

Lot # 5

HOMEOWNER'S  
ASSOCIATION OFFERING PLAN

**BARCLAY PARK**

River Birch Lane, A Private Road, Town of Penfield, Monroe County, New York  
Total Amount of Offering: \$10,000.00

(Value of improved common areas to be maintained by  
Barclay Park Homeowner's Association, Inc.)

The cost of membership in The Barclay Park Homeowner's Association, Inc. is included in  
the purchase price of homes sold in conjunction with this offering.

**SPONSOR:** Maddox Development, LLC  
4 Colten Court  
Webster, NY 14580  
(585) 872-9100

**SELLING AGENT:** Stacey Spoto, Nothnagle Realtors  
2349 Monroe Avenue  
Rochester, NY 14618

Date of Acceptance for Filing: MAY 26, 2017. The term of the initial offer is twelve (12)  
months. The term may be extended by an amendment to the Offering Plan filed with the New York  
State Department of Law.

Twenty-Four (24) lots consisting of one single family attached townhome on each lot separated by a  
common wall.

Total project will consist of two Phases. Sponsor is committed to complete all Phases. Phase I  
improvements are completed and Subdivision Map is filed at this time.

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

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL MEMBERSHIP INTERESTS  
IN THE HOMEOWNER'S (OR PROPERTY OWNER'S) 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 OFFICE OF THE  
ATTORNEY GENERAL PRIOR TO SELLING OR OFFERING TO SELL ANY  
MEMBERSHIP INTERESTS. FILING WITH THE ATTORNEY GENERAL DOES NOT  
MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS  
APPROVED THIS OFFERING.**

**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, INVESTMENT PROTECTION BUREAU, REAL ESTATE FINANCING SECTION, OFFICE OF THE ATTORNEY GENERAL, 120 BROADWAY, NEW YORK, NEW YORK 10271.**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
Attorney General

(212) 416-6040

DIVISION OF ECONOMIC JUSTICE  
Real Estate Finance Bureau

Maddox Development, Inc.  
c/o Joseph W. Jacek, Jr. Attorney At Law  
Attention: Joseph Jacek, Jr., Esq.  
1597 West Ridge Road, Suite 202  
Rochester, NY 14615

June 1, 2017

RE: Barclay Park  
File Number: H 160008 Amount Offering \$10,000.00  
Filing Fee: \$750.00 Receipt Number: 139272  
Acceptance Date: 05/26/2017

Dear Sponsor:

The offering literature submitted for the subject premises is hereby accepted and filed. Unless extended by duly filed amendment, the effectiveness of the filing shall expire twelve months from this date. All advertising and solicitation material must be consistent with the contents of the filed offering literature. Any material change of facts or circumstances affecting the property or the offering requires an immediate amendment.

Any misstatement or concealment of material fact in the literature filed renders this filing void ab initio. This office has relied on the truth of the certification of sponsor, sponsor's principals and sponsor's experts, as well as the transmittal letter of sponsor's attorney.

The issuance of this letter is conditioned upon the faithful performance of all of the obligations of the sponsor, its agents and instrumentalities, which are required by law or set forth in the offering literature. If there is a failure or neglect to perform any such obligations when required, the effectiveness of this letter shall be suspended, and all offering and sales shall cease, pending further action by this office. Issuance of this letter is further conditioned on the collection of all fees imposed by law. This letter is your receipt for the above filing fee.

The filing of the offering literature shall not in any way be construed as approval of the contents or terms thereof by the Attorney General of the State of New York. Nor does it waive or limit the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable provisions of law.

Very truly yours,

Carol Stephens  
Assistant Attorney General



**OFFERING PLAN FOR  
BARCLAY PARK HOMEOWNER'S ASSOCIATION, INC.**

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**OFFERING PLAN FOR**  
**THE BARCLAY PARK HOMEOWNER'S ASSOCIATION, INC**  
**PART I**

**SPECIAL RISKS**

**1. No Completion Bond Posted by Sponsor**

The sponsor intends to improve all 24 lots known as Barclay Park, consisting of single family attached townhouse style units. However, due to circumstances outside sponsor's control, including market conditions, no assurance is made that every lot will be improved. Homes are built only when purchasers enter into binding contracts. The sponsor shall transfer a lot when it has a contract for the lot.

No completion bond is to be posted to secure the Sponsor's obligations to complete construction of the Association Property other than as may be required by the Town of Penfield for construction of the private road and retention pond. See "Rights and Obligations of the Sponsor" in this Offering Plan.

**2. Sponsor May Appoint Majority of the Board of Directors**

The Sponsor may designate a majority of the Board of Directors whenever it owns one or more of the total number of Lots subject to the provisions of the Declaration at the time of an election of the Directors. However, the Sponsor may not appoint or designate a majority of the Board of Directors at any time after five (5) years from the date of recording of the Declaration. See "Control by the Sponsor" in this Offering Plan and By-Laws in Part II of this Offering Plan.

The Sponsor, at its discretion, may remove any member of the Board and appoint his replacement at any time as long as the Sponsor owns one or more of the total number of lots, unless the Sponsor has relinquished control of the Board to the Homeowners after the sale of the last lot, or voluntarily relinquished control after thirteen (13) Lots have been sold or upon the elapse of five (5) years, from the date of filing this Plan, whichever is earliest.

**3. Sponsor has Veto Power**

The Sponsor has veto powers over certain expenditures and actions of the Board of Directors so long as it holds title to any Lot on the Property. Such veto powers extend to (i) amendments to the Declaration which adversely affects a substantial interest or right of the Sponsor, (ii) any addition, alteration or improvement to the Association Property (except for necessary or mandated repairs), (iii) establishment of any special assessments or to create or enlarge a reserve, contingency or surplus fund exceeding the proportional amount any such fund of the projected budget for the first year of operations (Schedule A of this Offering Plan), (iv) hiring any employee(s) in addition to the employees, if any, provided for in Schedule A, (v) expanding or reducing the scope of maintenance services provided by the Association beyond that provided for in Schedule A, (vi) borrowing money on behalf of the Association and (vii) changing the basis of determining Maintenance Assessments. See "Summary of the Declaration" and "Special Rights of Sponsor" in this Offering Plan.

#### **4. Limited Warranty**

The Housing Merchant's Implied Warranty as contained in Section 777-a of the New York General Business Law will apply to the purchase of Homesites, but such warranty, as permitted by such law has been limited, including application to initial Purchasers of Homesites only. See Purchase Agreement (Exhibit A in Part II of this Offering Plan) for a description of the limited warranty offered.

#### **5. Portion of Purchaser's Deposit Used for Extras is "At Risk"**

Any deposits required to be made by a Purchaser under a Purchase Agreement or under a rider or addendum to the Purchase Agreement which are for "extras" above the base contract price, will not be refundable to the Purchaser in the event the Purchase Agreement is terminated, if such funds, at the time of termination, have already been utilized in the performance of the work or the purchase of the materials which comprised such extras. All such deposits are to be made directly to the Escrow Agent pursuant to Paragraph 6 herein. However, if this Plan is terminated prior to transfer of title to the Purchaser of a homesite, the "extras" received by the Sponsor will be refunded to the Purchaser.

#### **6. Escrow Deposits**

Once the contract is signed by all parties, the purchaser is required to make a down payment of 10% of the purchase price to be held in accordance with the Trust Funds and Escrow Arrangements in this Offering Plan. Purchasers are advised that all deposits, down payments or advances made by Purchasers prior to closing, will be placed in attorney's segregated special escrow account covered by the Federal Deposit Insurance Corporation. However, any deposit by the Purchaser for "Extras" as defined in the Plan will be released thereafter to the Sponsor before commencement of construction. Purchaser will receive a credit at closing for "Extras" deposits, as well as all other deposits made by the Purchaser. Deposits in excess of \$250,000.00 will not be federally insured.

#### **7. Transfer Tax to be Paid by Purchaser**

The New York State Real Property Transfer Tax or "deed stamp" tax is the obligation of the Purchaser pursuant to paragraph 14 of the Purchase Agreement (see Exhibit A in Part II of this Offering Plan) and shall be paid at the time of closing. The payment of this tax is customarily the obligation of the seller.

#### **8. Reserve Fund for Replacement or Repair of Certain Improvements**

The initial budget for the first year of operations for the Association (see Schedule A of this Offering Plan) contains amounts to be allocated to the Association's reserve fund. These reserve amounts are to be used for repairs to or replacement of the listed items but not necessarily for all items. The amounts budgeted for these reserve items are based on current replacement costs. If repairs or replacements are necessary in the future and the Association does not have sufficient funds available in the reserve fund, the Association will likely have to impose a special assessment on Homesite owners to meet the expense of such repairs or replacements, and for other items not included on the list, but are deemed required or necessary. Additionally, if the real property tax on Association property increases beyond what has been allocated in the reserve fund, the increase may result in the imposition of a special assessment. The Association

will be responsible for adding the top coat on the private drive at a later date which may be charged as a special assessment. At the time that this Plan was prepared, it is estimated that the cost of the topcoat will be approximately \$10,875 for Phase I and \$10,600 for Phase II.

#### **9. Working Capital Fund**

No provision is made for working capital for the Association. In the event that the funds available to the Association for maintenance assessments are insufficient to fund current expenses, the Association may need to borrow funds from the Sponsor if the Sponsor is willing to lend, or from other sources. The Sponsor anticipates that such borrowing would only be necessitated by an emergency situation such as damage to the HOA property by a natural disaster or other calamity. The New York State Department of Law nor any other government agency have approved nor disapproved the lack of a provision for working capital.

#### **10. Fidelity Bond Coverage, Title Insurance**

The Sponsor elects not to obtain fidelity bond coverage covering wrongful or misuse of Association funds, nor to obtain insurance coverage insuring the Association against wrongful acts of Association officers or directors. The Sponsor does not possess and will not obtain owner's title insurance insuring the title to any property covered by this plan including property deeded to the HOA. The Sponsor will not obtain nor pay for title insurance for any buyer in the subdivision. All costs for title insurance are the buyer's expense, as is customary in this area.

#### **11. Sanitary Sewer, Storm Sewer Lines and Water**

Sanitary sewer main lines are maintained by the Town of Penfield within easements or Right of Way. The water main line is likewise maintained by the Monroe County Water Authority within easements granted to them. All storm and sanitary lateral lines from the right of way or easement line to their home is the responsibility of the homeowner and are not maintained by the Town or the BARCLAY PARK Homeowner's Association. However, the Homeowner's Association is responsible for the maintenance of all storm sewer management lines and facilities, including storm water detention pond. Homeowner grants the right to the HOA a right of access to enter the property for such maintenance. Homeowner shall not alter or disturb said lines in any manner.

#### **12. Association Property**

The Barclay Park Homeowner's Association, Inc. will take ownership of entranceway monuments and signs and landscaping, asphalt paved area of the private road, (not including individual driveway on homesite) detention pond and green space. The sponsor may convey ownership of this area to the Homeowner's Association at any time prior to the sale of the first lot.

The Association shall maintain insurance on the buildings for fire and other risks but such risk insurance does not include coverage for personal property and contents nor for liability or accidents occurring in or about their dwellings. Lot owners are advised to obtain insurance for these matters on their own.

The sponsor will hire Crosstown Custom Homes of Rochester, Inc. which will be paid a reasonable market fee of \$7,200.00 per year for its services as managing agent, which fee may

be adjusted annually and be included in the annual budget.

If a lot owner fails to maintain his home consistent with the guidelines of the association or the restrictive covenants contained herein, the association may perform the maintenance not performed by the owner. In such case, the cost of such maintenance shall be assessed against the non performing lot owner and shall become a lien on the property and collectible pursuant to this offering plan at Section 5.08 of the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens.

So long as Sponsor holds title to any portion of the property, The Sponsor has the right to grant to itself easements or rights of way, as may be needed for the orderly development of the property, including entry for corrections of construction, building a sales center, permitting conservation and drainage inspections to the Town of Penfield.

## **INTRODUCTION**

**THE PURCHASE OF A HOMESITE 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.**

### **Purpose**

The purpose of this Offering Plan is to set forth all of the terms of an offer to sell membership interests in the Association, in conjunction with the sale of Homesites. This Offering Plan may be amended from time to time by an amendment filed with the New York State Department of Law and served upon Purchasers and Owners of Homesites.

### **General**

The Sponsor, Maddox Development LLC, is a New York Limited Liability Corporation, with its offices located at 4 Colten Court, Webster, New York 14580.

The Sponsor is the owner of the land known as Barclay Park and hereinafter referred to as the "Property". The Property is in the Town of Penfield, Monroe County, New York and is accessed via a private roadway, River Birch Lane, off Nine Mile Point Road, a State road, also known as NYS Route 250. The Sponsor acquired the Property by Warranty Deed recorded in the Monroe County Clerk's Office on July 15, 2016 in Liber 11726 of Deeds at page 305.

The Sponsor will construct a total of twenty-four (24) Single Family attached townhomes consisting of twin buildings with attached 2 car garages. The Homeowner will own the lot to be conveyed by the Sponsor, and will become a Member of the Barclay Park Homeowner's Association. The Association facilities include a private road, green space, and a drainage detention facility. No other HOA Facilities are included or to be constructed. Units 1 and 2 are currently under construction and will be offered to the general public for sale once filing of this Plan with the NYS Attorney General has been accepted. Section One of the Subdivision has been approved by all local municipalities or agencies having jurisdiction, and the Subdivision map was filed on October 18, 2016. The Sponsor contemplates that the final Unit will be constructed in approximately December 2018. The Sponsor has filed the Subdivision Map for

Phase I of two phases. The Map for the second phase will be filed at a later date and any appropriate amendments with the NYS Attorney General will be filed. All Association facilities and improvements for Phase I are complete. Phase II facility improvements will be completed at the time the Subdivision Map for that phase is filed. However; at this time, the Sponsor has conveyed by deed all Association property as shown on **Exhibit I** Subdivision map. The approximate initial pricing of the homes is anticipated to be in the range of \$275,000 to \$310,000.00. The Sponsor will also construct for the use and benefit of all members of the Association, the private roadway, (not including topcoat) entrance signage and landscaping which shall feature lighted signage or monumentation. All electrical for the lighted signage is on a separate meter, usage for which is paid by the Association. All landscaping is at Sponsor's choice until such time as the Sponsor relinquishes control of the Board pursuant to this plan. See Part I of this Plan, under Architect's Description and Engineer's Description, for more specific details.

The lots in the Subdivision are subject to a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens, recorded or to be recorded in the Monroe County Clerk's Office. A copy of such Declaration is included as Exhibit D in Part II of this Offering Plan.

Each Purchaser of a Lot will own the Lot and any home thereon exclusively and shall, upon becoming the Owner of the Lot, automatically become a member ("Member") of The Barclay Park Homeowner's Association, Inc. ("Association"). Accordingly, if the Lot Owner sells the Homesite, the Purchaser automatically becomes a Member of the Association. The Association is a New York Corporation organized or to be organized under the New York Not-for-Profit Corporation Law. The Association will own certain common areas ("Common Areas"), hereinafter sometimes referred to as "Association Property". This property will include private road, landscaped areas, as shown on the Subdivision Map included as **Exhibit I** in Part II of this Offering Plan. Purchasers will indirectly have an interest in Association Property as Members of the Association.

The Association will, maintain and repair the Association Property, administer and enforce protective covenants, conditions, restrictions, charges and liens imposed on the Property by the Declaration and may, obtain and maintain liability insurance on the Association Property, and such other insurance as the Board of Directors may determine to be appropriate from time to time; and collect and disburse the Assessments and Charges necessary to perform its functions. The Association will maintain and repair all portions of the Association common areas, including lawn and landscaped and fenced areas. Each Home Owner will be responsible for the maintenance, repair and replacement of all interior components of the home including homeowner installed and Home Owner Association approved exterior structures, on the individual Lots and lateral lines on their property to the right of way or easement. The projected budget for the Association's first year of operation is found as "Schedule A" of this Offering Plan.

Upon relinquishment of control of the Board of Directors of the HOA, members of the Association will have the right to vote annually for the Board of Directors who will conduct the affairs of the Association. Members will pay monthly Maintenance Assessments or charges to the Association for:

1. the operation and maintenance of the areas, including the private road and entranceway landscaping and metered electric for association property and storm water management facilities;
2. liability insurance for the Association; and,
3. the creation of such reserves for maintenance, repair and replacement and contingencies as the Board of Directors may deem proper.

#### **Price Includes Interest in Association**

The price of the Homesite includes the membership interest in the Association. The cost of creating the Association is paid by the Sponsor from the proceeds of Homesite sales. Prices are set by Sponsor alone and are not subject to review or approval by the Department of Law or any other government agency. Homesite Owners will be obligated to pay Assessments to the Association to fund the cost of Association operations.

#### **Government and Services**

Police protection is provided by the Monroe County Sheriff. Fire protection is provided by the Northeast Joint Fire District serviced by the Webster Fire Department and ambulance service is provided by Union Hill Ambulance. The State of New York maintains Route 250 a/k/a Nine Mile Point Road, including snow removal. The property is within the Webster School District.

#### **Adjoining Areas**

The areas which surround the Development are zoned as follows: North - Residential R-2-9.6 District; South - Residential RA 2 District; East Residential RA 2 District; West - Residential R-120 District.

#### **Who May Purchase and Availability of Offering Plan**

Purchasers must be eighteen (18) years of age or older. There are no other limitations on who may Purchase. There are no limitations on the sale or leasing of Homesites, except that an Owner shall not lease any portion of a Home (other than the entire Home), and no lease shall be for an initial term of less than six (6) months. For information on the sale and leasing of Homes, see "Article X of the Declarations and Restrictions" in this Offering Plan.

This Plan, as presented to prospective Purchasers, contains all of the detailed terms of a purchase in the Development as it relates to the Association. Copies of this plan and Parts I and II of the Exhibits for this Offering Plan will be available for inspection without charge to prospective purchasers and their attorneys at the law firm of Joseph W. Jacek, Jr. Esq., counsel to the Sponsor, 1597 Ridge Road West, Suite 202, Rochester, New York 14615, or from the Sponsor at 4 Colten Court, Webster, New York, 14580 and, during the time any on-site office is open, at such on-site office.

