

**HOMEOWNERS ASSOCIATION OFFERING PLAN**

**CHARLOTTE SQUARE TOWNHOMES  
HOMEOWNERS ASSOCIATION, INC.**

**80 CHARLOTTE STREET, CITY OF ROCHESTER, MONROE COUNTY, NEW YORK.**

THIS OFFERING RELATES SOLELY TO MEMBERSHIP IN THE CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION AND THE DECLARATION OF COVENANTS AND RESTRICTIONS APPLICABLE TO ALL TEN (10) HOMES SOLD HEREIN. THE PURCHASE PRICE OF THE HOMES INCLUDES MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION

Approximate amount of offering: \$5,000. This amount is based on the total value of the fully improved common property to be owned and maintained by the Homeowners Association.

NAME AND ADDRESS OF  
SPONSOR :

CHARLOTTE SQUARE HOMES, LLC  
180 Clinton Square  
Rochester, New York 14604  
(585) 262-6210

SELLING AGENT:

HOME LEASING, LLC  
180 Clinton Square  
Rochester, New York 14604

THE DATE OF ACCEPTANCE FOR FILING IS May 25, 2017

THIS PLAN MAY NOT BE USED AFTER May 25, 2018 UNLESS EXTENDED OR AMENDED.

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

**THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL MEMBERSHIP INTERESTS IN CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. THE COST OF MEMBERSHIP IN CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. IS INCLUDED IN THE PURCHASE PRICE OF THE TOWNHOME. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**



**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. PURCHASE OF A LOT INCLUDES AUTOMATIC MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION.**

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





**TABLE OF CONTENTS**

<b><u>PART I</u></b>	<b><u>Page</u></b>
I. SPECIAL RISKS.....	1
II. INTRODUCTION .....	4
III. DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE OWNED OR MAINTAINED BY THE HOMEOWNERS ASSOCIATION .....	8
IV. BUDGET FOR FIRST YEAR OF HOA OPERATION .....	9
V. INTERIM LEASES .....	14
VI. PROCEDURE TO PURCHASE .....	15
VII. TERMS OF SALE .....	20
VIII. RIGHTS AND OBLIGATIONS OF THE SPONSOR .....	21
IX. CONTROL BY SPONSOR .....	24
X. THE ASSOCIATION .....	25
XI. OPINION OF COUNSEL .....	34
XII. LOCAL GOVERNMENT APPROVAL .....	37
XIII. WORKING CAPITAL FUND.....	38
XIV. RESERVE FUND .....	39
XV. MANAGEMENT AGREEMENT .....	40
XVI. IDENTITY OF PARTIES .....	41
XVII. REPORTS TO MEMBERS .....	42
XVIII. DOCUMENTS ON FILE .....	43
XIX. GENERAL .....	44

**PART II**

I. CONTRACT OF SALE	
II. FORM OF DEED TO HOA PROPERTY	
III. DESCRIPTION OF PROPERTY/ENGINEER'S DESCRIPTION	
IV. SITE PLAN	
V. LIMITED WARRANTY	
VI. DECLARATION OF COVENANTS AND RESTRICTIONS	
VII. CERTIFICATE OF INCORPORATION OF HOA	
VIII. BY-LAWS	
IX. ESCROW AGREEMENT	
X. CERTIFICATION BY SPONSOR AND PRINCIPALS	
XI. CERTIFICATION BY ENGINEER	
XII. CERTIFICATION BY SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET	
XIII. INTERIM LEASE	



## I. SPECIAL RISKS

1. There will be 10 townhome homes in this development. The Sponsor expects the first homes to be ready for occupancy in August of 2017, with all Units completed by December 31, 2019. The Sponsor will complete all improvements to Association property including the parking area and landscaped areas. The Sponsor expects to complete all Common Areas by December 31, 2019, excepting only weather-dependent final items, such as landscaping, which will be completed by May 31, 2020. There are no bonds or other security established to guarantee the completion by Sponsor of any of the improvements. Therefore the completion of the project is dependent upon the continued financial ability of the Sponsor. See Section VIII, within.

2. If Purchaser fails to fulfill Purchaser's duties and obligations according to the terms of the Purchase Agreement, all deposits made by the Purchaser, up to a maximum of 10% of the purchase price excluding extras, may be retained by the Sponsor. In addition, the Purchaser shall forfeit the funds paid to Sponsor for all extras, upgrades and change orders that were commenced or ordered prior to Purchaser's default. Sponsor may instead commence an action for damages or seeking any other remedies allowed in law or in equity. After Purchaser's default, Sponsor must make written demand for payment at least 30 days before forfeiture of the deposit may be declared. See the Purchase Agreement in Part II of this Plan.

3. The Sponsor has sufficient financing to pay for the construction of the Association improvements and individual Townhomes. See Section VIII for additional information.

4. Sponsor will control the Homeowners Association for up to five (5) years after the sale of the first townhome in that Sponsor retains the right to designate the Directors until all ten lots are transferred or for five years after the first closing, whichever first occurs. See Section IX, entitled Control by Sponsor.

5. The Sponsor is offering an express Limited Warranty in connection with the sale of Lots in Charlotte Square Townhomes. The Limited Warranty is in the amount of 90% of the purchase price in year 1 and 75% of the purchase price in years 2 through 6, and is extended to the first owner of the home. The Sponsor has adopted the "Residential Construction Performance Guidelines" published by the Rochester Home Builders Association. The complete terms of the Limited Warranty are set forth in Part II of this Plan.

6. Water service is required for watering common area landscaping during June through September. Each Lot Owner will furnish water required for landscaping in the common area from his external hose bib. Personnel providing the watering service will endeavor to draw water equally from each Lot Owner's hose bib, as averaged over a sustained time period; however, no assurances can be given that the amount of water drawn from each Lot Owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the landscaping in the common areas. See Section X for additional information.

