") with the Rochester Home Builder's Association ("Association"), in accordance with its Rules and Procedures.

(2). The term "correct the defect" shall mean that the Seller may, at its option, repair the defect, or replace the defective item or pay the Buyer the reasonable cost of such repair or replacement.

c. In the event:

(1). The written decision of the Association resulting from the Conciliation Proceeding does not resolve the Buyer's claim or dispute in a manner satisfactory to the Buyer; or

(2). The Seller does not comply with the recommendation contained in the written decision of the Association within the time set out therein or as extended, in writing, by the mutual agreement of the parties; or

(3). The work performed by the Seller pursuant to the Association's written decision is not satisfactory to the Buyer; or

(4). The Association fails to hold the proceeding within sixty (60) days of receipt of notice and/or fails to render a written decision on its Conciliation Proceeding within thirty (30) days after the date of the proceeding,

then the Buyer may commence an action in a court of law with regard to the Buyer's claim or dispute.

Any fees for the Conciliation Proceeding shall be paid solely by the Seller.

**8. LEGAL ACTIONS, JURISDICTION, AND CONDITIONS PRECEDENT.** No claim or cause of action under the Limited Warranty may be commenced or asserted against the Seller in any Conciliation Proceeding, suit, action, or other legal proceeding in any forum or court unless a written Notice of Claim, furnishing the information requested, has been received by the Seller as provided in Paragraph 7 above and the procedures set forth in Paragraph 7 above are followed. Notwithstanding anything to the contrary contained in this Limited Warranty, in the event (a) the defect(s) described in the Notice of Claim cause the Dwelling to be uninhabitable or (b) the applicable statute of limitations for commencing an action under this

Limited Warranty will or may expire at any time after the Notice of Warranty Claim has been timely given, but prior to the completion of the procedures described in Paragraph 7 above, then the Buyer is not required to follow any further procedures described in Paragraph 7 above, and the Buyer may apply directly to the appropriate forum or court for relief.

**9. GENERAL PROVISIONS.**

a. This Limited Warranty may not be changed or amended in any way except in writing signed by both parties.

b. This Limited Warranty shall be binding upon and inure to the Buyer and the Buyer's heirs, executors or administrators, and the Seller, and the Seller's heirs, successors, and assigns.

c. Should any provision of the Limited Warranty be determined unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability of the remaining provisions.

d. This Limited Warranty is to be governed under the laws of New York State.

e. Use of one gender in this Limited Warranty includes both genders, and use of the singular includes the plural, as may be appropriate.

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**NOTICE OF WARRANTY CLAIM FORM**

Dear Buyer:

To ask the Seller to correct a defect in your Dwelling that you think is covered by the Limited Warranty, you must complete this form and deliver it to the Seller. This is necessary to protect your rights to warranty performance under the Limited Warranty. Even if you believe that the Seller is aware of the problem, fill out this form and deliver it to the Seller.

The information you will need to fill out the form will be on Page One of the Limited Warranty. However, if you do not know the answers to any questions, write "Not Known". Please do not leave any item blank.

Owner's Names: \_\_\_\_\_

Address of Dwelling  
Warranted: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_

Work or Day Phone: \_\_\_\_\_

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

Describe the defect(s) which you think are covered by the Limited Warranty. Be sure to include when each defect first occurred or when you first noticed it. Use additional sheets, as necessary, to fully describe the problem:

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

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