**No Minimum Number of Sales Required to Commence Conveyance of Title**

There is no minimum number of purchase agreements ("Purchase Agreements") that the Sponsor must enter into in order to commence conveying title of common areas to Barclay Park Homeowner's Association, Inc.

Tax Exempt Status under the Internal Revenue Code - Sponsor makes no representation as to whether the Association will receive income tax exempt status from the Internal Revenue Service. Such exemption if desired must be obtained by the Association at a later date.

**Leases**

There are no current leases and the Sponsor does not intend to lease any home that is vacant before closing.

**Architect's Description:**

**Barclay Park Townhomes  
Town of Penfield  
Monroe County, New York**

*Prepared for:*  
Maddox Development, LLC  
4 Colten Court  
Webster, NY 14580

*Prepared by:*  
James Fahy Design Associates  
Architecture & Engineering P.C.  
2024 West Henrietta Rd. 3K  
Rochester, NY 14623

October 2016



## **BUILDING DESCRIPTION:**

### **TWO-UNIT TOWNHOMES**

Each townhouse building will be a one or a two-story wood framed structure with a basement foundation. General construction and material specifications for each building is as follows:

## **I. BUILDING SPECIFICATIONS:**

### **MASONRY**

- A. Footings: 2500 PSI concrete, sized per plan
- B. Foundation Wall: 11 to 13 course CMU sized and reinforced per plan
- C. Slab on grade: 4" concrete 3000 PSI, air entrained, with 6x6 welded wire mesh reinforcing per plan
- D. Sidewalk, porch and patio slabs: 3500 PSI concrete, air entrained, per plan

### **FRAMING**

- A. Exterior Walls: 2x4 and 2x6 hem-fir construction, 16"- o.c., per plan
- B. Wall Sheathing: 7/16" oriented strand board
- C. Interior Partitions: 2x4, 16"-o.c., sized as per plan
- D. Roof: Engineered truss and conventional framing with rafters per plan
- E. Roof Sheathing: 7/16" oriented strand board

### **EXTERIOR DOORS**

- A. Main Entrances Door: Therma-Tru Smooth Star entry system or equal
- B. Garage to House: ¼ hour rated metal insulated door

### **WINDOWS**

- A. Silverline 5900 Series Double Hung Low E Argon

### **EXTERIOR FINISHES**

- A. Roofing: Limited lifetime warranty
- B. Siding: Vinyl siding or equal
- C. Soffits: Vented vinyl soffit
- D. Fascia: Aluminum wrapped 2x8
- E. Trim: LP Smart trim
- F. Stone: Ply Gem lightweight stone or equal
- G. Gutters: 5" K-Aluminum factory finish with 2x3 square downspouts as required, connected to splash blocks

**A MODERN APPROACH TO TIMELESS ARCHITECTURAL DESIGN**



**JAMES FAHY DESIGN ASSOCIATES  
ARCHITECTURE & ENGINEERING P.C.**

2024 W. HANFORD RD. | SUITE 3K | ROCHESTER, NY 14623  
TEL (585) 272.1650 | FAX (585) 272.1008  
INFO@JAMESFAHY.COM | WWW.JAMESFAHY.COM

#### SITE WORK

- A. Per site plans prepared by BMB Associates, the project Civil Engineer

#### HEATING

- A. Gas Forced Air: York 95% Efficient Furnace
- B. Air Conditioning: York, 13 SEER

#### ELECTRIC

- A. Wiring: As per Residential Code of New York State
- B. Service: 200 amp with circuit breakers, each unit

#### INSULATION

- A. Wall: Exterior wall: 2x4 = R-13; 2x6 = R-19, kraft faced fiberglass insulation
- B. Ceiling: R-44 in flat areas, R-30 in sloped areas, kraft faced insulation

#### INTERIOR FINISHES

- A. Walls: ½" drywall finished smooth and painted with latex paint
- B. Interior Doors: Hollow core masonite with wood jambs and frames
- C. Interior Door Hardware: Design House Lever Series
- D. Interior Trim: Colonial, MDF baseboard and casing finished with latex paint
- E. Paint: Two coats of latex paint - 1 coat primer, 1 coat finish
- F. Shelving: white wire shelving
- G. Mirrors: Plate glass mirrors above vanities; 42" high x approximate width of vanities
- H. Bath Hardware: Chrome, Gold or White: 24" towel bar, towel ring and toilet paper holder

#### FIREPLACE

- A. Zero clearance direct vent gas fireplace, as selected

#### KITCHEN CABINETS

- A. Wood cabinets per selected manufacturer
- B. Laminate counter tops

#### APPLIANCES

- A. Dishwasher: under counter dishwasher, manufacturer as selected
- B. Microwave: combination microwave and hood, manufacturer as selected

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#### A MODERN APPROACH TO TIMELESS ARCHITECTURAL DESIGN



2024 W. Henrietta Rd. | suite 3k | Rochester, NY 14623  
tel (585) 272.1650 | fax (585) 272.1008  
info@jamesfahy.com | www.jamesfahy.com

**Engineer's Description**  
for  
**Barclay Park Association, Inc.**

**Barclay Park Residential Community**

**Town of Perfield  
Monroe County, New York**

*Prepared for:*

Maddox Development LLC  
4 Colten Court  
Webster, NY 14580



**BME** | ASSOCIATES

ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS

10 LIFT BRIDGE LANE EAST  
FAIRPORT, NEW YORK 14450

Project No. 2433

January 2016

*Last Revised: May 9, 2017*

## Exhibit "B"

Section 22.7 Description of HOA property and specifications or building condition.

### I. Location of Property and General Site Features

#### (22.7, (a) (b) (1), (2))

The proposed Barclay Park Residential Community includes twenty-four (24) to be newly built "for-sale" townhomes. All twenty-four (24) townhomes will be constructed in two section, being on a ±6.7 acre site on the west side of Fairport Nine Mile Point Road (NYS Route 250). It is anticipated that the first home will be completed February-March 2017 and all townhome construction to be completed by the end of 2019. This development will also include ±2.46 acres of Homeowners' Association (HOA) common lands to be built, which will be maintained by The Barclay Park Homeowner's Association. Located within the HOA common lands is the access roadway, utilities, stormwater management facility, green infrastructure stormwater management practices, and landscaping improvements. Sponsor anticipates all HOA facilities for Phase I to be completed by September 2016. Sponsor anticipates HOA land for Section II to be complete at time of filing Section II.

#### (22.7(f), (2), (3))

The site features and proposed construction improvements are built in accordance with the Town of Penfield Town Board, which approved the final subdivision and site plans on January 27, 2016. The site will be developed and built in accordance with the zoning regulations of the Town of Penfield, New York. The subdivision map was filed in the Monroe County Clerk's office on October 18, 2016, at liber 353 of maps on page 30. Barclay Park Residential Community received coverage under SPDES General Permit for Stormwater Discharge from Construction Activity (General Permit No. GP-0-15-002) from the New York State Department of Environmental Conservation on April 19, 2016. Access is provided by an approximately 880' long private drive, River Birch Lane, from a public road, Fairport Nine Mile Point Road (NYS Route 250), and utilities will be extended from existing water and sanitary sewer available at the site. Storm sewers and a stormwater management facility (SWMP 'A') will also be constructed.

### II. Description of Lands of the Barclay Park Homeowner's Association

1. Common HOA lands include one parcel of 2.46 acres. The HOA lands include new construction only of the private common access drive, a signage monument, landscaping, Stormwater Management Area "A", and an access and inspection easement over the pond to the Town of Penfield. The HOA will be responsible for the maintenance of all common and landscaped areas, as well as the exterior of the townhome which will be privately owned. Sponsor will not construct any other facilities such as pools, tennis courts, or recreational buildings, and there are no existing buildings to be renovated by the Sponsor.

2. Pavements

A. Private Drive: ((22.7 (3) (l) (iii) (v), (4) (i)), 22.7(a) (iii))

The Barclay Park Homeowner's Association will maintain the common drive serving Lots 1 through 24, River Birch Lane, to be constructed in accordance with the Town of Penfield standards. This common access drive is 20 feet in width and includes a 30-inch wide concrete gutter on both sides of the drive. The access drive construction consists of a 9-inch depth crusher run stone sub-base, a 2-inch depth asphalt concrete binder course, and a 1-inch asphalt concrete top course. (The top coat will be the responsibility of Barclay Park Homeowner's Association to be installed at a later date, see special risk paragraph 8.) The Barclay Park Homeowner's Association shall be responsible for the maintenance of such items as sweeping, snow removal, pavement repairs, and periodic resurfacing. The private drive is built according to plans approved by local municipalities and involved agencies. The drive will not be dedicated to the local government and will be built to their standards. Gutter inlets are proposed along River Birch Lane to collect runoff from the proposed private road and direct it to the stormwater management facility.

B. Individual Townhouse Driveways: (22.7(f), (5) (h), (1), (2))

The Barclay Park Homeowner's Association shall be responsible for snow removal. Each unit will have an attached 2-car garage, in addition to visitor parking available in each unit's driveway.

3. Soil Conditions (22.7(a), (c) (1))

Several test pits were done on the site and soils observed were primarily loams. The area appears to be suitable for the proposed development, and no conditions are expected that cannot be handled through normal construction practices, building foundation design, drainage improvements, erosion control, and desiltation measures. The depth to the water table is approximately five feet to greater than ten feet on site.

4. Utilities within the Townhouse portion of the Development (22.7(a) (e))

The design plans for utilities to serve the project have been approved by the appropriate District, Town Engineer, and authorities having jurisdiction, and will be constructed in accordance with the most recent specifications of the appropriate agency.

A. Water Distribution System: ((22.7(a) (e))

The water distribution system will be constructed in accordance with the most recent standards of the Monroe County Water Authority. The system shall provide services for both domestic and fire fighting purposes. The water mains, hydrants, valves, and all other appurtenances within the dedicated easement shall be owned and maintained by the Monroe County Water Authority. Each unit will be provided with an individual service and usage will be metered on an individual unit basis by the Monroe County Water Authority. Individual homeowners shall

be responsible for the maintenance of their own individual water service from the right-of-way or easement line to their home.

**B. Sanitary Sewer System: (22.7(a) (f), (1), (i), (iii))**

The sanitary sewer system will be constructed in accordance with the most recent standards of the Town of Penfield and Monroe County Department of Health. The site is part of an existing sanitary sewer district with all lots participating in the annual maintenance and administration of the District. Each unit will be served by a four (4) inch PVC sanitary lateral that ties into a PVC sanitary sewer main with a diameter of eight (8) inches. The sanitary sewer system within the dedicated easement shall be owned and maintained by the Town of Penfield, which includes the (8) inch mains and manholes. Individual homeowners shall be responsible for the maintenance of their own individual sanitary lateral from the right-of-way or easement line to their home.

**C. Storm Drainage System: (22.7(a) (f), 22.7(f), (3), (i), (ii) (iii) (iv))**

The storm drainage system will be constructed in accordance with the most recent standards of the Town of Penfield. The storm drainage system within the development shall be owned and maintained by the Barclay Park HOA.

Each unit will be served by a six (6) inch storm lateral which ties into the storm drainage system. Individual homeowners shall be responsible for the maintenance of their own individual storm lateral from the right-of-way or easement line to their home and if necessary, installation and maintenance of sump pumps to drain the sump to the storm lateral. The roadways and lawn areas shall be graded to direct surface runoff to various storm inlets. Field inlets are located in the rear of the proposed lots. Two (2) sets of gutter inlets are proposed along River Birch Lane to collect runoff from the proposed private road. The storm drainage system will convey drainage to the onsite stormwater detention facility. Maintenance of these facilities and related structures for drainage purposes shall be the responsibility of the Barclay Park Homeowner's Association LLC.

**D. Green Infrastructure Practices: (22.7(a) (f))**

The green infrastructure practices, which includes dry swales and a wet swale, will be constructed in accordance with the Town of Penfield and New York State Department of Environmental Conservation most recent standards. The maintenance of the green infrastructure practices will be the responsibility of Barclay Park Homeowner's Association. Maintenance of these facilities will be required as directed by the Town of Penfield as described in the Stormwater Maintenance Agreement between the Town of Penfield and the developer.

**E. Gas and Electric Service: (22.7(a) (f))**

The Rochester Gas and Electric Corporation will provide all units with gas and electric service. All gas and electric services will be installed using underground conduits and will be maintained by the appropriate private corporation by easement.

F. Telephone Service: (22.7(a) (f))

Telephone services will be provided by Frontier Telephone Corporation and will be by underground conduit. Frontier Telephone Corporation will maintain these services by easement.

G. Television Cable Service: (22.7(a) (f))

Each individual unit will be equipped to receive television cable service. The homeowner shall be responsible for contracting with the cable company to receive services.

H. Landscaping Areas: (22.7(a) (d), (1), (2), (3), (4))

The maintenance of the lawn and landscaped areas shall be the responsibility of the Barclay Park Homeowner's Association. Landscape plantings consisting of conifers trees will be planted along the western edge of the property, along with a six foot high solid vinyl fence. The pond will be landscaped with various shrubs and trees, and slopes seeded with a native area seed mix. The common park area located in the northeast corner of the property will be landscaped with various deciduous and coniferous shrubs and trees. Foundation plantings will be provided for each individual unit. All remaining areas shall be seeded with a lawn seed mixture.

I. Lighting: (22.7, (3) (iv))

Each townhouse unit will have their own individual carriage lamp and individual building mounted lighting that will supplement the stoop lighting. This will be the responsibility of the Barclay Park Homeowner's Association to maintain the lighting.

**III. Refuse Disposal (22.7(f) (g), (3), (4), (5))**

As set forth in the offering plan, the Barclay Park Homeowner's Association will contract for removal or disposal of all refuse materials for the townhomes. The expense of refuse removal will be included in monthly common charges billed by the Association. Each unit will be given a garbage tote to be picked up weekly by a private collector. Necessary permits for disposal of potentially toxic materials must be secured by the individual homeowner to ensure proper transportation of all waste materials to protect the health, safety, and well being of the public. Existing laws will strictly regulate any toxic wastes produced.

22.7, (3) (ii);

Not applicable

22.7(a) (ii), (c) (2) (3), (5) (6) (7) (8), (ii) (iii);

Not applicable

22.7(f) (g) (1), (2), (h) (3) (4) (5) (6) (7);  
**Not applicable**

Specify all applicable items in subdivisions (i) through (q) of this section below for each building:

(i) (1)

**Not applicable**

22.7(i), (2), (3), (4), (5), (6), (7), (j), (1), (2), (3), (4), (k), (l) (1) (2) (3) (4);

**Not applicable**

22.7(l), (5) (i) (ii) (iii) (iv) (v) (vi), (6) (i) (ii) (iii) (iv) (v) (vi), (7) (i) (ii) (iii) (iv), (8) (i) (a) (b) (c);

**Not applicable**

22.7(l), (d), (e), (ii), (a), (b), (c) (iii) (iv), (a), (b), (c), (v), (a), (b), (c), (d), (e), (vi), (9) (i) (ii) (iii) (iv) (v);

**Not applicable**

22.7(l), (10) (i) (ii) (iii) (iv) (v) (vi), (m), (1) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii), (2) (i) (ii) (iii) (iv);

**Not applicable**

22.7(m), (3) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi), (4) (i) (ii) (iii) (iv) (v), (n) (1), (2) (i) (ii);

**Not applicable**

22.7(n) (iii) (iv), (3) (i) (ii) (iii) (iv) (v), (4) (o) (1), (2), (3), (4), (5), (6), (7), (8), (9) (p);

**Not applicable**

22.7(o), (1) (2) (3) (4), (q) (1) (2) (3) (4) (r) (s) (1) (i) (ii), (iii), (iv), (v), (2), (l), (ii);

**Not applicable**

22.7(s), (iii) (iv), (3) (t) (u) (1) (2) (3) (4) (5), (v);

**Not applicable**

22.7(v), (1) (2) (3) (4) (5);

**Not applicable**



MEMORANDUM

To: To Whom It May Concern

Date: February 2, 2017

Re: Barclay Park Section 1  
Town of Penfield, Monroe County, NY

2433

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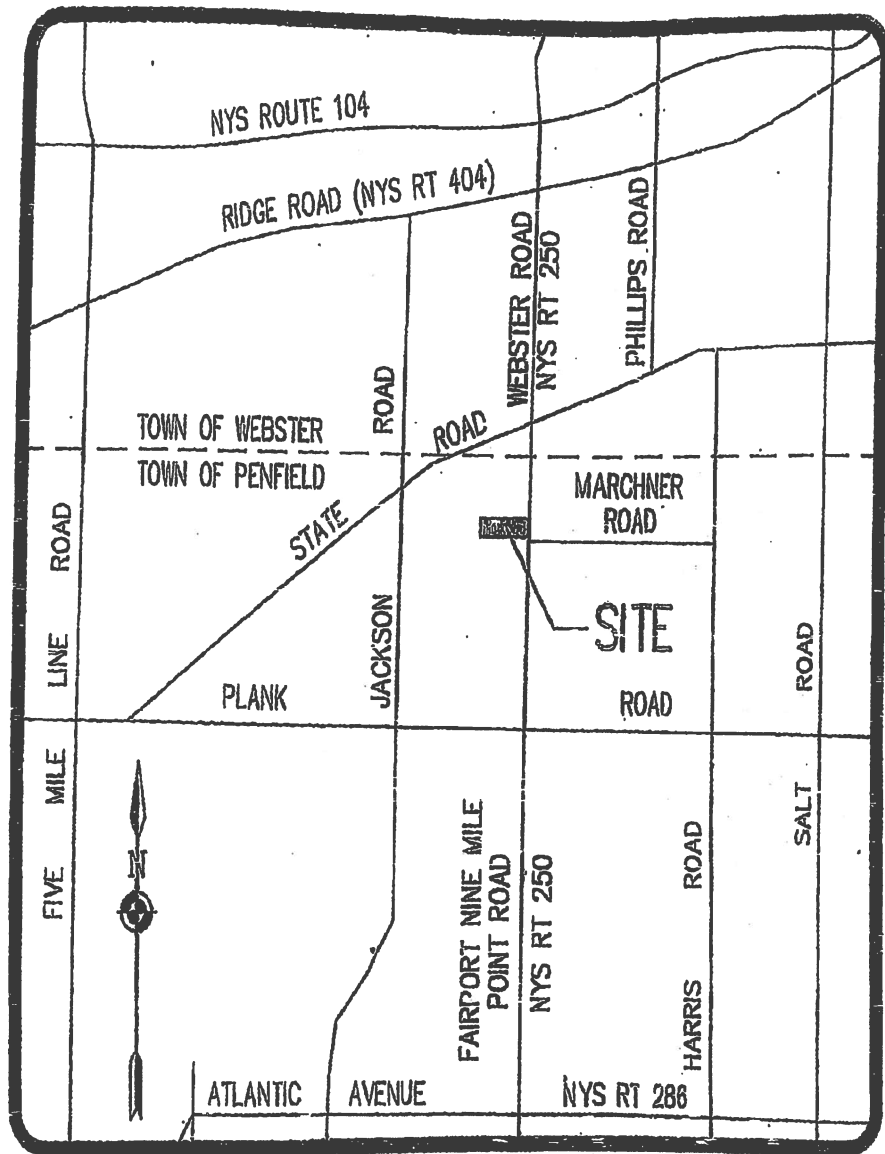
BME Associates, as the Project Engineer, hereby acknowledges that, to the best of our belief and knowledge, installation of utilities and a portion of River Birch Lane is complete at Barclay Park Phase I. Watermains have been tested, chlorinated and certified, in accordance with requirements of the Monroe County Water Authority and New York State Department of Health. Sanitary sewers have been installed and passed testing. River Birch Lane has been graded, stoned and paved in binder course asphalt to Station 5+16.