7. Sponsor's related company, Home Leasing LLC, will manage the project for the first year. It is charging a rate commonly charged by outside companies in the greater Rochester area.

8. A nominal provision has been made for real estate taxes on the Association Property; the tax assessor has advised the Sponsor that the value of the Association Property will be reflected in the assessments of the Lots. Should there be a more substantial assessment of the Association Property, the Maintenance Assessments will necessarily be increased to fund the resulting taxes. See the Budget, Schedule A, within.

9. Insurance carried by the Association for fire and all risk building coverage does not insure the personal property or dwelling contents of individual Lot Owners. Lot Owners are advised to obtain property insurance for personal property and dwelling contents, as well as liability coverage for accidents occurring in and about their dwelling. See Section X, entitled Association.

10. If a Lot Owner fails to maintain his home consistent with the guidelines established by the Association, the Association may perform maintenance not performed by the Lot Owner at the Lot Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Lot Owner and shall be deemed to be a common assessment, a lien against the Lot and collectable as such. See Section X, entitled Association.

11. A purchaser may purchase his home with mortgage financing, but the obligations and conditions of the commitment are the responsibility of the purchaser, and are not contingencies of the contract between the Sponsor and purchaser. Additionally, the purchaser is responsible to obtain a commitment which expires on or after the closing date set forth in the Purchase Agreement with the Sponsor. If the commitment expires before closing, it is the purchaser's obligation to have the commitment extended. See Section VI for additional information.

12. The Board of Directors shall enforce certain provisions of the Declaration and control any change in use or any additions, modifications or alterations to any improvement within the Charlotte Square Townhomes within guidelines and/or policies established by the Board of Directors. See Section X.

13. During Sponsor's control period, the Sponsor will not exercise veto power over the expenses in the Projected Budget, nor over expenses required to (1) comply with applicable law or regulation; (2) remedy and notice of violation; (3) remedy any work order issued by an insurer; or (4) ensure the health and safety of the occupants of the building, provided such maintenance action is otherwise the obligation of the Association. During Sponsor's control, Sponsor may exercise veto power over expenses other than those listed above in compliance with the terms and conditions of the Declaration. See Section IX for further information.

14. The Sponsor will comply with the Escrow Trust Fund provisions established by the Attorney General. Deposits will be held in trust by the Sponsor's attorney. The name of the account is CHARLOTTE SQUARE TOWNHOMES ESCROW ACCOUNT, located in Manufacturers and Traders Trust Company, First Federal Plaza Office, Rochester, New York 14614. This bank is covered by federal bank deposit insurance. The maximum amount of insurance is \$250,000.00 per account as of the date of this Offering Plan. If deposits in the aggregate are in excess of the then applicable maximum amount, such deposits will not be federally insured in excess of the then applicable maximum amount. See Section VI, Procedure to Purchase, for further information.

15. Any deposits required to be made by a Purchaser under a Purchase Agreement which are for "extras" 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 materials which comprise such extras. See the Purchase Agreement in Part II of this Plan.

16. The NYS Real Property Transfer tax or "deed stamp" tax is the obligation of the Purchaser pursuant to the Purchase Agreement in Part II of this Plan and shall be paid at the time of closing. The payment of this tax is customarily the obligation of the Seller. See the Purchase Agreement in Part II of this Plan.

17. Owners of Lots may lease their Homes to anyone for residential purposes. All leases must be at least 12 months in length. No portion of the Home may be rented; only the entire Home may be rented. See section II for additional requirements.

18. The Association does not plan to hire any employees during the first year of operation. The Association will be managed by Home Leasing, LLC, an affiliate of Sponsor, so any employees involved in the maintenance of the property will be employees of Home Leasing, LLC. See Schedule A for additional information.

19. There will be party walls between the Homes. The cost of repair of a party wall shall be borne equally by the Lot Owners who share such wall, assuming the damage was not the result of negligence or a willful act by one of such Lot Owners. See Section X for further information.

20. No bonds have been required by the City of Rochester for the completion of the water and sewer lines. See Section III for additional information.

## II. INTRODUCTION

The purpose of this Offering Plan is to set forth all the terms of the offer of membership in Charlotte Square Townhomes Homeowners Association, Inc. ("Association"). The Sponsor may amend the Offering Plan from time to time by filing an amendment with the New York State Department of Law. All amendments shall be served on purchasers and Members. A copy of this Offering Plan and all exhibits delivered to the Department of Law at the time this plan was filed are available for inspection, without charge to prospective purchasers and their attorneys, at the Sponsor's office.

Charlotte Square Homes, LLC (hereinafter referred to as "Sponsor"), is a New York limited liability company with an office and principal place of business at 180 Clinton Square, City of Rochester, Monroe County, New York. The Sponsor acquired fee ownership of approximately .611 acres of land located in the City of Rochester, Monroe County, New York, by deed recorded in the Monroe County Clerk's Office on July 24, 2015 in Liber 11566 of Deeds, at page 536. The Sponsor intends to develop the land as a residential community consisting of ten single family townhomes and parking area, and green space or open space for the benefit of the single family townhome owners and residents.

The maximum number of Townhomes is 10. The townhome lots are offered in connection with the Association. This offering plan is for Charlotte Square Townhomes Homeowners Association, Inc. The property comprising Charlotte Square Townhomes is bounded on the west by a small pocket park with public easement and dedicated sculpture separating the 72 unit Charlotte Square Apartments from the townhome lots; on the north by Haags Alley; on the east by Pitkin Street and the south by Charlotte Street. The area surrounding Charlotte Square Townhomes is a mix of residential, commercial and retail uses. The townhomes are adjacent to the City of Rochester's Inner Loop re-development area that is targeted for a mix of additional residential apartments and commercial uses. The property is located in an area described as the East End, part of the core of the City of Rochester. The townhomes are within easy walking distance to the Kodak Theater, the Carlson Center YMCA, the Alexander/East entertainment corridors and dozens of restaurants.