Sincerely,  
BME ASSOCIATES



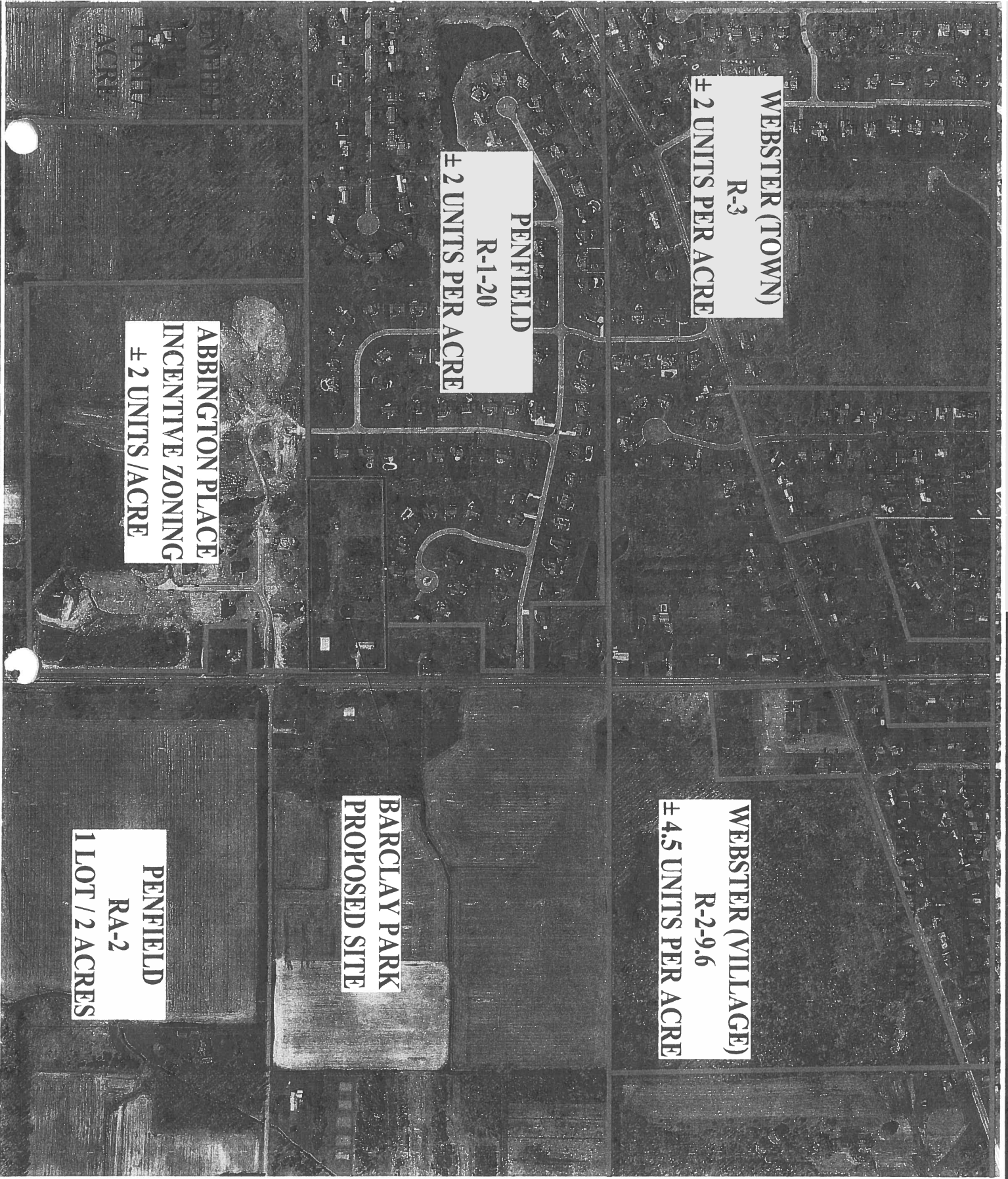
Peter G. Vars, P.E.





# LOCATION MAP

NOT TO SCALE



WEBSTER (TOWN)  
R-3  
± 2 UNITS PER ACRE

PENFIELD  
R-1-20  
± 2 UNITS PER ACRE

ABBINGHTON PLACE  
INCENTIVE ZONING  
± 2 UNITS /ACRE

WEBSTER (VILLAGE)  
R-2-9.6  
± 4.5 UNITS PER ACRE

BARCLAY PARK  
PROPOSED SITE

PENFIELD  
RA-2  
1 LOT / 2 ACRES

**BME**  
ASSOCIATES

BARCLAY PARK  
EXISTING ZONING EXHIBIT  
TOWN OF PENFIELD, MONROE COUNTY, NEW YORK

Scale:  
1"=600'

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**SCHEDULE A**

**PROJECTED FIRST YEAR HOA  
OPERATING BUDGET**

22.3(g)

**SCHEDULE A**

**Budget For First Year Of HOA Operation  
Beginning approximately May 1, 2017**

**Projected Income**

**Maintenance charges**

(\$206.00 per home per year Payable monthly/annually Based on 24 homes).....\$4,944.00

**Projected Expenses**

\*Utilities (Electricity and Gas for common property).....\$1,200.00

\*Repairs, maintenance and supplies.....\$1,600.00

\*Service Contracts.....\$14,585.00

\*Snow Removal.....\$9,000.00

\*Refuse Removal.....\$4,428.00

\*Insurance.....\$11,335.29

\*Management Fees.....\$7,200.00

Legal Fees.....\$500.00

Accounting Fees.....\$1,500.00

Taxes.....\$

\*Real Estate.....\$120.00

\*Franchise and Corporate.....\$100.00

\*Reserve.....\$7,285.00

\*Other.....\$644.00

**TOTAL.....\$59,197.29**

## SCHEDULE A

Budget for First Year of Barclay Park HOA, Inc.  
May 2017

	24 Units	Footnotes
<b>Projected Income</b>		
Maintenance Charges @ \$206.00 per month	\$4,944.00	1
Developer Contribution		
<b>TOTAL INCOME</b>	<b>\$4,944.00</b>	
<b>Projected Expenses</b>		
Utilities	\$1,200.00	2
Water Charges/Sewer Rent	\$0.00	3
Repairs/Maintenance/Supplies	\$1,600.00	4
Service Contracts	\$14,585.00	5
Snow Removal	\$9,000.00	6
Refuse Removal	\$4,428.00	7
Insurance	\$11,335.29	8
Management Fees	\$7,200.00	9
Legal Fees	\$500.00	10
Accounting Fees	\$1,200.00	11
<b>Taxes</b>		12
Real Estate Tax	\$120.00	
NYS Franchise Tax	\$100.00	
Federal Income Tax	\$0.00	
State Income Tax	\$0.00	
Sales Tax	\$0.00	
Reserve	\$7,285.00	13
Other	\$644.00	14
<b>TOTAL EXPENSES</b>	<b>\$59,197.29</b>	

## DEFINITIONS

As used in this Plan the following terms have the meanings as follows:

**"Assessments"** - composed of (i) "Maintenance Assessments" (see definition below), charged to the Owners on an annual basis and payable on a monthly basis, and (ii) "Special Assessments" (see definition below).

**"Association"** - Barclay Park Homeowner's Association, Inc.

**"Common Areas"** - all land, improvements and other properties subject to the Association's common easement.

**"Declaration"** - The Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens which has been or will be recorded in the Recording Office prior to the transfer of title to the first Homesite in conjunction with this Offering Plan. The Declaration establishes the mandatory nature of the Association and includes the administrative framework and responsibilities of the Association and the basis for collection of Maintenance Assessments to enable the Association to carry out its responsibilities. The Declaration also sets forth the property rights and obligations of the Members of the Association.

**"Development"** - the entire Barclay Park, i.e. the lands described on **Exhibit I**.

**"Home"** - each residential home on the Property which has been (i) completed as evidenced by issuance of a certificate of occupancy issued by the Town of Penfield for such home or (ii) occupied as a residence.

**"Lot"** - a plot of land subject to the Declaration which is designed for separate ownership or which is shown as a separate parcel on a filed subdivision map or on the tax records of the Town of Penfield, except that land owned by the Association shall not be deemed a Lot.

**"Lot Owner"** - the Owner of a Lot.

**"Maintenance Assessments"** - amounts charged by the Association to the Owners for the maintenance and operation of the Common Areas, including the private road, for the administrative costs of the Association, including but not limited to office expenses, insurance premiums for liability insurance covering the Association common easement, legal fees for enforcing restrictive covenants, accounting fees and charges for reserve funds. The sponsor is not obligated to pay monthly assessments for vacant lots, except as set forth under the Section Rights and Obligations of Sponsor.

**"Member"** - each holder of a membership interest in the Association as such interests are set forth in Article III of the Declaration in Part II of this Plan.



**"Offering Plan"** or **"Plan"** - the plan or prospectus prepared pursuant to New York Law and the Department of Law for the sale of Homesites together with an interest in the Association.

**"Owner"** - the holder of record title, whether one or more persons or entities, of the fee interest in any Lot.

**"Property"** - all properties, including the Association Property, and the Homesites which are subject to the provisions of the Declaration.

**"Purchase Agreement"** - the written agreement or contract pursuant to which a Homesite is sold by the Sponsor and purchased by the Purchaser.

**"Purchaser"** - a person or entity who has entered into a contractor purchase agreement to acquire a Homesite.

**"Recording Office"** - the Monroe County Clerk's Office.

**"Selling Agent"** - the person or entity, if any, retained by the Sponsor to act as the Sponsor's agent for the sale of Lots.

**"Special Assessments"** - amounts charged by the Association to the Owners for capital improvements, unbudgeted or extraordinary expenses and any monetary penalties imposed against an Owner pursuant to Section 5.04 of the Declaration.

**"Sponsor"** — **Maddox Development, LLC.**, its successors and assigns.

## PROCEDURE TO PURCHASE

A person desiring to purchase a Lot will be required to execute two (2) copies of a Contract of Sale (Purchase Agreement) in the form set forth as **Exhibit A** in Part II of this Plan and return it to the office of the Sponsor or the Sponsor's Selling Agent together with a check for a down payment in the amount of ten percent (10%) of the purchase price. The down payment funds and deposits for "extras", and all other payments for the Lot should be payable to or endorsed to the order of "Joseph W. Jacek, Jr. Esq. - Barclay Park Account". Purchasers shall have not less than three (3) business days prior to execution of a Purchase Agreement to review this Offering Plan and all filed amendments to date or, if a Purchaser has not had the Offering Plan for such three (3) business day period, such Purchaser will be afforded until 4 p.m. on the seventh day following Purchaser's execution and delivery of a Purchase Agreement to the Sponsor or to the Selling Agent to rescind the Purchase Agreement and to have the entire deposit promptly refunded. Any notice to rescind must be in writing and personally delivered to the Sponsor or the Selling Agent or if sent by mail to the Sponsor or the Selling Agent, postmarked within such seven (7) day period. The Purchase Agreement contains terms and conditions upon which the Lot will be sold and before being executed by the Purchaser should be reviewed by the Purchaser's legal or financial representative. The Purchase Agreement or Plan may not contain a provision waiving Purchaser's rights or abrogating Sponsor's obligations under Article 23-A of the General Business Law. Sponsor may allow assignment of the Purchase Agreement to an affiliated company or company substantially controlled by the Sponsor. The first copy of such

document is provided to the Purchaser without cost. Thereafter, subsequent copies of the Offering Plan, together with any amendments thereto, are available from the Sponsor or the Sponsor's Selling Agent. A \$50.00 charge will be required for a second copy of such documents, which amount will be paid at the time the copy is released to the buyer. The Sponsor will have two (2) days after receipt to accept the Purchase Agreement and return one (1) fully executed copy to the Purchaser or reject the Purchase Agreement and refund the deposit tendered by the Purchaser. If the Sponsor does not give the Purchaser notification of acceptance or rejection of the Purchase Agreement, the Purchase Agreement will be deemed to be of no effect and the Purchaser's deposit will be returned unless both the Purchaser and the Sponsor re-execute the Purchase Agreement or otherwise indicate in writing that such two (2) day period has been extended. The Purchase Agreement may not contain, or be modified to contain, any provision waiving the Purchaser's rights or abrogating the Sponsor's obligations under the Offering Plan or under Article 23-A of the New York General Business Law.

### **Trust Funds and Escrow Arrangements**

Pursuant to , Sections 352-e(2-b) and 352-h of the New York General Business Law, the applicable regulations of the New York State Department of Law and the Escrow Agreement included as **Exhibit F** in Part II of this Offering Plan, the Sponsor will within five (5) business days after receipt of a deposit or down payment for a Homesite, including such deposits for "extras," deposit such funds in a separate "Interest-On-Lawyer's ("IOLA") Account", pursuant to Section 497 of the New York Judiciary Law, the interest earned on such account being paid to a special fund used to (i) fund civil legal services to the poor and (ii) for other purposes related to the improvements of the administration of justice in New York State. This account ("Escrow Account") shall be called the "Joseph W. Jacek, Jr, Esq. – Barclay Park Escrow Account" and shall be maintained at M&T Bank, 1282 Long Pond Road, Rochester, New York 14626. Deposits in excess of \$250,000.00 are not federally insured. This account is a separate account apart from any other personal or escrow accounts maintained by the attorney.

Funds from this account may be released only by signature of Joseph W. Jacek, Jr., as escrow holder. Neither the Sponsor nor any principal of the Sponsor is a signatory on said account. There are no administrative fees deducted from this account and the Sponsor is responsible to bear any administrative cost for maintenance of the account.

The escrow agent shall maintain all records concerning the escrow account for seven (7) years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for these records by one of them or by the successor firm and shall notify the Office of the Attorney General of such transfer.

The Office of the Attorney General may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulations.

Any provision of any contract or agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over

any conflicting or inconsistent provision in the Offering Plan or in a purchase agreement.

Nothing contained herein shall diminish or impair the Sponsor's statutory obligation to each purchaser pursuant to General Business Law Section 352-h to hold in trust all deposits, advances, or payments made in connection with the offer until consummation of the transaction with such purchaser. However, pursuant to Paragraph "6" of the Special Risks Section of this Plan, deposits for Extras will initially be deposited in the Special Escrow Account set forth herein, but shall, prior to construction commencement, be released to the Sponsor. Consummation of the Plan does not relieve Sponsor of its obligations pursuant to General Business Law Section 352-h. Funds from the escrow account, except those released for payment of "Extras" remain the property of the Purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the Sponsor or the escrow agent upon any bankruptcy, incapacity, or death.

The Escrow Account may include deposits made by other Purchasers of Lots. Funds in the Escrow Account deposited with respect to the purchase of a Lot remain the property of the Purchaser of such Lot until employed in connection with the consummation of the purchase or as otherwise provided in this Offering Plan or in the Purchase Agreement.

#### **Notification to Purchaser**

Within seven (7) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. Within fifteen (15) business days of placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance to the terms of the Purchase Agreement and Escrow Agreement. Deposits for "Extras" will be released to the Sponsor in accordance with Paragraph "6" under Part I "Special Risks" of this Plan.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within twenty (20) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

#### **Release of Funds**

All Deposits, except for advances made for upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be the Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Sponsor, as per GBL § 352-h.

Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of a post-closing amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-e(2-b) and 352-h.

The Escrow Agent shall release the Deposit if so directed:

- (a) pursuant to terms and conditions set forth in the Escrow Agreement and Purchase Agreement upon closing of title to the townhome, or
- (b) in a subsequent writing signed by both Sponsor and Purchaser; or
- (c) by a final, non-appealable order or judgment of a court.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (a) through (c) above. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the clerk of the county where the [unit/building] is located and shall give written notice to both parties of such deposit.

The Sponsor shall not object to the release of the Deposit 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.

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations.

#### **Waiver Void**

Any provision in the Purchase Agreement Escrow Agreement or separate agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding any Deposit in trust is absolutely void. The provisions of the Attorney General's regulations and GBL §§ 352-e(2-b) and 352-h concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase Agreement, Plan, or any amendment thereto.

### **Compliance With Section 71-a(3) of the Lien Law**

Pursuant to Section 71-a(3) of the New York Lien Law, a builder constructing a home for a purchaser is responsible, if the purchaser requests, to place in escrow or to bond the purchaser's initial deposit until completion of the home. Notwithstanding this election right of the Purchaser of a Homesite, because both the Sponsor and the Sponsor's closing attorney agree to comply with the escrow and trust provisions of Sections 352-e(2-b) and 352-h of the New York General Business Law, the Purchaser will be deemed to have made such election and the initial deposit will be handled as set forth above.