The common area includes 10 surface parking spots, ingress and egress to townhome garage space and minimal landscaped areas. There are no driveways for the Homes. The common areas are anticipated to be completed by December 31, 2019. The 10 surface parking spots will be assigned by Sponsor, one per Townhome. Overflow parking is available on adjoining streets and in the East End Garage, 1 block to the west.

A "Townhome" shall mean and refer to a residential dwelling constructed upon a given Lot and attached to at least one other Townhome by means of a party wall. A "Lot" shall mean and refer to any portion of Charlotte Square Townhomes identified as a separate parcel on the tax records of the municipality, or shown as a separate lot upon any recorded or filed subdivision map. Purchasers of Lots within Charlotte Square Townhomes are purchasing the Lot and the improvement constructed on it. All areas of Charlotte Square Townhomes not contained within the perimeter of the building lots will be common areas and conveyed to the Association prior to the sale of the first Lot. The common area to be owned by the Association consists of .18 acres of open space.

All Owners of Lots at Charlotte Square Townhomes, as defined in a certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as

the "Declaration"), to be recorded in the Monroe County Clerk's Office prior to the transfer of title to the first Lot, automatically become Members in the Association, which has been formed for the purpose of insuring the efficient preservation of the values and amenities of Charlotte Square Townhomes. (See a copy of the Certificate of Incorporation of the Association set forth in Part II of this Plan). The Members' obligation to become Members is set forth in the form of Purchase Agreement set forth in Part II of this Plan, which refers to the Declaration which governs the use and ownership of land within Charlotte Square Townhomes. The complete text of the Declaration is set forth in Part II of this Plan. The By-Laws of the Association are also set forth in Part II of this Plan.

The purchase price of a Lot in Charlotte Square Townhomes includes the Townhome constructed on it, the exclusive right to use the improvements associated with the Townhome, the cost of the Association property and the cost of membership in the Association. Purchasers are advised that purchase prices are set by the Sponsor and are not subject to review or approval by the New York State Department of Law or any other governmental agency.

As defined in the Declaration, the Sponsor and all Lot Owners shall automatically be deemed to have become Members of the Association. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor are transferred, or until 5 years following the first closing, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member, one (1) vote. At the first annual meeting following the conversion of Sponsor's Class B Membership to a Class A Membership, the Members shall elect a new Board of Directors unrelated to the Sponsor.

Upon the Sponsor relinquishing control, 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 and utility charges to the Association for:

1. The operation and maintenance of the Association property.
2. With respect to the Townhomes, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts, roofs, asphalt, decks, patios, stoops, walks and stone pavers if any. The Association shall paint the wood surfaces of trim, windows and doors. The Association shall not repair or replace windows, skylights, window panes, doors, garage doors, storm doors. Exterior items that are vinyl coated and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations. The Association shall not be responsible for the removal of snow from roofs.
3. Fire and casualty insurance covering the Townhomes, Association property, and liability insurance for the Association.
4. The creation of such reserves for contingencies as the Board of Directors may deem proper.
5. Maintenance, including repair and replacement, as necessary, of the common properties of the Association, including the open space, parking area and landscaping as installed by Sponsor.
6. Plowing of snow from the paved areas. The Association shall not be responsible for ice control or removal.

7. Maintenance of landscaping within Charlotte Square Townhomes originally installed by Sponsor. See Schedule A for a description of snow removal and other services provided by the Association. Trash removal will be provided by the City of Rochester and will not be part of the Association's responsibilities. The cost of trash removal will appear on the City Tax bill to each Owner.

Except as set forth above, individual Lot Owners are responsible for the interior and exterior maintenance of their Townhomes. They may decorate their dwellings as they desire, subject only to such rules and regulations regarding the exterior appearance of the dwellings as may be promulgated from time to time by the Association's Board or Architectural Committee. No Lot Owner shall alter or change the exterior color of the improvements on his Lot without the prior written consent of the Association. The Association may perform maintenance not performed by the Lot Owner at the Lot Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Lot Owner and shall be deemed to be a common assessment, a lien against the Lot and collectable as such.

Lot Owners may improve their deck and patio areas with the Sponsor's written consent, and thereafter when the Sponsor is no longer in control of the Association, the Association's consent. The specific area of the improvement, and the nature of the improvement and the materials used shall all be reviewed and approved before construction begins. The improvements shall not be attached to an adjoining Lot Owner's property, and the adjoining Lot Owner and Association shall not be obstructed from performing repairs and maintenance on the adjoining Townhome. The Lot Owner shall maintain the improvements in a clean and good condition, employing a high and proper standard, and in a manner equal to the maintenance standards of the Association. Upon the Lot Owner's failure to maintain, the Association may maintain the area or remove the improvement and restore the area to its original condition at the defaulting Lot Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Lot Owner and shall be deemed to be a common assessment, a lien against the Lot and collectable as such.

Owners of Lots, excluding the Sponsor, are responsible for the payment of monthly maintenance assessments to the Association. The estimated charges for the first year that Charlotte Square Townhomes is completed and operating are set forth immediately following this Section. A certification by an expert concerning the adequacy of such charges is set forth in Part II of this Plan. The Association may place a lien on Lots for unpaid maintenance assessments. This could result in foreclosure. The maintenance assessments on Lots owned by the Sponsor shall be in an amount equal to the difference between the actual Association expenses, exclusive of reserves applicable for completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by the Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot.