### **Projected Date of Closing of First Lot; Purchaser's Right to Rescission if Closing is Delayed One Year**

The Sponsor projects the date of closing of the first Lot under this Offering Plan to be in the first or second quarter of 2017. If the date set for closing in any Purchase Agreement is delayed one year or more, unless the Sponsor and the Purchaser have agreed to such delay, the Purchaser shall be afforded the right to rescind the Purchase Agreement upon which rescission all deposits made by the Purchaser will promptly be refunded.

### **Default by Purchaser; Forfeiture of Deposit**

If a Purchaser defaults in the performance of the Purchaser's obligations under the Purchase Agreement, the Sponsor will give the Purchaser written notice affording the Purchaser the opportunity to cure such default: If such default is not cured within thirty (30) business days after receipt of such notice, the Sponsor may cancel the Purchase Agreement and retain or collect from the Purchaser as liquidated damages an amount equal to ten percent (10%) of the contract price, plus amounts actually expended by the Sponsor for extras and upgrades or in lieu of retaining such amount as liquidated damages bring a lawsuit for actual damages under New York Law.

### **Notice to Close**

The Sponsor will give the Purchaser at least fifteen (15) days prior written notice of the date, time and place to close the transfer of title to the Homesite. Such notice will advise the Purchaser of the status of payments of Assessments to the Association and when the Purchaser's first payment of such Assessments will be due and payable. Any balance owing on the purchase price of the Homesite shall be payable at the time of closing by certified personal check or official cashier's check drawn on a member bank of the New York Clearing House Association.

### **Risk of Loss**

If a Home is damaged or destroyed by fire or other casualty, the risk of such a loss remains with the Sponsor unless and until either the Purchaser takes actual possession of the Home pursuant to a written agreement with Sponsor, or legal title to the Homesite has been conveyed to the Purchaser.

### **Financing Contingency**

Unless the Purchaser is a "cash" buyer, the Purchaser's obligations to consummate the purchase may be made contingent on the Purchaser obtaining mortgage financing as provided in the Purchase Agreement. The Purchaser will make application for such loan in accordance with the Purchase Agreement after the Sponsor has accepted the Purchase Agreement, whichever is provided for therein. If the Purchaser does not receive a commitment for a mortgage loan within thirty (30) days from the date of application and the Purchaser so notifies the Sponsor in writing within five (5) days after the expiration of the thirty (30) day period or if such mortgage commitment, once obtained, is thereafter rescinded or expires without fault of the Purchaser, and is not reinstated or extended at the same or a lower interest rate and the Purchaser so notifies the Sponsor within five (5) days after such rescission or expiration, the Purchase Agreement shall terminate automatically and the Sponsor shall cause the down payment to be returned to the Purchaser.

### **Provisions of Offering Plan Control**

The provisions of this Offering Plan are incorporated into each Purchase Agreement by reference. Any conflict between the terms, provisions and conditions of this Offering Plan and those of the Purchase Agreement will be resolved in favor of the Offering Plan.

### **Purchase Agreement Not Assignable Without Sponsor's Consent**

The Purchaser may not assign the Purchase Agreement without prior written consent of the Sponsor. Any purported assignment of the Purchase Agreement by the Purchaser without the Sponsor's consent shall be deemed null and void.

## **FINANCING FOR PURCHASERS**

The Sponsor is not designating and has not procured any specific lender to finance the purchase of individual Homesites by Purchasers. However, the Sponsor may, from time to time, make recommendations of specific lenders. No such recommendation shall be deemed a condition of this Offering Plan or of the Purchase Agreement. Purchasers may obtain any necessary financing from any source available to them. The Purchase Agreement may provide the Purchaser's obligation to purchase is contingent on the Purchaser obtaining such financing. The following financing contingency appears in the purchase contract at Paragraph 12 thereof.

**12. MORTGAGE LOAN FOR PURCHASER:**        YES        NO. This Agreement is contingent upon Purchaser obtaining and accepting within 30 days from date that Purchaser receives a fully executed contract, a written commitment for a mortgage loan from a lending institution upon terms acceptable to Purchaser. However, the contingencies of the mortgage commitment shall not be contingencies of this Agreement, and shall be the sole responsibility of the Purchaser. Issuance and acceptance of the written commitment by the Purchaser shall be a waiver and satisfaction of this contingency. If Purchaser cannot obtain and accept such commitment within the stated period, or in the event that a lender revokes the commitment letter, not due to Purchaser's fault, then either Purchaser or Seller may cancel this Agreement by giving written notice to the other. In that event, this Agreement shall be null and void and both parties released from any and all liabilities. Deposits, with interest if any, shall be returned to the Purchaser. Except that if this Agreement is cancelled because the lender has revoked a commitment letter not due to Purchaser's fault, any deposit made for upgrades or new construction extras, will not be refunded if such deposit was used in the construction of the home.

## TERMS OF SALE

### Transfer of Common Areas to Association

The deed conveying the common area to the Association will be a Warranty deed with lien covenant. A copy of the deed is an exhibit to part II of the offering Plan submitted to the Attorney General. Title to the Association property will be conveyed free and clear of all liens, encumbrances and title exceptions other than as disclosed in this Offering Plan, the state of facts shown on the subdivision map recorded in the Monroe County Clerk's office or an instrument survey, and the proposed deed. Title exceptions may include the State of Facts shown on a stated survey and any additional State of Facts a subsequent survey would show, provided that such additional State of Facts does not render title unmarketable.

Prior to the transfer of title to any lot the Sponsor will file the Declaration, and the deed conveying the common area to the Association, in the Monroe County Clerk's office.

The sponsor is obligated to repair damage to the common area which occurs prior to transfer of title. The sponsor will make periodic checks of the property conveyed to the Association and correct any defect in construction due to improper workmanship or material substantially at variance with this offering Plan, provided the sponsor is notified or otherwise becomes aware of any such defect within one year from the day of completion of such construction or 12 months from the date of transfer of title to the first Lot, whichever is later. The quality of construction shall be comparable to local standards customary in the particular trade and in accordance with the plans and specifications. In no event shall the sponsor be responsible for the partial or total death of any trees, shrubs, bushes or other landscape improvements. The Association shall be responsible to remove any landscape improvement which ceases to be a healthy species for any reason whatsoever. The sponsor is not obligated to install the top coat of the private roadway.

A closing will take place only upon issuance of a temporary or permanent certificate of occupancy for the Townhome closed. There are no leases, liens, mortgages or other title exceptions which will affect the Homeowner's Association property after closing. Except that the Sponsor has given a mortgage secured by the individual lots not HOA property. The Mortgage for each lot will be released at each lot closing.

### Transfer of Homesites to Purchasers

The Declaration will be recorded in the Monroe County Clerk's Office prior to the first conveyance of a Homesite. Conveyance of Homesites to Purchasers will be by Warranty Deed with Lien Covenant and as otherwise provided in the Purchase Agreement. The Sponsor will comply with any applicable requirements of the New York State Department of Taxation and Finance including procuring of any required "Real Property Transfer Gains Tax Tentative Assessment and Return" (or "Statement of No Tax Due"). As provided in the Purchase Agreement, the obligation for the payment of New York State transfer tax, usually the responsibility of the seller, is transferred to the Purchaser.

## **RIGHTS AND OBLIGATIONS OF THE SPONSOR**

### **1. Defend and Indemnify for Acts or Omissions**

All representations under the Offering Plan and all obligations pursuant to the General Obligations Law and such additional obligations under the Offering Plan which are to be performed subsequent to the closing date will survive delivery of the deed. The Sponsor will defend any suits or proceedings arising out of Sponsor's acts or omissions and will indemnify the Board of Directors of the Association and the Homesite Owners for any liabilities or costs arising out of such acts or omissions pursuant to the applicable statute of limitations under New York Law.

### **2. Number of Units to be Built and Common Areas to be Completed and Conveyed to Association**

The Sponsor is only obligated to complete the construction of twenty-four (24) Townhomes and the improvements to Association Property which includes the roadway, (exclusive of top coat) driveways and green areas. Sanitary sewers, water lines, phone lines, cable lines, gas and electric lines are all built by the Sponsor as part of Subdivision approvals required by the Town of Penfield. These facilities and improvements shall be completed before conveyance of a lot, except for green space, if permitted by the Town of Penfield, and paid for by the Sponsor. The Sponsor reserves the right to change or modify size, elevation, or architectural details at its discretion provided that such changes or modifications at all times comply with Town of Penfield Building Codes. The roadway is owned by the HOA and is not a public road. However, included as Part I of this Plan and as Exhibit J of this Plan, is the Engineer's Certification that the Phase I facilities have been completed and installed according to Town requirements.

### **3. No Financing for Construction of Common Areas**

The Sponsor has not obtained financing for the construction of improvements to the Common Areas, and no financing is anticipated at this time, but sponsor may obtain such financing in the future.

### **4. Right to Substitute Equipment or Materials**

With respect to the construction and completion of Common Areas, the Sponsor will complete construction in accordance with the plans and specifications identified in the Offering Plan, but the Sponsor has the right to make changes or to substitute equipment and materials of comparable or better value, quality or design.

### **5. Pay for Improvements to Common Areas**

The Sponsor will pay for the authorized and proper work involved in the construction of the improvements on the Common Areas which the Sponsor is obligated to complete under this Offering Plan and will cause all mechanic's liens with respect to such construction to be promptly discharged or bonded.



**6. Record Declaration**

Prior to the transfer of title to the first Homesite, the Sponsor will record the Declaration. Any Common Areas to be conveyed to the Association will be released from any mortgage lien prior to or simultaneous with their conveyance to the Association and will be conveyed to the Association prior to the transfer of title to any Homesite. Prior to the transfer of title to any Homesite the Sponsor will complete the construction of streets servicing such Homesite.

**7. Deliver Set of Plans to Association**

The Sponsor will deliver a set of engineering design plans and specifications to the Board of Directors of the Association for any improvements which service the Homesites including roads, water lines and sewer lines. The Sponsor will represent that such plans and specifications are in substantial compliance with the disclosure for such Common Areas as set forth in this Offering Plan. If any as built plan or specification is not in substantial compliance with the disclosures in the Offering Plan, the plan will be amended and recession will be offered to all purchasers and members.

**8. No Security Furnished by Sponsor**

No bond or other security has been furnished to secure the Sponsor's obligations under this Offering Plan including the Sponsor's obligations to complete the construction of the Common Areas, except for a letter of credit to the Town of Penfield for completion of the sanitary sewers. Said letter is on file with the Town of Penfield.

**9. Procurement of Insurance**

So long as the Sponsor is in control of the Board of Directors of the Association, the Sponsor appointed or elected Directors will arrange for the Association to obtain and maintain public liability insurance covering the Common Areas. There are no HOA facilities requiring fire insurance.

**10. Provide Financially Responsible Successor Entities**

In the event of the Sponsor's dissolution or liquidation the Sponsor will provide financially responsible entities or individuals who, at the time or engaging in sales activity with respect to the Homesites transferred, will assume the status and all of the obligations of the Sponsor for those transferred homes or lots under the Offering Plan applicable laws and regulations and Sponsor will guarantee the obligations of the new Sponsor.

**11. Amend this Offering Plan to Disclose Status of Association Budget**

So long as the Sponsor has unsold Homesites, or lots offered for sale pursuant to the Offering Plan, the Sponsor will amend this Offering Plan whenever there is a material change in the operating budget of the Association or when one year has passed since the budget was last updated. The prior year's certified financial statements for the Homeowner's Association will be included even if Sponsor assumes responsibility for Homeowners

Association operating expenses. The financial statements will be submitted within 3 months of the latest fiscal year of operation of the Homeowner's Association and conform with part 22.3 (h) of the regulations.

**12. Assign to Association Manufacturers' Warranties for Equipment on Association Property**

The Sponsor will assign to the Association any manufacturers' warranties for equipment installed on Association Property or to be owned or maintained by the Association. At this time, no equipment is anticipated to be installed.

**13. Sponsor's Easements**

Pursuant to the Declaration (see Section 4.05 of the Declaration in Part II of this Offering Plan), so long as the Sponsor holds title to any portion of the Property, the Sponsor has an easement over the Property for (i) the purpose of making corrections to construction whether or not required by a Purchaser's warranty; (ii) the operation of a sales center and the installation and maintenance of signs, and (iii) ingress and egress of prospective Purchasers and lessees of Homesites including parking. The Sponsor also has the right to grant itself or other such easements and rights of way as may be reasonably needed for the orderly development of the Property. Including conservation and drainage inspections to the Town of Penfield.

**14. Provide Title Insurance on Association Property**

The Sponsor will not provide a policy of Title Insurance covering the common areas conveyed to the Association by a title company authorized to do business in the State of New York. Such conveyance shall be by Warranty deed. There is no requirement under law to provide this policy. Title to common areas was acquired simultaneously with all other property in the Subdivision. At that time, an examination of the title was undertaken, and title was thereafter deemed to be acceptable. Such procedure is commonly accepted in Monroe County.

**15. Subordinate or Discharge of Mortgages and Other Liens**

The Sponsor will arrange for the discharge, release or subordination of any mortgages or other liens including any mechanics liens which affect the Common Areas, prior to or simultaneously with, the conveyance of such Common Areas to the Association.

**16. Sponsor's Source of Funding Assessment Obligations to Association**

The Sponsor represents that it has sufficient resources to meet its obligations for the payment of Assessments to the Association for unsold Lots as provided in the Declaration (see Section 5.06 of the Declaration in Part II of this Offering Plan and item 2 under "Special Rights of Sponsor" in this Offering Plan). The funds to meet the Sponsor's obligations for Assessments will be obtained from the proceeds of Homesite sales and from contributions of the partners of the Sponsor.

**17. Pay Assessments**

The maintenance assessments on lots owned by the Sponsor shall be in an

amount equal to the difference between the actual Association expenses, inclusive of reserves applicable for completed improvements, and the Association charges levied on owners who have closed title to their Lots. In no event, however will the sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. See Article V of the Declaration set forth in Part II of this plan. The sponsor has the financial means to meet its obligation with respect for unsold Lots. Income from Lot sales and ongoing operations will fund this obligation. In adopting any revised schedule of Operating Expenses, Sponsor shall provide back-up budget quotations from arm's length third party providers for any item greater than the amount set forth in the Estimate of Operating Expenses set forth as Schedule A of this Plan.

### **CONTROL BY THE SPONSOR**

The Sponsor will designate the initial three (3) members of the Board of Directors. See By-Laws in Part II of this Plan for details as to term, election and number of members of the Board of Directors. The Sponsor may designate a majority of the Board of Directors whenever it owns one (1) or more of the total number of Lots outstanding at the time of an election of Directors, provided five (5) years have not passed since the date of recording of the Declaration.

When the Sponsor no longer owns one (1) or more of the Lots outstanding at the time of an election of Directors, it shall have no right to appoint any members of the Board of Directors at such election. The Sponsor will not use its position of being in control of the Board of Directors to: reduce the level of services described in this Offering Plan, prevent capital repairs to the Association Property, or prevent expenditures required to comply with applicable laws or regulations.

While the Sponsor is in control of the Board of Directors, (i) no mortgage liens will be placed on the Association Property without the consent of at least 51% of the Homesite Owners, other than the Sponsor; and (ii) certified financial statements will be provided to the Association Members at the end of each fiscal year. The Sponsor may not exercise veto power over expenses described in Schedule A, or expenses required (i) to comply with applicable law or regulation, (ii) to remedy any notice of violation or (iii) to remedy any work order by an insurer.

### **THE ASSOCIATION**

#### **Purposes of Association**

The Association is incorporated and its certificate was filed on October 12, 2016 under the not for profit law of the State of New York. The purposes of the Association include the following: (i) preservation of property values and amenities in the community, (ii) maintenance of the private roadways servicing all Lots in the Development, all other association property and exterior of the Townhomes sites. (iii) enforcement of the restrictive covenants set forth in the Declaration and the rules and regulations adopted by the Association, (iv) obtaining and maintaining public liability insurance covering the officers and directors of the Association and the Homesite Owners for events occurring on Association Property and (v) the collection of Assessments to cover the cost of all of the above. The Declaration and Association By-Laws

included in Part II of this Offering Plan provide the framework and procedures by which the Association will operate. A Lot owner becomes a mandatory member of the Association upon taking ownership of a Lot.

### **Summary of the Declaration**

#### **Recording, Duration, Amendment, Termination and Enforcement of the Declaration.**

The Declaration will be recorded in the Monroe County Clerk's Office prior to the closing of title to any Homesites: The Declaration will encumber the Property perpetually but is subject to termination by the affirmative vote of Owners of all of the Homesites. The Declaration provides that it may be modified by the Sponsor or by the Association to correct omissions or errors, provided any such amendment shall not substantially or adversely modify rights of any Lot Owners without such Lot Owner's consent.

The provisions of the Declaration may be amended, after a public hearing, by the affirmative vote of Owners of thirteen (13) or more of the Lots except that, (i) if the Sponsor owns any lands subject to the Declaration, the consent of the Sponsor will be required if the proposed amendment adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld, and (ii) no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Homesites, advise the Association that they are opposed to such amendment, which opposition must not be unreasonable.

The provisions of the Declaration may be enforced by the Sponsor, the Association or any Lot Owner, their legal representatives, heirs, successors and assigns, by actions at law or suits in equity. In addition, the Association may impose penalties and fines after affording an alleged violator a reasonable opportunity to appear and be heard. In addition, if the violator is a lot owner, guest, invitee, tenant or family member, and is found to have violated the declarations, any costs or legal fees incurred by the Association shall be deemed an assessment and lien against the lot of such violating lot owner

#### **Membership in the Association**

The Members of the Association shall be the Lot Owners including the Sponsor so long as the Sponsor owns any Lot. Membership is automatic with the obtaining of title to a Lot. The Association will have as Members the Owners of the twenty four (24) lots in the Development on which the Sponsor plans to construct Homes.

#### **Right to Extend or Expand Declaration to Other Lands**

Other lands may be subjected to the provisions of the Declaration with the consent of the Owners, other than the Sponsor, of thirteen (13) or more of the Lots.

#### **Easements**

The Property shall be subjected to the following easements and rights to grant

easements:

(1) Each Lot Owner shall have (a) an easement of enjoyment as to all Association Property, i.e. as to all lands owned by the Association, (b) an easement for ingress and egress over the roadway shown on the subdivision map for the Development filed in the Recording Office covering the Property and (c) a right and easement for the use, maintenance, repair and replacement of any pipes, wires, cables, conduits, drainage areas or other utility lines servicing such Owner's Lot but located on Association Property or on another Lot.

(2) The Association shall have (a) the right to grant easements or rights of way to any public or private utility corporation, cable television company, governmental agency or political subdivision; (b) an easement over the Lots for the use, installation, maintenance, repair and replacement of any pipes, wires, cables, conduits, drainage areas and other utility lines located on one Lot and servicing Association Property or other Lots; (c) an easement over the Lots for the installation, maintenance, repair or replacement of utility banks and telephone pedestals; (d) an easement over the Lots for the installation, maintenance, repair or replacement of any improvements, which the Association has the obligation to maintain, and on Association Property, (e) an easement to tie into and use water and electric from any Home for exterior maintenance and for the watering of grass and plantings on any lands the Association is obligated to maintain subject to the reimbursement by the Association to the Lot Owner for the cost of the water and electric consumed if billed directly to the Home.

(3) The Sponsor shall have (a) the right to grant and reserve easements and rights of way over the Property for the installation, maintenance, repair, connection with, use, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits to service any portion of the Property; (b) an easement to use Association Property for ingress and egress to any portion of the Property; (c) the right to operate a sales center, to install and maintain signs and to have prospective purchasers and others visit such sales center and park on the roads or in parking spaces on the Property; (d) the right to grant itself and others such other easements and rights of way as may be reasonably needed for the orderly development of the Property; and (e) an easement to undertake such work as is necessary to make corrections to construction whether or not required by a Purchaser's Warranty.

#### **Specific Covenants and Restrictions**

There are numerous restrictive covenants contained in the Declaration restricting or limiting the use of Association Property and the Lots. A complete explanation of such restrictions is contained in the Declaration at **Exhibit C**.

#### **Architectural Controls**

The Declaration gives the Board of Directors of the Association control over any exterior changes, modifications or alterations of improvements on a Lot made subsequent to the issuance of a Certificate of Occupancy for the Home on the Lot.

#### **Subordination of Mortgages to Declaration**

Any mortgages encumbering any portion of the Property subjected to the Declaration will be subordinated to the Declaration with respect to that portion of the mortgaged lands which are subject to the Declaration.

## **INSURANCE:**

### **Insurance Obtained by Board of Directors**

The Board of Directors shall obtain and maintain, and with such deductible amounts as the Board of Directors shall deem appropriate: (1) liability insurance for occurrences on Association Property, (2) workers' compensation insurance covering Association employees and those who perform work for the Association (3) Fire insurance covering the exterior walls and roofs of all homes in the subdivision. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

### **Notice for Required Cancellation**

The coverages obtained shall not be cancelled, substantially modified, invalidated or suspended without at least 30 days' prior written notice to all of the insureds (only 10 days' notice required in the event of cancellation for non-payment of premium) including mortgagees of Lots reported to the carrier or its insurance agent.

### **No Liability for Failure to Obtain Above Coverages**

The Board of Directors shall not be liable for failure to obtain any of the coverages required herein or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

### **Insurance Obtained by Owners**

The Sponsor suggests that purchasers of Lots obtain the following coverages which the Board of Directors does not provide or is not obligated to provide:

1. **Fire and Casualty Coverage** for (i) the personal property of the Lot Owner
2. **Liability** coverage for occurrences on their Lot, or within their Home.

Purchasers may obtain such coverage by making arrangements with their own insurance agent or with the insurance agent for the Association (whose name is available from the Sponsor upon request).

### **Special Rights of Sponsor**

The Sponsor and the holders of mortgages (mortgagees) on individual Homesites have certain rights given to them under the Declaration, including the following:

1. Pursuant to Section 3.10 of the Declaration, so long as the Sponsor holds title to any Lot, and provided the maximum number of Lots provided for under this Offering Plan have not been improved with Homes and transferred to individual purchasers, the Board of Directors may not, without Sponsor's written consent, which consent must not be unreasonable withheld, (i) except for any necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property; (ii) assess any

amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget of estimated expenses for the Association which amount of reserves in the initial budget of estimated expenses bears to the total amount of such initial budget of estimated expenses; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for services or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. The Sponsor will also have the easements and rights set forth in the "Easements" section above.

2. Pursuant to Section 5.06 of the Declaration, the Sponsor has no obligation for the payment of Maintenance Assessments to the Association for Lots owned by the Sponsor. Except in circumstances when there is a difference between the actual Association expenses (including budgeted amounts for reserves applicable to completed improvements) as projected in this Offering Plan and the Association charges levied on Lot Owners independent of the Sponsor, in which case, the sponsor shall only be obligated for the actual difference between the said charge and the amounts for reserves and levied charges on owners not including the sponsor.

3. Pursuant to Section 5.07 of the Declaration, no change in the basis of determining Maintenance Assessments can be made (i) if the Sponsor holds title to any portion of the lands described in Schedule A to the Declaration and does not give written consent to the change, which consent must not be unreasonably withheld.

4. Pursuant to Section 5.02 of the Declaration, so long as the Sponsor owns any lands subject to the Declaration, any vote by the Members of the Association to increase or decrease the Association's maintenance responsibilities will require the consent of the Sponsor as well as the approval of the Owners of thirteen (13) of the lots not owned by the Sponsor or the majority of lot owners at that time.

5. Pursuant to Section 11.07 of the Declaration, the Sponsor during the time it owns any of the lands described in Schedule A to the Declaration, may make amendments to the Declaration to correct omissions or errors provided such amendments will not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent.

### **Creation, Management, Operation and Membership of the Association**

#### **INCORPORATION:**

The Association has been incorporated prior to the first Homesite closing, under the Not-For-Profit Corporation Law of the State of New York as a Type "A" corporation. The Certificate of Incorporation is included in Part II of this Offering Plan as **Exhibit D**.

#### **Voting Rights of Members**

Each Owner of a Lot shall have one vote. The Sponsor shall have one vote for each lot

that it owns. Unless otherwise provided in the Declaration or in the Association's By-Laws, or required by the Association's Certificate of Incorporation or by law, the act of thirteen (13) of the Owners of Lots present at a meeting at which there is a quorum, shall be the act of the Lot Owners or the majority of lots owners at that time.

Voting may be in person or by absentee ballot except that for a meeting at which Directors are to be elected, voting may be by proxy and, only if the Board of Directors so provides, by absentee ballot.

The Board of Directors of the Association may establish voting procedures consistent with the provisions of the Declaration, the Association's Certificate of Incorporation and By-Laws and applicable laws.

Certain matters require a public hearing for the Members of the Association before action can be taken by the Association's Board of Directors. These include any proposed acquisition or disposition of Association Property, the construction of additions or modifications to Association Property, the demolition of improvements on Association Property, the material change in use of any Association Property and the imposition of Special Assessments.

### **Directors and Officers**

The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three (3) persons designated by the Sponsor. The first meeting of the Board of Directors shall be held within ninety (90) days after the first Homesite closing. The initial board of Directors shall hold their terms until the last lot has been transferred pursuant to a New Home Construction contract or until 5 years after the transfer of the first lot, whichever comes first. After the last lot is transferred, the term of the board selected by the sponsor terminates and a new interim board is to be elected by the lot owners within 30 days from that date. The interim board shall serve until a new board is elected at the next annual meeting of the Association. After title has been transferred to thirteen (13) Lots, The Sponsor, solely in his discretion, may terminate the term of the entire Board of Directors. Within 30 days from such termination, The Lot Owner-Members shall select a new board from the Association members. In no event shall the first meeting of the initial board be held later than six (6) months from the date of the transfer of title to the first Lot (See By-Laws). A full Board of Directors shall be elected by Lot Owner-Members at the first annual meeting of the Association after the replacement board is elected pursuant to the transfer of the 13th lot held pursuant to the By-Laws. All elected Directors shall be (i) Lot Owner-Members. Except that there shall not be more than one director per Lot.

Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who may or may not be a Director, and two (2) or more other Home Owners. Nominations may also be made from the floor at the annual meeting of the Association.

The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each annual meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its sole discretion, determine, but not less than the number of



vacancies that are to be filled.

Subject to the limitations set forth in the following paragraphs, at any regular or special meeting of the Members, any member of the Board of Directors elected by the Lot Owner-Members may be removed (i) without cause, by the affirmative vote of the Owners of not less than thirteen (13) Lots, other than the Lots owned by the Sponsor, and (ii) with cause, by the affirmative vote of the Owners of not less than thirteen (13) Lots owned by Members, other than Lots owned by the Sponsor, and a successor may then and there or thereafter be elected to fill the vacancy thus created.

Any member of the Board of Directors whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed without cause only by the Sponsor, and then and there or thereafter replaced by the Sponsor. Members of the Board of Directors elected or appointed by the Sponsor may be removed with cause by the Lot Owner-Members, but their successors shall be appointed by the Sponsor.

Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby.

#### **Initial Directors and Officers**

The initial directors and officers of the Association, their business address and their relationship to the Sponsor, the Sponsor's principals and the Sponsor's attorney are as follows:

**President:** Rudy Neufeld — Director, 4 Colten Court, Webster, NY 14580; Sponsor

**Secretary:** Robert Neufeld — Director, 4 Colten Court, Webster, NY 14580; Sponsor

**Treasurer:** Eric Olivas — Director, 4 Colten Court, Webster, NY 14580; Sponsor

**Attorney:** Joseph W. Jacek, Jr. — 1597 Ridge Road West, Suite 202, Rochester, NY 14615;

No business relationship with Sponsor.

#### **Assessments**

The Sponsor, subject to the limitation herein, and each Lot Owner, by becoming a Lot Owner, shall be deemed to covenant and agree to pay to the Association: (1) Monthly Maintenance Assessments or charges for the repair, maintenance and operation of Association Property or property which the Association is obligated to maintain, and (2) Special Assessments for capital improvements and repairs to Association Property, (or property which the Association is obligated to maintain) and for unbudgeted or extraordinary expenses of the Association. For the special rights of the Sponsor as to the obligation for payment of Maintenance Assessments, see "Special Rights of Sponsor" in this Offering Plan.

Unless the Board of Directors of the Association determines otherwise, Maintenance Assessments shall be payable in equal monthly installments. Assessments shall commence on the day on which the first Lot is conveyed or on such date thereafter as determined by the Sponsor. There are no special provisions as to how Maintenance Assessments can be increased or decreased. Special Assessments for the construction (rather than the reconstruction or replacement) of any capital improvement or for an amount in excess of 20% of the then current amount of the annual Maintenance Assessment require the

affirmative vote of thirteen (13) of such Lot Owners as are present in person or by proxy at a meeting duly called for such purpose. Each Lot shall be obligated to pay an equal portion of the Maintenance Assessment. So long as the Sponsor holds title to any portion of the Property (whether or not subject to the Declaration), any change in the basis of Assessments which adversely affects a substantial right or interest of the Sponsor with respect to unsold Lots shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld.

The Board of Directors may, with respect to any violation of the Declaration, the Association By-Laws or the rules and regulations of the Association or of any Committee of the Association, impose monetary penalties against a Lot Owner or occupant of a Lot. Such penalties shall be deemed a Special Assessment against the Lot.

All Maintenance and Special Assessments become a lien and charge against the Lot and shall also be a personal obligation of the Owner at the time the Assessment falls due. If an Assessment or installment thereof is not paid within ten (10) days of the due date, the Association may impose a late charge and, if the Assessment or installment thereof is not paid within thirty (30) days of the due date, the Association may collect interest on the amount due at such legally permissible rate as the Board of Directors of the Association may set from time to time, accelerate remaining installments, if any, bring legal action against the Lot Owner personally obligated to pay the Assessment, and/or foreclose a lien against the Lot. The cost of such proceedings including reasonable attorney's fees, shall be added to the amounts of such Assessments. The waiver of the use or enjoyment of Association Property or the abandonment of a Lot or Home shall not be grounds for exemption from the obligation to pay Assessments. In no event may voting rights be suspended for nonpayment of any Assessments. An Owner with unpaid Assessments may still use Association Property.

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; In the event that a property covered by the assessment is sold or transferred pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure, such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

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**JOSEPH W. JACEK, JR.**  
Attorney at Law  
1597 West Ridge Road, Suite 202  
Rochester, New York 14615  
Telephone: (585) 368-9020  
Facsimile: (585) 730-7817

Email: [jaceklaw@wny.twcbo.com](mailto:jaceklaw@wny.twcbo.com)

*Diane M. Cunning - Paralegal*

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November 15, 2016

Maddox Development, LLC  
4 Colten Court  
Webster, NY 14580

Re: The Barclay Park Homeowner's Association, Inc.

Gentlemen:

In response to your request as "Sponsor", for our opinion as to various matters in conjunction with your proposed sale of individual attached townhome dwelling units in the development together with automatic membership in The Barclay Park Homeowner's Association, Inc. please be advised as follows:

1. Enforceability of Declaration Provisions:

Although we believe the provisions of the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration") to be enforceable under current law, we do not assure such enforceability. Because of the relatively recent popularity of homeowners' associations throughout the United States the case law with respect to enforceability of covenants, conditions, and restrictions, such as are contained in the Declaration, is new and developing. In addition, the enforceability of some provisions of the Declaration will depend on factors other than the actual text of the document such as the establishment, reasonableness, dissemination and timeliness and uniformity of enforcement of rules, regulations and architectural standards by the homeowner's association, and on case law interpreting such enforceability.

2. Tax Deductions Available to Home Owners:

(a) Association charges - At this time, Home Owners will not be entitled to deduct any portion of Association charges for federal or New York State income tax purposes.

(b) As of this date, real estate taxes and interest on mortgage indebtedness Under the provisions of Section 163 and 164 of the Internal Revenue Code of 1986 as amended and Section 615 of the New York State Tax Law, each Lot Owner will be entitled to deduct from his or her gross income for federal and New York State income tax purposes the real estate taxes assessed against his or her home and lot, and paid, and the amount paid on account of interest on any purchase money mortgage indebtedness covering such home used as a primary or secondary home. It is suggested that individual home owners consult their own tax counsel or advisor for advice regarding tax preference items or minimum tax on other items as it concerns their individual tax liability.

3. Taxation of the Association:

(a) Federal and New York State tax on income. Section 528 of the Internal Revenue Code contains provisions exempting certain associations (including homeowner's associations) from federal income tax on funds retained in the association's account at the end of the association's fiscal year if:

- 1) 60% or more of the gross income in the fiscal year consisted of membership dues, fees or assessments from home owners; and
- 2) 90% or more of the expenses were for the acquisition, construction, management or maintenance of the property; and
- 3) Except for (2) above, no part of the net earnings of the association inures to the benefit of the home owners; and
- 4) No part of the net earnings not used for the purposes set out in (2) above or rebated to the home owners inures to the benefit of any private individual or member; and
- 5) The association elects to take the exemption provided.

At this time, based on our review of the estimates of projected income and expenses which you have submitted to us and which we understand you will include in your Offering Plan for the sale of Homes, we are of the opinion that the Association will be eligible for tax exempt status should it elect to take such exemption. We suggest, however, the association consult with its accountant prior to making any decisions which could have an impact on the taxability or the extent of taxability of the Association. We also bring to your attention that interest income earned on Association funds and any income not received from membership dues, fees or assessments will be taxable to the Association whether or not tax exempt status under Section 528 is obtained and that the Association must file a tax return even though it may qualify for tax-exempt status. We further advise you that we are making no opinion as to the taxability or effect of any income to the Association from the sale or lease of homes acquired through the foreclosure of a lien for nonpayment of common assessments.

Section 208(9) of the New York Tax Law creates a presumption that New York taxable income of a corporation for purposes of Article 9-A of the New York Tax Law shall be the same as its federal taxable income. To the extent that Section 528 of the Internal Revenue Code applies to the Association's income, there will be no taxable income under Article 9-A of the New York Tax Law and no tax liability.

(b) Franchise Tax

Although no New York Franchise Tax will be payable on the income of the Association (other than certain exceptions as noted above) the New York State Department of Taxation and Finance currently takes the position, which position has been opposed by many homeowner's associations, that homeowner's associations are liable for the payment of the minimum New York Franchise Tax for the privilege of exercising their corporate franchises. Accordingly, unless the New York State Tax Commission reverses its position or legislation

is passed exempting homeowners' associations from the payment of franchise taxes, the Association should include the amount of the minimum annual New York Franchise Tax in

(c) Sales Tax

Subject to the possible exceptions described below, we believe the Association will not be liable for sales tax except for such maintenance, servicing, or repair of real property which it undertakes using its own employees rather than independent contractors. To the extent the Association uses independent contractors to perform obligations of the Association i.e., the maintenance, service or repair of Association Property, the Association is merely acting as a conduit for the payment of such funds to others. When the services are performed by an independent contractor, the Association would then be responsible to pay the sales tax on the cost of such services if applicable and for any other services and/or supplies which are taxable under Article 22 of the New York State Tax Law.

4. Zoning Ordinances and Statutes

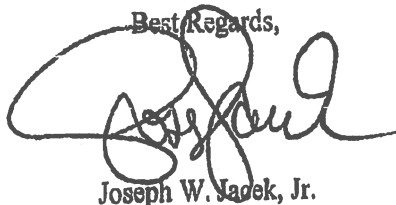
To our knowledge, the Barclay Park Subdivision is not in violation of any zoning or other ordinances or statute of the Town of Penfield, County of Monroe or State of New York.

5. Barclay Park Homeowner's Association, Inc. was duly formed as a not for profit corporation Law and filed pursuant to the laws of New York State on October 12, 2016.

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel base this opinion will not change. In no event will the sponsor, the sponsor's counsel, the Association, counsel to the Association, the selling agent or any other person be liable if by reason of future changes in fact or applicable law, regulation, decisional law or Internal Revenue Service rulings the tax status should cease to meet the requirements contained in this opinion.

This letter will be made a part of the Barclay Park Homeowner's Association Offering Plan.

Best Regards,



Joseph W. Jacek, Jr.

JWJ/dmc

## **LOCAL GOVERNMENT APPROVALS**

In undertaking the Development, the Sponsor obtained from the Town of Penfield final approval on February 17, 2016. A Subdivision map was filed in the Monroe County Clerk's Office on October 18, 2016 in Liber 353 of Maps at page 30 for Phase I. The Subdivision Map for Phase II will be filed at a later date.