The City of Rochester Police Department will provide police protection. The City of Rochester Fire department will provide fire protection. The City of Rochester Bureau of Water will provide water service. The Monroe County Pure Waters District will provide sanitary sewer service. Rochester Gas and Electric Company will provide electricity and gas. The cost of police and fire protection, sewer services will be included in the Lot Owner's real estate tax bill. Electric, gas and water usage and pure waters service will be separately billed on the basis of consumption.



Owners of Lots may sell or mortgage their Lots to anyone without restriction. Each Lot is separate and not subject to mortgages of other Lots. Owners of Lots in Charlotte Square Townhomes should be aware that, if they resell their Lot, those who purchase from them will automatically become Members of the Association, assuming all rights and obligations.

Owners of Lots may lease their Homes to anyone for residential purposes. All leases must be at least 12 months in length. No portion of the Home may be rented; only the entire Home may be rented. Any lease must be on the form prescribed by the Association. An executed copy of any lease must be submitted to the Association. All tenant contact information including information on cars and pets must be provided to the Association by the Unit Owner.

The Offering Plan as presented contains all of the detailed terms of the transaction as it relates to the Association. Copies of the Offering Plan and all Exhibits submitted to the Office of the Attorney General will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers and their attorneys at the office of the Sponsor during normal business hours, and at the NYS Department of Law, 120 Broadway, 23<sup>rd</sup> Floor, New York, New York 10271.

**THE PURCHASE OF A HOME 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 URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.**

### **III. DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE OWNED OR MAINTAINED BY THE HOMEOWNERS ASSOCIATION**

The Sponsor plans to improve Charlotte Square Townhomes in one phase of ten homes. Charlotte Square Townhomes consists of a surface parking lot with ten spaces, minimal landscaped areas to be owned by the Association, and the townhome dwellings to be owned by individual purchasers. There are no driveways attached to the Homes. The common area is not improved by any structure or building. Construction of Charlotte Square Townhomes will commence in March of 2017 and is anticipated to be completed by December 31, 2019. A site plan showing the details of the proposed development is set forth in Part II of this Plan. The Sponsor will complete the subdivision improvements. However, because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as market acceptance of the development, the availability of financing, and the general condition of the economy, the Sponsor gives no assurance that each Lot will be improved with a dwelling. The Sponsor will construct homes as purchasers enter into binding purchase agreements. The Sponsor has not established a fixed or predetermined timetable.

There is a common parking area with 10 spaces, one to be assigned to each townhome.

All areas which are not contained within the perimeter of a Subdivision Lot will be known as common areas, and will be conveyed to the Association prior to the closing of title to the first Lot. The common areas will consist of the parking area and minimal landscaped areas. The improvements to the common areas which may be incomplete at the time of conveyance of the common areas to the Association will include such items as landscaping and the asphalt paved areas.

The sanitary and storm drainage sewers as well as the water lines are located within the common areas. Sanitary and storm drainage sewers will be constructed in accordance with plans and specifications required by the City of Rochester plumbing department and Rochester Pure Waters. Neither the City nor Rochester Pure Waters have required bonds for their completion.

Storm and sanitary sewers will be provided by Rochester Pure Waters District (Monroe County Pure Waters). Each unit will be provided with its own sanitary lateral and the Association will provide maintenance of each lateral between the cleanouts at the right of way line and the Townhome wall for each individual Townhome.

Individual sanitary sewer laterals are provided from the dedicated sewer within Haags Alley, through the common area parcel to the Townhomes. The laterals are 4" PVC SDR-21 and constructed to Rochester Pure Waters standards and specifications. Sewage is disposed through the private laterals which convey the effluent to the public sewer within Haags Alley.

The storm drainage system will consist of catch basins provided for drainage. The catch basins are 6" thick precast concrete and placed at low areas as shown in the Grading and Erosion Plan attached to the architect's report in Part II of this plan. Storm sewers are PVC SDR-35 and range in size from 8" to 12".

Lot Owners will have access to Haags Alley directly from their individual garages and through common paved areas. The water services for each unit will be constructed in accordance with plans and specifications required by Rochester Water Bureau. For complete details of the subdivision utilities

please see the Engineer's Description set forth in Part II of this plan. There are no common roadways.

At the time of its conveyance to the Association, the common property will be free and clear of all liens and encumbrances, except:

1. Those created by or pursuant to the Declaration, or shown on the site plan.
2. Easements and rights of way granted to governmental authorities for drainage, sewers, and other municipal purposes,
3. Public utility easements,
4. Sewer, drainage or utility easements which may be granted in the future.

The Sponsor will provide and pay for a title insurance policy to cover the common property conveyed to the Association. The policy will be in the amount of the offering.

The Sponsor will construct all improvements in accordance with the City of Rochester Zoning and Building Ordinances.

**IV. SCHEDULE A**  
**ESTIMATE OF OPERATING EXPENSES AND RESERVES**  
**FOR THE FIRST TWELVE MONTHS OF OPERATION COMMENCING**  
**APPROXIMATELY August 1, 2017 AND ENDING July 31, 2018**

This estimate is prepared as of August 1, 2017, which date is a reasonable projection of when the first closing is to occur. This estimate of operating expenses and reserves has been made by the Sponsor and is based upon quotations obtained by Sponsor. This estimate cannot be construed as an assurance of actual expenses and is based merely upon information available to the Sponsor at the time of preparation.

A nominal provision has been made for real estate taxes on the Association Property. The tax assessor has advised the Sponsor that the value of the Association Property will be reflected in the assessments of the Lots. Should there be a higher than expected assessment of the Association Property, the Maintenance Assessments will necessarily be increased to fund the resulting taxes.

These operating expenses are based upon the cost of operating the project with 10 Lots transferred to third party purchasers. Each Lot transferred by the Sponsor is assessed 1/10<sup>th</sup> of the total costs of operations.