### **WORKING CAPITAL FUND**

No provision has been made for working capital for the Association. In the event the funds available to the Association from maintenance assessments are insufficient to fund current expenses, the Association will have to impose a special assessment or borrow funds from the Sponsor, if the Sponsor is willing and able to make such loan or from another source, if one can be found. Neither the New York State Department of Law nor any other government agency has passed upon the lack of provision for Working Capital.

### **RESERVE FUND**

The Board of Directors of the Association may budget for reserves ("Reserve Fund") for capital expenditures such as the repair or replacement of Association Property or other property which the Association is obligated to maintain. The initial budget of the Association for its projected first year of operation provides for a contribution to such Reserve Fund for the following items: See Schedule A (not including a top coat for the private driveway or individual driveway). This amount, if budgeted and collected every year as projected, should be sufficient, based on estimated replacement costs obtained or projected by the Sponsor, to cover foreseeable capital expenditures, including the replacement of capital items, if any, likely to be needed within the time period set forth in said Schedule A. However, due to the uncertain effects of inflation over the long period of time of some of the items budgeted, there can be no assurance that, if these amounts are collected and deposited to the Reserve Fund, the Reserve Fund will be sufficient to fund all of such projected expenditures. The portion of the Assessments allocated to the Reserve Fund should be periodically reviewed by the Board of Directors of the Association. Neither the New York State Department of Law nor any other government agency has passed upon the adequacy of the Reserve Fund. Any election by the Sponsor to pay the difference between actual Association expenses and Association charges levied on Lot Owners, who have closed title to their Lots, shall only require the Sponsor to contribute to the Reserve Fund for completed improvements. While the Sponsor is in control of the Board of Directors, the Reserve Fund shall not be used to reduce projected Association Assessments or the Sponsor's obligation to fund a deficit.

In the event the Reserve Fund and other available monies, which the Association designates for such purpose, are insufficient to finance needed capital expenditures for items the Association is obligated to repair or replace, the Association will have to impose a Special Assessment to finance such expenditures or obtain the funds by a loan, securing repayment with an assignment of future receipts from Maintenance or Special assessments. Because it may be difficult to find a lender willing to make such a loan, the imposition of a Special Assessment is the likely means of financing such costs.

### **AGREEMENTS BINDING THE ASSOCIATION**

The Sponsor has not entered into any contracts which will be binding on the Association. The Association will enter into a management agreement with Crosstown Custom Homes of Rochester, Inc. to manage the affairs of the Association including maintenance as required under the Offering Plan for all common property and the exterior of

the Townhomes and to keep all financial records, insurance policies and all other matters in connection with the operation of the Homeowner's Association. See pages 122-128 for the Association Agreement.

### **IDENTITY OF PARTIES**

#### **Sponsor**

The Sponsor, Maddox Development, LLC, 4 Colten Court, Webster, NY 14580, is a New York Limited Liability Corporation. The principals of the Sponsor are Rudy Neufeld, Robert Neufeld and Eric Olivas. The business address of the principal is 4 Colten Court, Webster, NY 14580. The Sponsor has over 65 years of combined experience in building, development, and management of residential and commercial real estate projects. Rudy and Robert Neufeld entered the construction business as assistants in the field working for their father, Jacob Neufeld, who built many homes for many years in the Rochester area. Starting in the trades as masons, the Neufeld's learned every aspect of each trade and took over management of their father's company then known as Crosstown Construction Company, in the late 90's. Eric Olivas was hired by the Neufeld's in 2001 as an assistant in the field and was thereafter named Vice President of Crosstown Custom Homes of Rochester, Inc. in 2010.

The Sponsor was formed on January 26, 2016 and has not previously been involved in any prior public offerings as the Sponsor or principal of a Sponsor. Within the last 5 years, the principals of the Sponsor have been involved as principals of Pepper Ridge Associates, LLC which developed Preston Park in 2008 in the Town of Penfield, NY which received CPS-7 Treatment under Attorney General File No. HO-08-0033; and as principals for Crosstown Construction, Inc., which developed Woodland Chase in the Town of Penfield, NY in 2008 which received CPS-7 Treatment under Attorney General File No H-080034, and as The Penfield Village Square Homeowner's Association File No. H-130008, Neither the Sponsor nor its principals have any felony convictions, judgments, bankruptcies or injunctions. The Sponsor nor its principals own 10 percent or more of unsold shares in any other cooperative, condominium or homeowner association.

#### **Attorney**

The Sponsor has retained the following attorney in conjunction with this offering:

Joseph W. Jacek, Jr. Esq. 1597 Ridge Road West, Suite 202, Rochester, NY 14615 (Telephone: (585) 368-9020). This firm prepared this Offering Plan and will represent the Sponsor in individual Homesite closings.

#### **Managing Agent**

The Sponsor will hire a professional management company until control of the Board of Directors is turned over to the Home Owners. At this time, the sponsor intends to hire Crosstown Custom Homes of Rochester, Inc. as the managing agent. The Sponsor or professional management company will charge a fee for management services. Once control is turned over to the Home Owners, the Home Owners may elect either to engage a professional management company, or proceed with self-management. The Sponsor obtained the estimated fee for management services appearing in the projected budget (Schedule A of this Offering Plan) Each principal in Crosstown Custom Homes of Rochester, Inc. is also a member of the Sponsor.

Rudy Neufeld and Robert Neufeld are principals in Erie Canal Associates, LLC, Rudy Neufeld and Robert Neufeld and Eric Olivas are principals in Crosstown Custom Homes of Rochester, LLC., 4 Colten Court, Webster, NY 14580 and have over sixty-five years of experience in building new homes and property management. The fees for the managing agent include collecting Homeowner's Association fees, and paying maintenance fees outlined herein for the Association Property.

### **Selling Agent**

The selling agent will be Stacey Spoto of Nothnagle Realtors, a local real estate brokerage located at 2349 Monroe Avenue, Rochester, NY 14618. Ms. Spoto has many years of experience as a real estate agent in the area. Neither she nor Nothnagle Realtors are employees of the Sponsor. Stacey Spoto has no business affiliation with the Sponsor or principals of the Sponsor and will be paid a real estate commission according to its agreement with the Sponsor upon each sale. The selling agent has no prior felony conviction, injunctions or judgments.

### **Sponsor Engineer**

BME Associates, 10 Lift Bridge Lane East, Fairport, NY 14450; 25 years of experience with subdivision development. Possesses all required licenses or professional certification.

### **Sponsor Architect**

James Fahy Design, 2024 W. Henrietta Rd, Rochester, NY 14623; Over 40 years of experience with home design. Possesses all required licenses or professional certification.

The selling agent, sponsor, principals of the Sponsor, engineer and architect have no personal business relationship among them. The realtor, architect, and engineer are compensated only for their professional services to the Sponsor and its principals.

## **REPORTS TO MEMBERS**

It is the obligation of the Association to give all Members of the Association annually:

1. Promptly after the end of the fiscal year, a full and correct statement of the financial affairs of the Association prepared by a public accountant or certified public accountant, including either (i) an audited balance sheet and an audited financial statement of operation for the preceding year, or (ii) a balance sheet and a review of operations, whichever the Board of Directors of the Association deems appropriate, taking into account the cost of the same, the complexity and volume of Association's financial affairs and such other factors the Board of Directors deems relevant. Mortgagees of Lots owned by Members shall receive copies of the financial statements for the Association on request. Notwithstanding the above, (i) an audit, at the expense of the Association shall be required if authorized in writing by Members who own at least thirteen (13) of all Lots owned by Members independent of the Sponsor, (ii) any Lot Owner or Mortgage holder shall be entitled to obtain an audited statement at such Lot Owner's or mortgagee's own expense as (iii) so long as the Sponsor is in control of the Board of Directors of the Association the statement of the financial affairs of the Association shall be certified (audited);



2. Not less than 10 days or more than 30 days before the date of the annual meeting, notice of the annual meeting; and

3. Not less than seven (7) days prior to the date set by the Board of Directors for adoption of the annual budget of the Association, a copy of such budget. If the Sponsor is in control of the Board of Directors at the time such budget is presented for adoption, the budget shall be certified by a person experienced in the management of homeowners' association, cooperative, condominium or rental properties as being "reasonable and adequate under existing circumstances" and the projected income as being "sufficient to meet the anticipated operating expenses" for the period covered by the budget.

### **DOCUMENTS ON FILE**

In accordance with Part 22 of the New York State Attorney General's regulations, copies of this Offering Plan and all exhibits or documents referred to herein shall be available for inspection without charge and for copying at a reasonable charge by Purchasers and by any person or entity who participated in the offering of such securities, at the office of the Sponsor, 4 Colten Court, Webster, New York, 14580, and shall remain available for inspection without charge and for copying at a reasonable charge for a period of six (6) years from the date of the first closing of a Homesite. The Sponsor will deliver to the Board of Directors of the Association a copy of all documents relating to the Association and its Members filed or recorded with the Recording Office at or prior to the transfer of title to the first Homesite. Such documents shall include the subdivision map, the Declaration, the deeds to any Common Areas and any release of the Common Areas from any mortgages or other encumbrances.

### **GENERAL**

#### **No Pending Litigation**

There are no lawsuits or other proceedings now pending, or any judgments outstanding, either against the Sponsor, the Selling Agent, if any, the managing agent, if any, the Association or any other person or persons which may materially affect this Offering, the Property, the Sponsor's capacity to perform its obligations under this Offering Plan, the Association or the operation of the Association.

#### **Prior Offering**

This Property has not been the subject of any prior public offering and no preliminary binding agreements have been entered into, written or oral, and no money has been collected from prospective purchasers with regard to the Property or this offering. The Property has not been the subject of any market test pursuant to Cooperative Policy Statement No. 1 of the New York State Department of Law. All Homes offered for sale are to be custom built for the homeowner, except for any model home which has been built for marketing purposes.

#### **No Discrimination**

Neither the Sponsor nor any of its agents will discriminate against any person because of race, creed, color, sex, age, disability, marital status, national origin, ancestry or any other grounds prohibited by law in the sale of Homesites in the Subdivision.

**Rescission Required if Plan is Amended to Materially Adversely Affect Purchasers**

If an amendment to the Offering Plan materially adversely affects the interest of any Purchaser prior to transfer, all Purchasers so affected shall be afforded not less than 15 days to rescind their purchase and have their deposit returned.

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**EXHIBIT A**

**CONTRACT OF SALE (PURCHASE AGREEMENT)  
MADDOX DEVELOPMENT, LLC  
LIMITED WARRANTY**



**PURCHASE AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between MADDUX DEVELOPMENT, LLC, having an office at 4 Colten Court, Webster, New York 14580 ("Seller") and \_\_\_\_\_ (Name), Residing at \_\_\_\_\_ ("Purchaser").

**WITNESSETH:**

In consideration of the mutual promises herein made, Seller agrees to sell and Purchaser agrees to purchase the premises described below for the price and upon the terms and conditions set forth below.

1. **PREMISES:** Those certain premises located in the Town of Penfield, County of Monroe and State of New York, known and having a mailing address of \_\_\_\_\_ River Birch Lane, Webster, New York 14580, and designated as Lot No. \_\_\_\_\_ of the Barclay Park Subdivision, on a map filed in the Monroe County Clerk's Office.

The premises are sold together with all rights of Seller in and to any and all streets, roads, highways, alleys, driveways, easements and rights of way appurtenant thereto.

The premises are sold subject to restrictive covenants of record provided they have not been violated, unless enforcement of the covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; utility easements of record, easements common to the tract or subdivision, easements and rights of way shown on the subdivision map, and easements and party wall agreements recorded in the Monroe County Clerk's Office, and also subject to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, and the By-Laws for the Barclay Park Homeowner's Association, Inc. both of which are included in the Offering Plan for the Barclay Park Homeowner's Association, Inc. Purchaser acknowledges receipt of the Offering Plan at least three (3) business days prior to the date of this Agreement and the Offering Plan is incorporated in this Agreement by reference and made a part of this Agreement with the same force and effect as if set forth in full. Purchaser agrees to be bound by the Declaration, By-Laws and any Rules and Regulations of the Association as they may be amended from time to time. Purchaser acknowledges that he is purchasing an interest in the Association and that except as stated in this Agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any representations or other statements of any kind or nature made by Seller or otherwise.

**2. PRICE:**

The Purchaser shall pay to Seller for the premises the following sum: \$ \_\_\_\_\_.

Base Contract price: \$ \_\_\_\_\_;

Contract Extras total: \$ \_\_\_\_\_;

The Purchaser has paid a lot deposit in the sum of \$ \_\_\_\_\_.

The Purchaser shall pay the sum of \$ \_\_\_\_\_ upon executing the contract deposit form.

The purchaser shall pay the sum of \$ \_\_\_\_\_ upon executing the contract extras deposit form.

The purchaser shall pay the sum of \$ \_\_\_\_\_ upon executing the notice of removal of contingencies form.

**3. DWELLING:** Seller agrees to sell and Purchaser agrees to purchase the townhouse now on the premises or to be constructed on the premises in accordance with plans and specifications on file in the office of Maddox Development, LLC, including the additional Extras requested by Purchaser, pursuant to an agreed upon addendum signed by the parties. Purchaser understands that he may make changes and alterations in the plans provided that such changes are made prior to the start of construction and are listed on a change authorization form signed by Purchaser and Seller.

Purchaser understands that the model home constructed by Seller may contain furnishings, carpeting and special features and fixtures which are not included in, and which are or may be more expensive than, those included in the property which Purchaser is purchasing.

Seller reserves the right to: (i) make changes or substitutions of materials or construction for items as set forth in the plans and specifications, provided any such changes are of comparable value and quality; (ii) determine the grading, elevation, location of home foundation, dwellings, decks, heat pumps and landscaping and trees to fit into the general pattern of the project; and (iii) determine elevation and location of foundations, driveways and streets to conform to topographical conditions. Seller has the option to change grades, foundations and footings and setback of the dwelling if underground conditions are such that the original placement makes it inadvisable to construct where originally agreed upon. Underground conditions can be the result of rock, water, soil type or any other condition which in the judgment of Seller would necessitate a change in elevation or setback, or result in extraordinary construction costs or necessitate unusual construction methods. If underground conditions are severe and unusual costs or construction methods would be incurred, Seller shall have the right to cancel this contract by written notice to Purchaser, and purchaser's deposits will be refunded.

Seller will attempt to preserve trees on the site. Seller, however, shall not be responsible for trees which die after closing or for removal of such trees. There shall be no warranty at any time on the binder driveway.

**4. DEPOSITS:** The Seller will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

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 and a deposit check has been delivered by Purchaser, in a segregated special escrow account of Joseph W. Jacek, Jr., as-attorney, (the Escrow Agent) whose address is 1597 West Ridge Road, Suite 202, Rochester, New York 14615, and whose telephone number is (585) 368-9020. The signatory on this account authorized to withdraw funds is Joseph W. Jacek, Jr., Esq.

The name of the account is BARCLAY PARK ACCOUNT (ESCROW ACCOUNT), opened at Manufacturers and Traders Trust Company at the Long Pond Road offices, Rochester, New York. This bank is covered by federal bank deposit insurance. The present maximum amount of insurance is \$250,000.00 per account. If deposits in the aggregate are in excess of then applicable maximum amount, the excess amount of such deposits will not be federally insured.

The account will be an Interest-On-Lawyer's-Account ("IOLA") pursuant to Judiciary Law Section 497. Interest earned will not be the property of the Purchaser, Seller or Escrow Agent, but rather will be paid to the New York State IOLA Fund.

All instruments shall be made payable to or endorsed to the order of Barclay Park Account (Escrow Account).

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Escrow Agreement and place the Deposit into the Escrow Account. Within ten (10) business days of the placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall not be initially deposited into the Escrow Account, and released in accordance to the terms of the Purchase Agreement and Escrow Agreement.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

All Deposits, except for advances made for upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be the Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Sponsor, as per GBL § 352-h.

Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of a post-closing amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL § 352-e(2-b) and 352(h).

The Escrow Agent shall release the Deposit if so directed:

- a) pursuant to terms and conditions set forth in the Purchase Agreement in Paragraph four, or upon closing of title to the townhome.
- b) in a subsequent writing signed by both Sponsor and Purchaser; of
- c) by a final, non-appealable order or judgment of a court.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (a) through (c) above. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the clerk of the county where the townhome is located and shall give written notice to both parties of such deposit.

The Sponsor shall not object to the release of the Deposit 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.

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations.

Any provision of the Purchase Agreement or Escrow Agreement or separate agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding any Deposit in trust is absolutely void. The provisions of the Attorney General's regulations and GBL § 352-e(2-b) and 352(h) concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase Agreement, Plan, or any amendment thereto.

Escrow Agent shall maintain the Escrow Account under its direct supervision and control.

A fiduciary relationship shall exist between Escrow Agent and Purchaser, and Escrow Agent acknowledges its fiduciary and statutory obligations pursuant to GBL § 352-e(2-b) and 352(h).

Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Purchase Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution, or validity thereof.



Sponsor agrees that it shall not interfere with Escrow Agent's performance of its fiduciary duties and statutory obligations as set forth in GBL § 352-e(2-b) and 352-(h) and the New York State Department of Law's regulations.

Sponsor shall obtain or cause the selling agent under the Plan to obtain a completed and signed Form W-9 or W-8, as applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and this Purchase Agreement.

Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

Sponsor agrees to defend, indemnify, and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of Escrow Agent's responsibilities arising in connection with this Purchase Agreement or the performance or non-performance of Escrow Agent's duties under this Purchase Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the obligations set forth in this Purchase Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

**YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.**

**5. RISK OF LOSS:** Risk of loss or damage to the premises until transfer of title shall be assumed by the seller. If any damage to the premises occurs prior to transfer of title and Seller determines that it cannot repair or restore such loss or damage, this Agreement shall terminate without any further liability of one party to the other, and Purchaser shall have his deposits returned in accordance with paragraph 4 of this Agreement.

**6. SURVEY:** Seller shall furnish at Seller's expense an instrument survey made by a land surveyor duly licensed by the State of New York, showing the premises above described and the location of all buildings, improvements and other structures affecting the premises.