The maintenance assessments on Lots owned by the Sponsor shall be in an amount equal to the difference between the actual Association expenses, exclusive of reserves applicable for completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by the Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. See Article V of the Declaration set forth in Part II of this Plan.

Assessments will be assessed yearly and payable monthly. Assessments will commence on the first day of the month immediately following the sale of the first Lot, or at such other time as the Sponsor shall determine. Assessments will be prorated and adjusted in the month of sale.

If the actual commencement date of Association operations is to be delayed by six (6) months or more from the projected date in this offering plan, this Offering Plan will be amended to include a revised budget disclosing current projections. The amendment will be completed prior to closing the first home or Lot. If the amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for at least 15 days' time, after presentation of that right, to rescind their offer to purchase and to have their deposits refunded with interest, if any. The Sponsor's guarantee of the budget in this Offering Plan will not avoid an offer of rescission.

**Schedule A**  
**Projected Schedule of Receipts and Expenses**  
**First Year of Operations Commencing August 1, 2017 and ending July 31, 2018**

**Income**

Maintenance Charges (10 lots @ \$ 295.00/mo.) **\$35,396.00**

**Expenses**

Labor.....	\$ 0.00	(1)
Utilities – Common Area Lighting.....	\$ 40.00	(2)
Repairs, Maintenance & Supplies.....	\$ 1,700.00	(3)
Grounds Care/Snow Removal .....	\$ 7,028.00	(4)
Insurance.....	\$ 8,118.00	(5)
Refuse Removal.....	\$ 0.00	(6)
Management Fees (Sponsor managed).....	\$ 3,600.00	(7)
Legal Fees.....	\$ 500.00	(8)
Accounting.....	\$ 1,500.00	(9)
Franchise Tax .....	\$ 100.00	(10)
Real Estate Taxes.....	\$ 450.00	(11)
Reserve .....	<u>\$12,360.00</u>	(12)

**TOTAL** **\$35,396.00**

## Footnotes to Projected Budget

1. No employees are anticipated to be hired for this homeowners association.
2. There will be 2 common area lights to illuminate the parking lot. They will consume 2,912 KWH per year. The rate for each KWH is \$.0125, plus a 10% inflation factor.
3. This category will include routine repairs, maintenance and supplies, such as changing lightbulbs (which should be minimal as all components will be new).
4. Snow removal seasonal contract for the driveways servicing the townhomes and the parking lot. This is based on seasonal bids from Mentis Landscape and Property Maintenance with an address of 3344 Newark Road, Marion, New York 14505. The estimate is for plowing at 2 inches of snowfall; with minimal salting or de-icing included, plus applicable tax. This also includes landscaping which will be minimal on the green area and lots in this Association which will be planted with low maintenance shrubs, ground cover or landscaping stone.
5. Insurance is based on estimates by First Niagara Risk Management, Inc. with an address of 777 Canal View Boulevard, Rochester, New York 14623. The insurance quote of \$8,118, dated August 30, 2016, is for 10 units and includes the following coverage: \$3,650,000 Property Value (Replacement cost), \$1,000,000/\$2,000,000 Liability, \$1,000,000 Directors & Officers, and \$250,000 Employee Dishonesty.

The insurance policy provides that:

- a. Each homeowner is an additional insured party;
- b. There will be no cancellation without notice to the Board of Directors;
- c. A waiver of subrogation is included;
- d. A waiver of invalidity due to acts of the insured and homeowners; and
- e. A waiver of pro-rata reduction if homeowners obtain additional coverage.

The following items are not included in the budget and are available at additional cost:

- a. Rent insurance;
- b. Excess liability; and
- c. Garage keeper's liability.

Homeowners are required to obtain additional insurance, at their own expense, to cover fire and casualty losses to contents of the home, and liability coverage for accidents occurring within the home.

6. Trash is collected by the City of Rochester and is included as an embellishment expense on the owner's tax bill.

7. Sponsor's related company, Home Leasing, LLC, will manage the Association in the first year. Management fees are based on \$30.00 per unit, per month. This estimate is consistent with outside management companies. .
8. Routine legal expenses are for occasional advice and for the annual audit certification letter by Association counsel. It is assumed that any collection fees expensed for delinquent accounts will be passed on to the unit owner per the Declaration and therefore will be reimbursed to the Association. This estimate is provided by Woods Oviatt Gilman LLP, 700 Crossroads Bldg., 2 State Street, Rochester, New York 14614, 585-987-2800.
9. Audit fees for annual audit as projected by Bonn, Dioguardi, Ray, LLP, C.P.A.'s with an address of 70 Linden Oaks Office Park, Rochester, New York 14625. Fee includes the full audit, published audit statements to the Board of Directors, Owners, and preparation of all tax returns.
10. Estimates of NYS franchise tax to be paid by a not-for-profit corporation.
11. Estimates of City/School, State, Town, County taxes on the vacant parcel of common area of the Association noted on the site plan. This information is based on the estimated assessed value of \$5,000 for the parcel provided by the City of Rochester Assessor, together with current rates per thousand. The combined current tax rate is \$32.275 per thousand, plus special districts, which are not based on a "per thousand" calculation.
12. Reserve – The reserve will cover the roofs, siding, asphalt ( common area – there are no driveways ) and decking according to the following schedule:  
  
Roof – useful life 25 years; \$5,000 to replace for each unit; Monthly contribution per unit \$17.  
  
Siding: (power wash and paint every ten years) \$40,000; monthly contribution \$33;  
  
Asphalt: 15 year life; \$6,500 replacement expense per Unit; monthly contribution \$36;  
  
Decking 25 year useful life; \$5,210 to replace per unit; monthly contribution \$17.

## V. INTERIM LEASES

If Sponsor leases a Townhome to a purchaser under a purchase agreement, the lease and purchase agreement will provide that an uncured default under the purchase agreement is a default under the lease, and an uncured default under the lease is a default under the purchase agreement. Before the Sponsor may utilize the default under the lease to declare a default under the purchase agreement, the Sponsor shall first obtain either an order of eviction or other judgment or order from a court of competent jurisdiction against the tenant, unless the tenant has vacated the Townhome. The lease and purchase agreement will provide that tenant has to vacate the Townhome within seven days after default under the purchase agreement or rescission of the purchase agreement by tenant.

A typical interim lease ( possession agreement ) is included in Part II of this Plan.



## **VI. PROCEDURE TO PURCHASE AND TRUST FUND PROVISIONS**

The form of the Purchase Agreement is set forth in Part II of this Plan. An executed Purchase Agreement and good faith deposit check, made payable to the Charlotte Square Homes Escrow Account shall be delivered to the Sponsor for consideration.

The Sponsor 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, and all funds paid by purchasers shall be handled in accordance with such statutes and regulations.

The Escrow Agent:

The law firm of Woods Oviatt Gilman LLP, with an address at 700 Crossroads Building, 2 State Street, Rochester, New York 14614, telephone number 585-987-2800, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories: Paula A. Lapin, Esq., James Bonsignore, Esq., Jerry A. Goldman, Esq., and Kelley Ross Brown, Esq.; each may act independently of the other. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

The Escrow Account:

The Escrow Agent has established the escrow account at M&T Bank, located at First Federal Plaza, Rochester, New York 14614 ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled Woods Oviatt Gilman LLP as Escrow Agent for Charlotte Square Townhomes Homeowners Association ("Escrow Account"). The maximum amount of insurance is \$250,000.00 per account as of the date of this offering. If deposits in the aggregate are in excess of the then applicable maximum amount, such deposits will not be federally insured in excess of the then applicable maximum amount.

All Deposits received from Purchaser shall be in the form of checks, money orders, or other instruments, and shall be made payable to or endorsed by the Purchaser to the order of Woods Oviatt Gilman LLP, as Escrow Agent.

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.

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, Sponsor or Escrow Agent, but rather will be paid to the New York State IOLA Fund. No fees of any kind may be deducted from the Escrow Account, and the Sponsor shall bear all costs associated with the maintenance of the Escrow Account.

The Escrow Agent shall maintain all records concerning the Escrow Account for seven years after release of the escrow funds. Upon dissolution of the Escrow Agent law firm, the former partners of

the firm shall make appropriate arrangements for the maintenance of the records by one of them or by a successor firm and shall notify the Office of the Attorney General of such transfer.

The Purchase Agreement:

The Purchase Agreement is attached in Part II of the Plan. The relevant escrow trust fund provisions are set forth in a separate Escrow Agreement, which is contained in Part II of this Plan. **Both the Purchase Agreement and the Escrow Agreement must be executed in order for the purchase Agreement to be effective.**

Notification to Purchaser:

Within five (5) business days after the Purchase Agreement and the Escrow Agreement have 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 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. 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.

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 fifteen (15) days after tender of the Purchase Agreement, Escrow 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, 23rd 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 Purchase Agreement upon closing of title to the home; 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 home 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) the 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 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.

Section 71-a(3) of the New York Lien Law which requires holding a deposit for new home construction in escrow is satisfied by the escrow provisions of the Plan.

Purchasers shall be afforded not less than three (3) business days to review the Offering Plan and all filed amendments prior to executing a purchase agreement. By executing a purchase agreement, Purchaser represents that he has had not less than three (3) business days to review the documentation. This representation may not be removed from the purchase agreement.

Per the Purchase Agreement, a Purchaser's obligation to purchase may be contingent on obtaining mortgage financing. If the Purchaser fails to obtain the required financing within the time period stated, either party may terminate the contract, all deposits will be returned and neither party will

have further liability under the contract. The time period within which the Purchaser must obtain financing will be negotiated between the parties on an individual basis. All financing will be negotiated directly by Purchasers and the terms and conditions of any financing are the responsibility of the Purchaser. The obligations and conditions of the commitment are the responsibility of the Purchaser, and are not contingencies of the contract between the Sponsor and Purchaser. Additionally, the Purchaser is responsible to obtain a commitment which expires on or after the closing date set forth in the Purchase Agreement with the Sponsor. If the commitment expires before closing, it is the Purchaser's obligation to have the commitment extended.

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

The Sponsor shall make a written demand for payment after default at least 30 days before forfeiture of the deposit may be declared.

Within five business days after a Purchaser delivers an executed Purchase Agreement together with the Escrow agreement and the required deposit, the Sponsor will either accept the offer to purchase, or reject the Purchase Agreement and refund the deposit. If the Sponsor fails to act within five business days, the Purchaser may provide Sponsor with written notice that the purchase offer is null and void, and the deposit will be returned to the Purchaser.

Purchase Agreements are not assignable without the prior written consent of the Sponsor. If consent is given, it may be conditioned upon the original Purchaser remaining fully responsible to perform the financial obligations of the purchaser under the Purchase Agreement.

If Purchaser fails to fulfill Purchaser's duties and obligations according to the terms of the Purchase Agreement, all deposits made by the Purchaser, equal to 10% of the purchaser price excluding extras, may be retained by the Sponsor or the Sponsor reserves the right to sue the Purchaser for all damages incurred. In addition, the Purchaser shall forfeit any amounts paid for all extras, upgrades and change orders that were commenced or ordered prior to the date of Purchaser's default.

The Sponsor anticipates the first Lot closing to occur on or about August 1, 2017. If a date set for closing is delayed 12 months or longer, the purchaser shall be offered rescission in accordance with the requirements of the Attorney General.