**7. DEED:** At closing, Seller shall deliver to Purchaser a warranty deed, with lien covenant, conveying marketable title in fee simple, free and clear of all liens and encumbrances, except as provided in this Agreement at Section 16.

**8. SEARCHES:** Seller agrees to provide an abstract of title, guaranteed tax search and a United States District Court search to the time of transfer, showing marketable title as provided in this Agreement.

The searches will be provided to Purchaser's attorney at least fifteen (15) days prior to transfer.

**9. CERTIFICATE OF OCCUPANCY:** At the time of closing, Seller agrees to deliver to Purchaser a Certificate of Occupancy, or a temporary Certificate of Occupancy subject to weather related items.

**10. INSPECTION:** Prior to closing, Purchaser shall have the right to inspect the premises upon reasonable notice to the Seller. Any pre-closing inspections by purchaser need to be accompanied by a representative of the seller. Purchaser assumes the risk of damage to person or property when purchaser visits the property and purchaser indemnifies, defends and holds seller, subcontractors and/or suppliers harmless from all actions, claims and damages of any kind whatsoever arising out of buyers visits to the property.

**11. POSSESSION:** Purchaser shall have possession and occupancy of the premises from and after the date of delivery of the deed.

**12. MORTGAGE LOAN FOR PURCHASER:** \_\_\_\_\_ YES \_\_\_\_\_ NO This Agreement is contingent upon Purchaser obtaining and accepting within 30 days from date that Purchaser receives a fully executed contract, a written commitment for a mortgage loan from a lending institution upon terms acceptable to Purchaser. However, the contingencies of the mortgage commitment shall not be contingencies of this Agreement, and shall be the sole responsibility of the Purchaser. Issuance and acceptance of the written commitment by the Purchaser shall be a waiver and satisfaction of this contingency. If Purchaser cannot obtain and accept such commitment within the stated period, or in the event that a lender revokes the commitment letter, not due to Purchaser's fault, then either Purchaser or Seller may cancel this Agreement by giving written notice to the other. In that event, this Agreement shall be null and void and both parties released from any and all liabilities. Deposits, with interest if any, shall be returned to the Purchaser. Except that if this Agreement is cancelled because the lender has revoked a commitment letter not due to the Purchaser's fault, any deposit made for upgrades or new construction extras, will not be refunded as such deposit was used in the construction of the home.

**13. ADJUSTMENTS AT CLOSING:** There shall be prorated and adjusted as of the date of transfer of title: water charges, pure water charges, current taxes computed on a fiscal year basis, rents, and Association assessments. Purchaser will accept title subject to, and will pay, all assessments and installments of assessments for local improvements which are not payable as of date of delivery of deed and which, if any, appear on the current tax rolls.

**14. COSTS:** Purchaser shall pay for any fees, incurred in recording of the deed and mortgage and for the New York State Mortgage tax. Purchaser shall pay the cost of the required Real Estate Transfer Tax Stamps to be affixed to the deed. Purchaser shall pay for the fee and mortgagee title insurance policy. Purchaser agrees to reimburse seller upon transfer of title for the Town of Penfield Recreation Fee (\$1,000.00), the Water Meter Fee (\$250.00), and the Sewer Tap in Fee (\$800.00).

**15. CLOSING:** After removal of buyer's contingency for obtaining a mortgage and for sale of their existing property or any other contingency of this contract, the buyer shall have 30 days to make final

selections with seller. Failure to timely complete all selections and remove all contingencies may cause a delay in the completion date contained in this paragraph 15. Seller is not responsible for any delays in closing which are the result of buyers failure to timely remove contingencies or make selections.

The Seller shall have no obligation to commence construction until all contingencies are satisfied and removed in writing signed by the Purchaser and delivered to the Seller, and Purchaser has paid all required deposits.

The dwelling shall be completed and ready for occupancy (the "Occupancy date") on or about 150 days from the "Commencement Date". The Commencement date shall be the last date on which each of the following shall have been accomplished: (1) the removal of all contingencies (2) the payment of all required deposits, (3) the completion of all selections; and (4) excavation of the basement.

Seller, in its sole discretion, may begin construction prior to the Commencement Date. In the event the framing of the building of which this dwelling forms a part is completed on the date this Agreement is accepted by the Seller, the Occupancy Date shall be 90 days from the last date on which the Purchaser removed all contingencies, paid all required deposits and completed all selections. In either event, the seller shall provide notice to the buyer of the occupancy date.

The Occupancy Date may be delayed due to circumstances beyond the Seller's control, including, but not limited to adverse weather, material shortages, strikes, labor troubles, damage by fire or other casualty, theft, governmental restrictions, or delay in receipt of materials special ordered for Purchaser, in which event the closing date shall be extended accordingly without liability to Seller.

**Transfer of title shall take place within ten (10) days of being notified of completion. Transfer of title shall be completed at the offices of Joseph W. Jacek, Jr., or at the office of the mortgagee's attorney.**

Possession shall be given upon transfer of title and not before. Pre-construction site visits are not authorized except as accompanied by seller's representative.

The parties agree that the residence shall be deemed complete for closing when a Certificate of Occupancy or temporary Certificate of Occupancy is issued. Seller shall complete construction of all streets, sidewalks and parking facilities serving the Purchaser's home prior to closing title, but if incomplete, the Seller may close on the Purchaser's home if the town permits occupancy. All incomplete work shall be itemized before closing at a meeting between Purchaser and Seller. Purchaser agrees that the full purchase price will be paid at closing and no amounts will be withheld by Purchaser from Seller for incomplete work.

If there is a lender involved in this transfer, and the dwelling or its environs shall not be fully completed at the time set by the Seller for the closing of title, the incomplete item(s) will not constitute an objection to closing provided that the lending institution granting Purchaser's mortgage issues an inspection report and an escrow fund is deposited by the Seller with the lending institution if required under its report, and further provided that Purchaser shall have the right to delay the closing of title

until a temporary Certificate of Occupancy has been issued. The escrow fund shall be paid by the lending institution directly to the Seller when the lending institution, in its sole discretion, deems the items for which the escrow is held to be completed. Purchaser shall receive credit at closing for any funds so held in escrow.

If there is no lender involved in this transfer, and the dwelling or its environs shall not be fully completed at the time set by the Seller for the closing of title, the incomplete item(s) will not constitute an objection to closing provided the Town of Penfield has issued a temporary or final Certificate of Occupancy. The parties shall establish a list of incomplete items, which shall provide for the manner of completion and the estimated time of completion. No escrow will be held for incomplete items.

**16. FAILURE TO DELIVER OR REJECTION OF TITLE:** Should Seller be unable to or fail to deliver title to the premises in accordance with the provisions of this Agreement, or in the event that Purchaser raises objection to Seller's title or to any improvements, which, if valid, would render the title unmarketable or render the present or intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction) Seller shall have the right to cancel this Agreement. Seller shall cancel by giving written notice of cancellation to Purchaser and it is agreed that Seller's liability shall be limited to the return of Purchaser's deposits, with interest if any, and upon their return, this Agreement shall become null and void; provided, however, if Seller shall be able within a reasonable length of time to cure the objection or if either party secures a commitment for title insurance at standard rates to insure against the objection raised or title insurance acceptable to Purchaser, Purchaser shall pay the cost of the title insurance and this Agreement shall continue in full force and effect.

**17. PURCHASER'S FAILURE TO TAKE TITLE:** Upon the Purchaser's failure to take title, upon the occupancy date set forth herein and upon purchaser's failure to take title within 7 days from notice of its default, this agreement may, at seller's sole discretion, become null and void and the deposits shall be forfeited by the buyer and belong to the Seller. The purchaser shall also pay Seller the full cost of all Extras above the base price, and all additional new construction extras pursuant to a signed addendum between the parties which were commenced or ordered prior to the date of closing, and reasonable attorneys' fees and court costs, if incurred to enforce Seller's remedies, all of which shall be liquidated damages. In the alternate, at seller's sole discretion, the seller may agree to extend the closing to a future specified date provided that purchaser pay a late closing date charge in the minimum amount of \$125.00 per day or up to 1.5% per month of the full purchase price for each day beyond the original occupancy date as set forth herein, and/or at the time that the Builder serves written notice of the occupancy date until the actual extended closing

**18. REPRESENTATIONS:** This Agreement constitutes the entire agreement between Seller and Purchaser and supersedes all prior or other agreements and representations in connection with the sale and purchase. Purchaser has not relied on any representation as to size, dimensions or other characteristics of the lot, site landscaping, dwelling or the Association, except as presented in the Offering Plan. Purchaser agrees that by acceptance of the deed, Purchaser (a) will be a member of the Homeowners Association and thus liable for Association assessments, and (b) will own his property subject to rights of the Association in accordance with the Declaration. This Agreement cannot be

modified except in a writing signed by both parties. All the terms, covenants, provisions, conditions and agreements set forth or provided for shall be binding upon and inure to the benefit of the parties and their assigns.

19. **MERGER:** Delivery and acceptance of a deed by Purchaser shall be full compliance by the Seller with all the terms of this Agreement and a release by the Purchaser of any and all rights, obligations, claims or causes of action against the Seller, except as set forth in the Limited Warranty. The dwelling shall be regarded as completed in accordance with plans and specifications except for the specific items which Seller agrees, prior to closing, will be completed or repaired.

20. **ASSIGNMENT:** This Agreement may be assigned by Seller, but may not be assigned by Purchaser without Seller's written consent.

21. **LIMITED WARRANTY: THE SELLER MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, NO HOUSING MERCHANT IMPLIED WARRANTY, NO IMPLIED WARRANTY AND OF FITNESS, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS CONTRACT OR THE HOME AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS PROVIDED IN THE LIMITED WARRANTY. THE EXPRESS TERMS OF THE LIMITED WARRANTY ARE HEREBY INCORPORATED IN THIS CONTRACT AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE THEREOF. SELLER DOES NOT WARRANT CONSUMER PRODUCTS INSTALLED WITHIN THE HOME, INCLUDING BUT NOT LIMITED TO ANY HEAT PUMP, FURNACE, AIR CONDITIONING SYSTEM, SMOKE DETECTOR, METERS, WATER HEATER, RANGE, DISHWASHER, REFRIGERATOR, AND DISPOSAL. SELLER SHALL PROVIDE AND ASSIGN TO PURCHASER THE MANUFACTURER'S WARRANTY FOR ALL CONSUMER PRODUCTS INSTALLED BY SELLER IN THE HOME PURSUANT TO THIS AGREEMENT.**

This warranty does not cover naturally occurring contaminants found in the home, including but not limited to radon, animal dander, dust, dust mites, fungi, mold, bacteria and pollen (collectively, "Impurities"). Such Impurities may or may not be airborne and or invisible. Seller does not claim any expertise regarding the identification, remediation, or health consequences of such Impurities. Whether or not the home experiences adverse effects of Impurities depends largely on how Purchaser maintains the home after completion of construction, as well as an individual's susceptibility to such Impurities. **PURCHASER AGREES THAT SELLER IS NOT RESPONSIBLE FOR ANY DAMAGES, ILLNESS OR ALLERGIC REACTIONS THAT PURCHASER, OR PURCHASER'S FAMILY, GUESTS OR INVITEES, MAY EXPERIENCE AS A RESULT OF IMPURITIES IN THE HOME. SELLER DISCLAIMS ANY LIABILITY RESULTING FROM IMPURITIES IN THE HOME, INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, LOSS OF INCOME, EMOTIONAL DISTRESS, LOSS OF USE, LOSS OF VALUE AND OR ADVERSE HEALTH EFFECTS.**

22.  **NO OUTSIDE BROKER COMMISSIONS:** Purchaser represents that no broker has been contacted or engaged to represent purchaser's interests in connection with the procurement of this Agreement. Should this representation be contrary to fact, Purchaser shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the act or inaction of the Purchaser. This representation shall survive the closing and delivery of the deed to Purchaser. Seller has agreed to pay a listing brokerage commission.

23.  **OUTSIDE BROKER COMMISSIONS:** Purchaser represents that no broker other than \_\_\_\_\_ has been contacted or engaged in connection with representing purchaser's interests with the procurement of this Agreement. Should this representation be contrary to fact, Purchaser shall pay any commission due any other undisclosed broker and hold the Seller harmless from any claim or liability therefor arising out of the act or inaction of the Purchaser. This representation shall survive the closing and delivery of the deed to Purchaser. Seller shall not be obligated for the broker's commission if this transaction shall fail to close for any reason whatsoever. Nothnagle is the Listing Broker retained by Seller. Seller will pay the listing broker commission

24. **LIFE OF OFFER:** This offer is good until the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, at which time it shall be null and void.

25. **ATTORNEY APPROVAL:** This Purchase Agreement is contingent upon Purchaser and Seller securing attorney's approval within one week of acceptance by Purchaser and Seller. Failure of Purchaser's attorney to either approve or disapprove within one week shall be deemed an approval.

**THE PURCHASER ACKNOWLEDGES THAT A WRITTEN COPY OF THE TERMS OF THE LIMITED WARRANTY HAVE BEEN PROVIDED FOR THE PURCHASER'S EXAMINATION PRIOR TO THE TIME OF THE PURCHASER'S EXECUTION OF THIS CONTRACT.**

IN WITNESS WHEREOF, the purchaser has caused this instrument to be duly executed the day and year first above written.

\_\_\_\_\_  
Purchaser Signature & Date

\_\_\_\_\_  
Purchaser Signature & Date

**Buyer's Information**

**Buyer's Attorney Information**

Name \_\_\_\_\_

Address \_\_\_\_\_  
City, State &  
Zip \_\_\_\_\_

Home Phone # \_\_\_\_\_

Cell Phone # \_\_\_\_\_

Work # \_\_\_\_\_

Email Address \_\_\_\_\_

**ACCEPTANCE**

Seller hereby accepts this offer and agrees to sell on the terms and conditions set forth.

\_\_\_\_\_  
Maddox Development LLC.

\_\_\_\_\_  
Date

Maddox Development LLC.  
4 Colten Court  
Webster, New York 14530  
Office: 585-872-9100  
Fax: 585-872-9104  
Email: erico@crosstownconstruction.com

Joseph W. Jacek Jr., Esq.  
1597 West Ridge Road, Ste 202  
Rochester, New York 14615  
Office: 585-368-9020  
Fax: 585-730-7817  
Email: jaceklaw@wny.twcbc.com

Nothnagle Realtors  
NYS License #: 39NO0769984  
2349 Monroe Avenue  
Rochester, New York 14618  
Stacey Spoto NYS License #: 30SPO880545  
Cell: 585-760-8920  
Fax: 585-750-7550  
Email: spoto@nothnagle.com

Buyer's Agency Information



**EXHIBIT D**  
**SALE CONTINGENCY**

Lot No. \_\_\_\_\_ of Barclay Park Subdivision, Webster, Monroe County, New York.

The undersigned hereby agrees that the Purchase Agreement dated \_\_\_\_\_, 201\_\_, is hereby modified as follows:

The Purchase Agreement is contingent upon Purchaser securing a firm contract for the sale of his property located at

\_\_\_\_\_ no later than \_\_\_\_\_, 201\_\_\_. If Purchaser is unable to obtain a firm contract for the sale of his property by such date, then either Purchaser or Seller may cancel the Purchase Agreement by written notice to the other.

If Seller receives and accepts another purchase offer, Seller shall notify Purchaser in writing (the "Bump Notice") that Seller desires to accept the other purchase offer subject to the non-performance of this Purchase Agreement, and Purchaser will then have 24 hours (the "Bump Period") to remove this sale contingency by written notice to the Seller. Upon receipt of the Bump Notice, Purchaser may only remove this sale contingency if Purchaser provides Seller with evidence of a non-contingent mortgage commitment and immediately available funds totaling the purchase price of the dwelling (the "Purchase Ability"). If Purchaser does not remove this sale contingency and provide Seller with evidence of Purchase Ability after receiving the Bump Notice, Purchaser's rights under the Purchase Agreement shall terminate following passing of the Bump Period, the deposit with interest, if any, shall be refunded, and Seller shall be free to proceed with the other purchase agreement. Purchaser may not evidence Purchase Ability if Purchaser's mortgage loan commitment requires, or may require, the sale and transfer of Purchaser's property, and or the completion of any other requirement (excepting only the execution of routine loan documents) as a condition of the mortgage lender disbursing the mortgage loan proceeds.

Except as modified by the above paragraphs, the original terms and conditions of the Purchase Agreement are hereby ratified and remain in full force and effect.

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

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

Maddox Development, LLC \_\_\_\_\_ Date: \_\_\_\_\_

**LIMITED WARRANTY**

**Name of Purchaser(s):** \_\_\_\_\_  
**Address of Purchaser(s):** \_\_\_\_\_  
**Address of Home Warranted:** Lot #: \_\_\_\_\_ Barclay Park Subdivision, Webster, New York  
**Name of Builder:** Maddox Development, LLC  
**Address of Builder:** 4 Colten Court, Webster, NY 14580  
**Warranty Date:** Transfer of Title  
**Builder's Limit of Total Liability:** a) \$100,000.00

b) This Warranty extends only to the first buyer named in this contract. No coverage is afforded to subsequent owners regardless of when they acquire title.

**PURCHASER SIGNS THIS PAGE TO ACKNOWLEDGE RECEIPT OF THE LIMITED HOME WARRANTY:**

**Buyer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Buyer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**This Limited Warranty excludes all consequential and incidental damages  
except as required by New York State Law.**

Limited Warranty. THE BUILDER MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, NO HOUSING MERCHANT IMPLIED WARRANTY, NO IMPLIED WARRANTY OF FITNESS, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE HOME AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS PROVIDED IN THIS LIMITED WARRANTY. THE EXPRESS TERMS OF THE LIMITED WARRANTY ARE SET FORTH HEREIN AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF. BUILDER DOES NOT WARRANT CONSUMER PRODUCTS INSTALLED WITHIN THE HOME, INCLUDING BUT NOT LIMITED TO ANY HEAT PUMP, FURNACE, AIR CONDITIONING SYSTEM, SMOKE DETECTOR, METERS, WATER HEATER, RANGE, DISHWASHER, REFRIGERATOR, AND DISPOSAL. BUILDER SHALL PROVIDE AND ASSIGN TO PURCHASER THE MANUFACTURER'S WARRANTY FOR ALL CONSUMER PRODUCTS INSTALLED BY BUILDER IN THE HOME.