Prior to transfer of title, the Sponsor retains the risk of loss from fire or other casualty, unless and until the purchaser takes actual possession of the home pursuant to a possession agreement with the Sponsor. A Purchaser who takes possession of a Home, by interim lease or otherwise, prior to closing assumes the risk of losses not covered by Sponsor's insurance. Purchasers should obtain insurance coverage for personal property prior to taking possession of the home to protect themselves from loss due to fire or other casualty.

In the event of a loss prior to purchaser taking possession, the Sponsor will (i) notify purchaser within 30 days whether or not Sponsor will repair and restore the home, (ii) the home will be restored as promptly as possible and to substantially the same condition prior to the casualty. If the Sponsor elects

not to repair and restore the home, then the Purchase Agreement will be canceled and all deposits will be promptly refunded to the Purchaser.

If a conflict between the Offering Plan and the Purchase Agreement exists, the Offering Plan shall control. The Purchase Agreement may not waive any purchaser's rights or abrogate Sponsor's obligations under Article 23-A of the New York General Business Law.

Pursuant to the Housing Merchant Implied Warranty statute of the State of New York, the Sponsor is offering an express Limited Warranty in connection with the sale of Lots in Charlotte Square Townhomes. The Limited Warranty is in the amount of 90% of the purchase price in year 1 and 75% of the purchase price in years 2-6, and is extended to the first owner of the home. The Limited Warranty provides for Basic Coverage of one (1) year that the home will be free from defects in workmanship, design or materials. In addition to the above, the Limited Warranty provides for a two (2) year Major System Coverage of the plumbing, electrical, heating, cooling and ventilation systems of the home which have been installed by the builder. Finally, the Limited Warranty includes a six (6) year Major Structural Defect Coverage warranting that the home is free from a defect resulting in actual physical damage to a load bearing portion of the home making the home unsafe, unsanitary or otherwise unlivable. Load bearing portions of the home are the foundation and footings, beams, girders, lintels, columns, walls and partitions, floor systems and roof framing systems. The complete terms and conditions of the Limited Warranty are set forth in Part II of the Offering Plan.

## VII. TERMS OF SALE TO THE ASSOCIATION

The deed conveying the common area to the Association will be a bargain and sale deed with covenant against grantor's acts. A copy of the deed is contained in Part II of this Plan. Title to the Association property will be conveyed free and clear of all liens, encumbrances and title exceptions other than as disclosed in this Plan, the state of facts shown on the subdivision map recorded in the Monroe County Clerk's Office or an instrument survey (provided title is not uninsurable), and the proposed deed.

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 Plan, provided the Sponsor is notified of or otherwise becomes aware of any such defect within one (1) year from the date 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.

A closing will take place only upon issuance of a temporary or permanent certificate of occupancy for the Townhome closed.

## VIII. RIGHTS AND OBLIGATIONS OF THE SPONSOR

The following are obligations of the Sponsor with respect to this offering of interests in the Association:

1. Defend and Indemnify. The Sponsor shall defend any suits or proceedings arising out of Sponsor's acts or omissions, and will indemnify the Association and Lot Owners.
2. Survival after Closing. All representations under this Offering Plan, all obligations pursuant to the General Business 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.
3. Disclaimers Void. Disclaimer or limitations of liability on the part of the Sponsor or its principals for failure to perform obligations set forth in this Plan are not permitted.
4. Financing. The Sponsor has sufficient financing for the construction of the Association property. The Sponsor has not obtained any bonds securing its obligations under this Offering Plan.
5. Complete Construction of Common Areas and Facilities. The Sponsor will complete construction of the common areas and facilities in accordance with the plans and specifications identified in this Plan and any amendments hereto. The Sponsor may substitute equipment or material of equal or greater value. The Sponsor will pay for the authorized and proper work involved in the construction, establishment and transfer of all Association property that the Sponsor is obligated to complete under this Plan. The Sponsor agrees to cause all mechanics' liens with respect to Association property to be promptly discharged or bonded.

The Sponsor will complete construction of the common areas and other facilities that are vital to the health and safety of the Lot Owners prior to the conveyance of the Lot, subject to the terms of this Plan, including any public utilities. If the City of Rochester permits occupancy, and if the incomplete items are not vital to the health and safety of the Lot Owners, such as final pavement of driveways and landscaped areas, then closing may occur. The Sponsor anticipates that the project is to be completed by December 31, 2019.

6. 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, exclusive of reserves applicable for completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by the Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. See Article V of the Declaration set forth in Part II of this Plan. The Sponsor has the financial means to meet its obligations with respect to unsold Lots. Income from Lot sales and ongoing operations will fund this obligation. In adopting any revised schedule of Operating Expenses, Sponsor shall provide backup budget quotations from arm's length third party providers for any amount greater than the amount set forth in the Estimate of Operating Expenses set forth in Section IV of this Plan.

7. Conveyance of Common Areas and Title Insurance. Prior to the transfer of title to any Lot, the Sponsor will file the Declaration and convey, by bargain and sale deed with covenant against grantor's acts, the Association Property to the Association and furnish the Association with a policy of title insurance covering such property from a title company authorized to do business in New York. The policy covering the common areas shall be in the amount of the offering. Such policy will be furnished at Sponsor's sole cost and expense, and shall evidence insurable title. The lien of any construction loan mortgage will be released from the common areas prior to the transfer of title to the Association.

The common area is to be improved by minimal green space and landscaping and asphalt pavement. Prior to transfer to the Association, the Sponsor will assign to the Board of Directors of the Association any manufacturer's warranties with respect to such improvements.