2. To Whom Given. This Limited Warranty is extended to the Purchaser named on Page One, while the Purchaser owns the Home, subject to the Warranty Periods established below in paragraph 5. This Warranty is not transferable to subsequent owners of the Home or other persons.

a) By Whom Made. This Limited Warranty is made exclusively by Builder

b) Final Inspection. Prior to the transfer of the deed or occupancy by the Purchaser, the Purchaser shall inspect the Home at a time agreeable to both Purchaser and Builder. A representative of the Builder shall be present at the inspection. The purpose of this final inspection is to discover any defects or flaws of a visible or obvious nature. The Builder may indicate other defects known to the Builder which remain uncorrected at the time of inspection.

All defects or flaws found on final inspection of the Home will be itemized on a Final Inspection Sheet, which shall state each item that will be corrected and generally state the manner for correction. The Final Inspection Sheet will be signed by the Purchaser and the Builder before occupancy of the Home or transfer of the deed.

When the Purchaser moves into the Home or accepts the deed, the Builder's responsibility is limited to:

- a. completion of items shown on the Final Inspection Sheet, in the manner provided on the Final Inspection Sheet, and
- b. performance of warranty obligations under the provisions of this Limited Warranty, as listed below.

c) Warranty Coverage and Periods. The Warranty Period for all coverage begins on the Warranty Date shown on Page One. It ends at the expiration of the: overages shown below:

FIRST YEAR BASIC COVERAGE: For one year from the Warranty Date, the Home will be free from latent defects that constitute:

- i. defective workmanship performed by the Builder, an agent of the Builder or subcontractor of the Builder;
- ii. defective materials provided by the Builder, an agent of the Builder or subcontractor of the Builder; or
- iii. defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Builder.

Workmanship, materials, and design will be considered defective if they fail to meet or exceed the New York State

Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

**TWO YEAR MAJOR SYSTEM COVERAGE:** For two years from the Warranty Date, the plumbing, electrical, heating, cooling and ventilation systems of the Home which have been installed by the Builder are warranted to be free from latent defects that constitute defective installation by the Builder.

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.

Installation will be considered defective if the Builder's workmanship upon the installation fails to meet or exceed New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

**SIX-YEAR MAJOR STRUCTURAL DEFECT COVERAGE:** For six years from the Warranty date, the Home will be free from latent defects that are major structural defects, as defined below, and that constitute:

- a) defective workmanship performed by the Builder, an agent of the Builder or subcontractor of the Builder;
- b) defective materials provided by the Builder, an agent of the Builder or subcontractor of the Builder; or
- c) defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Builder.

Workmanship, materials, and design will be considered defective if they fail to meet or exceed the New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

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

6. **Exclusions From All Coverages.** The following are excluded from the Basic Coverage, Major System Coverage, and Major Structural Defect Coverage:

- a) Loss or damage caused by workmanship performed by any person other than the Builder, an agent of the Builder, or a subcontractor of the Builder.
- b) Loss or damage caused by defective materials supplied by any person other than the Builder, an agent of

the Builder, or a subcontractor of the Builder.

- c) Loss or damage caused by defective design provided by any person other than a design professional retained exclusively by the Builder.
- d) Patent defects including defects show on the Final Inspection Sheet and defects which an examination of the Home prior to the transfer of the deed or occupancy of the Home would have revealed.
- e) Defects in outbuildings including but not limited to detached garages and detached carports (excluding outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the Home); site located swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including but not limited to sodding, seeding, shrubs, trees and plantings); off-site improvements or any other improvements not a part of the Home itself.
- f) After the first year Basic Coverage, concrete floors of the basements and concrete floor of attached garages that are built separately from foundation walls or other structural elements of the Home.
- g) Damage to real property which is not part of the Home covered by this Limited Warranty and which is not included in the purchase price of the Home.
- h) Any damage to the extent that it is caused or made worse by:
- i) Negligence, improper maintenance; or improper operation by anyone other than the Builder, its employees, agents or subcontractors; or
  - i. failure of the Purchaser or anyone other than the Builder, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment; or
  - ii. failure of the Purchaser to give notice to the Builder of any defects or damage within a reasonable time; or
  - iii. changes in the grading of the ground by anyone other than the Builder its employees, agents or subcontractors; or
  - iv. changes, alterations or additions made to the Home by anyone after the Warranty Date shown on Page One; or
  - v. dampness or condensation due to failure or the Purchaser or occupant to maintain adequate ventilation.
  - vi. Any condition which does not result in actual physical damage to the Home.

Loss or damage caused by or resulting from accident, riot and civil commotion, Fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mud slide, earthquake, volcanic eruption, wind-driven water, and not reasonably foreseeable changes in the underground water table.

- j) Loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect.
- k) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance
- l) Any damage which the Purchaser or occupant has not taken timely action to minimize.
- m) Normal wear and tear and normal deterioration.
- n) Insect damage.
- o) Bodily injury or damage to personal property.
- p) Failure of the Builder to complete construction of the Home.
- q) Loss or damage which arises while the Home is being used primarily for nonresidential purposes.
- r) Loss or damage due to abnormal loading on floors by the Purchaser or occupant which exceeds design loads

as mandated by the New York State Uniform Fire Prevention and Building Code.

- s) Costs of shelter, transportation, food, moving, storage or other incidental expenses related to relocation during repair.
- t) Consequential damages (except where required by New York State law).
- u) Any claim not filed in a manner set forth below in paragraph 8 entitled, "Step By Step Claims Procedures".

Also excluded from coverage are naturally occurring contaminants, including but not limited to radon, animal dander, dust, dust mites, fungi, mold, bacteria and pollen (collectively, "Impurities"). SELLER DISCLAIMS ANY LIABILITY RESULTING FROM IMPURITIES IN THE HOME, INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, LOSS OF INCOME, EMOTIONAL DISTRESS, LOSS OF USE, LOSS OF VALUE AND OR ADVERSE HEALTH EFFECTS.

7. Warranty. If a defect occurs in an item covered by this Limited Warranty, the Builder will repair, replace or pay the Purchaser the reasonable cost of [repairing or replacing the defective item(s) within a reasonable time after the Builder's inspection or testing discloses the problem and in accordance with the Accepted Standards attached to this Limited Warranty. The choice among repair, replacement or payment is solely that of the Builder.

In no event will the Builder's total liability for deficiencies under this Limited Warranty exceed the Builder's Limit of Total Liability set forth on Page One,

Repair, replacement or payment of reasonable cost for any Major Structural Defect is further limited to (a) the repair of damage to the load-bearing portions of the Home themselves which is necessary to restore their load-bearing functions, and (b) the repair of those items of the Home damaged by the Major Structural Defect which made the Home unsafe, unsanitary or otherwise unlivable.

When the Builder finishes repairing or replacing the defect or pays the reasonable cost of doing so, a full release of all legal obligations with respect to the defect must be signed and delivered to the Builder.

#### 8. Step By Step Claims Procedures.

- a) Written notice of any warranty claim must be made on the attached "Notice of Warranty Claim Form" and must be received by the Builder no later than the first business day after the warranty coverage on that item expires. If this Notice of Warranty Claim Form is not properly completed and received by the Builder by the first business day after the warranty coverage on that item expires, the Builder will have no duty to respond to any complaint or demand, and any or all claims may be rejected. NOTICE OF WARRANTY CLAIM IS NECESSARY TO PROTECT RIGHTS TO WARRANTY PERFORMANCE UNDER THIS LIMITED WARRANTY.
- b) No steps taken by the Builder, Purchaser or any other person to inspect, test or correct defects will extend any time period under this Limited Warranty. The Builder's response to any complaint or request, other than a timely and properly completed Notice of Warranty Claim Form, will not impair, prejudice or otherwise affect any right of the Builder.
- c) In response to a Notice of Warranty Claim Form, or any other complaint or request of the Purchaser, the Builder and the Builder's agents will have the right to inspect and test the portion of the Home to which the claim, complaint or request relates. The Purchaser and occupant of the Home must provide reasonable access to the Builder and the Builder's agents during normal business hours to complete inspection, testing and repair or replacement.
- d) The Builder will complete inspection and testing within a reasonable time under the circumstances, not to exceed thirty (30) days after receipt of a timely and properly completed Notice of Warranty

Claim Form. Upon completion of inspection and testing, the Builder will determine whether to accept or reject the claim. If the Builder rejects the claim, the Builder will give written notice of that decision to the claimant at the address shown on the Notice of Warranty Claim Form. If the Builder accepts the claim, the Builder will take corrective action within a reasonable time under the circumstances and, upon completion, will give written notice of completion to the claimant at the address shown on the Notice of Warranty Claim Form. The Builder will use good faith efforts to process and handle claims in timely manner, but all time periods for repair or replacement of defects are subject to weather conditions, Acts of God, availability of materials and other events beyond the Builder's control.

9. Legal Actions.

- a) No claim or cause of action under this Limited Warranty may be commenced or asserted in any suit, action, or other legal proceeding against the Builder in any Court or forum unless notice of the claim or cause of action has been received by the Builder in a timely and properly completed Notice of Warranty Claim Form as provided above in paragraph 8(d).
- b) No suit, action and proceeding against the Builder under this Limited Warranty may be commenced in any Court or forum after the later of (i) the date of expiration of the applicable warranty coverage under paragraph 5 of this Limited Warranty, or (ii) sixty (60) calendar days after the Builder has given written notice of rejection of claim or completion of corrective action as provided above in paragraph 8(d).

10. General Provisions.

- a) This Limited Warranty may not be changed or amended in any way.
- b) This Limited Warranty is binding upon the Builder and the Purchaser.
- c) Should any provision of the Limited Warranty be deemed unenforceable by a court of competent jurisdiction, the determination will not affect the enforceability of the remaining provisions.
- d) Use of one gender in this Limited Warranty includes all other genders, and use of the plural includes the singular, as may be appropriate.
- e) This Limited Warranty is to be governed in accordance with the law of New York Stat

## NOTICE OF WARRANTY CLAIM FORM

Dear Home Owner:

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

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.

**Name:**

---

**Address of Home Warranted:**

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**Home Phone Number:**

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**Work or Day Phone Number:**

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**Warranty Date:**

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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:**

---

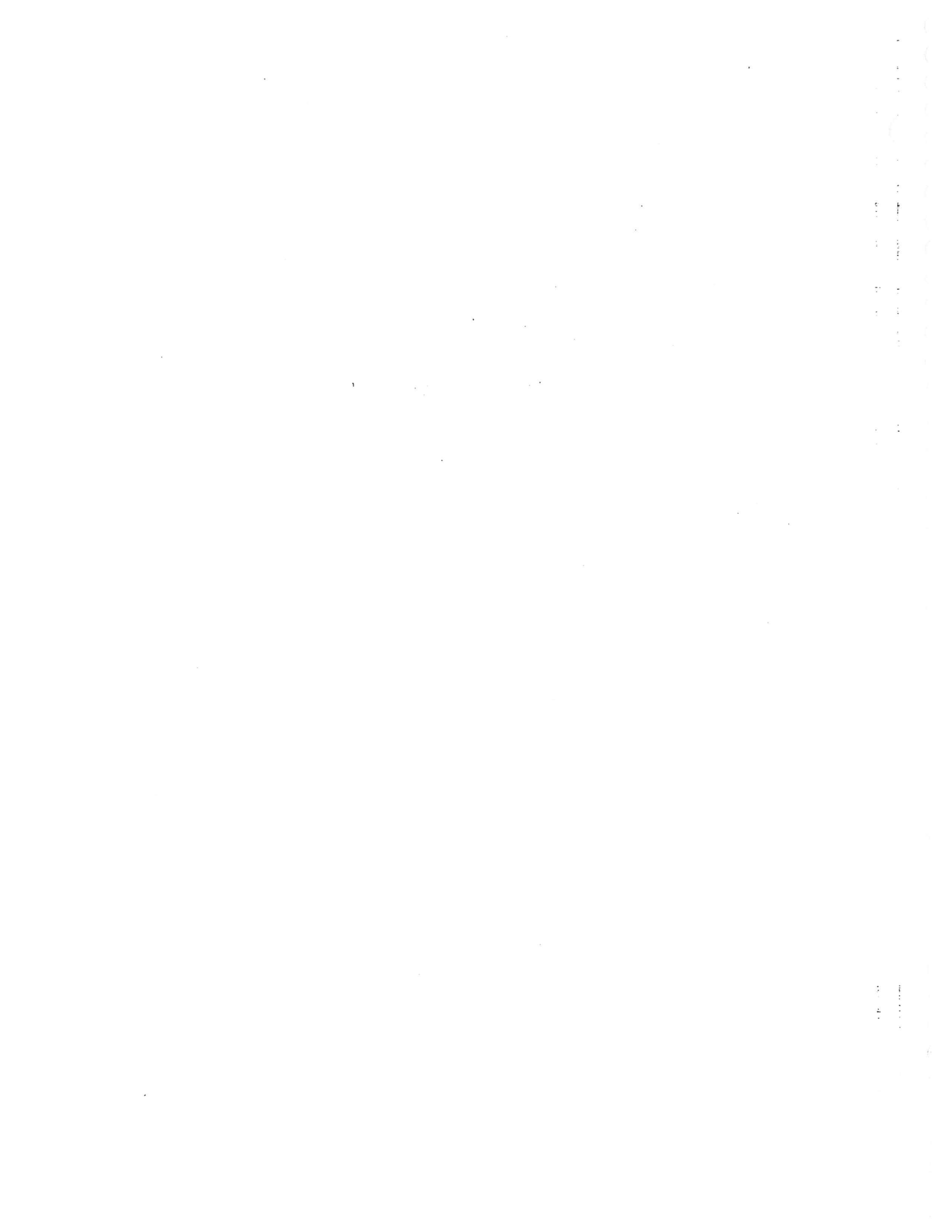
**Date:**

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**EXHIBIT B**

**COPY OF DEED TO HOMEOWNER'S ASSOCIATION**



**WARRANTY DEED**

THIS INDENTURE, made the 17 day of November, 2016.

**BETWEEN**

**MADDOX DEVELOPMENT LLC**, with offices located at 4 Colten Court, Webster, New York 14580

Grantor, and

**BARCLAY PARK HOMEOWNER'S ASSOCIATION, INC.** with offices located at 4 Colten Court, Webster, New York 14580

2016 NOV 21 PM 4:52

**WITNESSETH**, that the grantor, in consideration of ---One and 00/100ths (\$1.00) --- Dollars, paid by the grantee hereby grants and releases unto the grantee, their heirs, successors or assigns of the grantee forever,

**ALL THAT CERTAIN PARCEL OF LAND** situate in the Town of Penfield, County of Monroe and State of New York, being more particularly described on Schedule A attached hereto and made a part hereof:

**SEE ATTACHED SCHEDULE A**

Being and hereby intending to describe and convey part of the same premises conveyed to the Grantor by Warranty Deed recorded on July 15, 2016 in the Monroe County Clerk's Office in Liber 11726 of Deeds at page 305.

This conveyance is made subject to all covenants, easements and restrictions of record affecting said premises. This conveyance is made in the normal course of Grantor's business and is not all or substantially all of Grantor's assets.

**Tax Map No.** Part of 095.01-1-54  
**Tax Property Address:** 1213 Fairport Nine Mile Pt Rd., Penfield, NY 14526  
**Tax Mailing Address:** 4 Colten Court, Webster, NY 14580

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

**TO HAVE AND TO HOLD** the premises here granted unto the grantee, the heirs or successors and assigns forever, **AND** the said grantor covenants as follows:

**FIRST.** That the grantor is seized of the said premises in fee simple, and has good right to convey the same;

**SECOND.** That the grantee shall quietly enjoy the said premises;

**THIRD.** That the said premises are free from encumbrances;

**FOURTH.** That the grantor will execute or procure any further necessary assurance of the title to said premises;

**FIFTH.** The grantor will forever warrant the title to said premises. This deed is subject to the trust provisions of Section 13 of the Lien Law.

The word "grantor" and "grantee" shall be construed to read in the plural whenever the sense of this deed so requires.

**IN WITNESS WHEREOF,** the grantor has executed this deed the day and year first above written.

**MADDOX DEVELOPMENT LLC**

By:  **Rudy Neufeld, Managing Member**

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

On this 17 day of November, in the year 2016, before me, the undersigned, personally appeared **RUDY NEUFELD** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Signature and Office of Individual taking acknowledgment

**JOSEPH W. JACEK, JR.**  
Notary Public, State of New York  
Monroe County, Reg. #02JA4928969  
Commission Expires April 4, 2018

Return to:  
Joe Jacek  
1597 Ridge Rd West, 202  
Rochester NY 14615

### SCHEDULE A

**ALL THAT TRACT OR PARCEL OF LAND** containing 2.464 acres more or less, situate in the Phelps and Gorham Purchase, Township 13, Range 4, Town Lot 33, Town of Penfield, County of Monroe, and State of New York, being more particularly bounded and described as follows:

Beginning at a point, said point being the intersection of the westerly right-of-way line of Fairport-Nine Mile Point Road — New York State Route 250 (66' Right-of-Way) with the southerly boundary line of lands now or formerly of Karen A. Kimmel (T.A. No. 095.01-156.11); thence

1. S 00° 04' 09" E, a distance of 339.94 feet to a point; thence
2. S 89° 41' 07" W, a distance of 143.32 feet to a point; thence
3. N 00° 04' 08" W, a distance of 139.58 feet to a point; thence
4. S 89° 55' 52" W, a distance of 670.00 feet to a point; thence
5. S 00° 04' 08" E, a distance of 142.46 feet to a point; thence
6. S 89° 41' 07" W, a distance of 50.00 feet to a point; thence
7. N 00° 04' 03" W, a distance of 340.04 feet to a point; thence
8. N 89° 41' 32" E, a distance of 50.00 feet to a point; thence
9. S 00° 04' 08" E, a distance of 137.58 feet to a point; thence
10. N 89° 55' 52" E, a distance of 660.00 feet to a point; thence
11. N 00° 04' 08" W, a distance of 140.33 feet to a point; thence
12. N 89° 41' 32" E, a distance of 153.32 feet to the Point of Beginning.



# **EXHIBIT C**

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