8. File Subdivision Map and Declaration. The Sponsor will file a subdivision map in the office of the Monroe County Clerk prior to the conveyance of the first Lot in Charlotte Square Townhomes, which map shall show the Lots upon which the dwellings are or will be located. The Sponsor will file the Declaration and will convey Association property to the Association prior to closing title to the first home. The Association property will be released from the provisions of any land or construction loan mortgages prior to closing title to the first home or lot. The Sponsor will complete construction of all streets, sidewalks and parking facilities serving a home or the building in which the home is located and any other facilities that are vital to the health and safety of the owners prior to closing title to the home. If the municipality permits occupancy, closing may occur if such facilities are not vital to the health and safety of the owners.

9. Plans. The Sponsor will provide the Board of Directors with a set of "as built" plans, and certify construction is in substantial compliance with the plans and specifications set forth herein. If the certification cannot be made, the offering plan will be amended and rescission offered to the Purchasers.

10. Right of Access. The Sponsor shall have the right of access in accordance with the Declaration to complete construction of the project. The Sponsor will repair and restore the area as required. The Sponsor does not anticipate any interference with a Lot Owner's use and enjoyment of the area, except on a temporary basis.

11. Hold Down Payments and Deposits in Escrow. The Sponsor will hold all down payments and deposits in escrow (or properly post a letter of credit) to assure the return of down payments and deposits if the Sponsor defaults in its obligations under the Purchase Agreement.

12. Insurance. The Sponsor, while in control of the Board of Directors, shall procure agreed replacement cost fire and casualty insurance for the Townhomes, and liability insurance, for the Association property, as set forth in Schedule A of this Plan.

13. Dissolution or Liquidation. In the event of the dissolution or liquidation of the Sponsor, or the transfer of three (3) or more Lots to a purchaser who does not occupy such Lots, the principals of the Sponsor will provide reasonable, financially responsible entities or individuals who will assume the status and all of the obligations of the Sponsor for those Lots under the Offering Plan, applicable laws or regulations. If the original Sponsor is dissolved or liquidated, the principals of the Sponsor will guaranty the obligations of the successor sponsor.



14. Amendments. As long as the Sponsor has unsold Lots which are offered for sale pursuant to the Offering Plan, the Sponsor shall amend the Plan whenever the budget materially changes or whenever one year has passed since the budget was last updated. The prior year's certified financial statements for the Association shall be included in the amendment even if Sponsor assumes responsibility for all Association operating expenses. The financial statements shall be submitted within four months of the end of the latest fiscal year of operation of the Association.

15. Mortgage Liens. Any mortgage liens which remain on the property after closing of the first Lot shall be subordinate to the lien of the Declaration.

16. The Sponsor is not obligated to construct a minimum number of homes. The Sponsor is not obligated to improve or construct Association common area other than as above set forth. The Sponsor will construct homes as Purchase Agreements are received and accepted.

17. Sewer and water lines are to be constructed in accordance with local government specifications. Sponsor will amend the plan after completion of such improvements but prior to the conveyance of the common areas to the Association to include a certification by an engineer licensed to practice in NYS, stating that the sewer and water lines have, in fact, been constructed in accordance with such local government specification, and indicating the date of completion.

**NO BOND OR OTHER SECURITY HAS BEEN POSTED BY THE SPONSOR TO SECURE THE PERFORMANCE OF ITS OBLIGATIONS AS ABOVE SET FORTH. ACCORDINGLY, THE SPONSOR'S ABILITY TO MEET SUCH OBLIGATIONS COULD DEPEND ON ITS FINANCIAL CONDITION AT THE TIME IT IS CALLED UPON TO PERFORM.**

## **IX. CONTROL BY SPONSOR**

As defined in the Declaration, the Sponsor and all Lot Owners shall automatically be deemed to be Members of the Association. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor are transferred, or until 5 years following the first closing, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member, one (1) vote. At the first annual meeting following the conversion of Sponsor's Class B Membership to a Class A Membership, the Members shall elect a new Board of Directors unrelated to the Sponsor.

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

Sponsor may exercise veto power over expenses other than those listed above in compliance with the terms and conditions of the Declaration.

No mortgage liens will be placed on the Association property during the Sponsor's control of the Board of Managers.

While the Sponsor is in control, annual certified financial statements will be provided to Members.

## X. THE ASSOCIATION

Charlotte Square Townhomes Association, Inc. was formed on August 11, 2016 when its Certificate of Incorporation was filed under the Not-for-Profit Corporation Law of the State of New York. The Certificate of Incorporation is set forth in Part II of this Plan. The Declaration which is set forth in Part II of this Plan, provides the framework by which the Association will maintain and administer the lands and the facilities comprising the Association property. The Association will own the parking lot and minimal open space common area. The By-Laws which shall govern the operation of the Association are set forth in Part II of this Plan.

Membership in the Association is mandatory for all Lot Owners. Membership is conferred upon an individual taking title and ownership of a Lot. Membership in the Association will cease upon a Lot Owner conveying his Lot to another purchaser.

All mortgages on Charlotte Square Townhomes will be subordinate to the lien of the Declaration. The common area will be conveyed to the Association free of the lien of any construction mortgage. The individual Townhome Lots will be conveyed to Lot purchasers free of the lien of any construction mortgage.

The Declaration provides that its provisions shall run with the land and shall be enforceable by the Sponsor, the Association and the Owner of any Lot. With respect to the legal enforceability of the provisions of the Declaration, see the opinion of Sponsor's counsel, Woods Oviatt Gilman LLP. By accepting a deed, lease or other instrument conveying any interest in a Lot, the person accepting such interest covenants to observe and be bound by the provisions of the Declaration, including the personal responsibility for the payment of all charges and assessments which may become liens while such person holds an interest in a Lot.

The following is a summary of the important provisions of the Declaration:

There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor are transferred, or until 5 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into Class A Membership, and all Members shall vote equally, i.e., one (1) Member, one (1) vote.

Every Member shall have:

- a) A right of easement and enjoyment in Association property;
- b) An easement of ingress and egress by foot over Association property, and by vehicle over paved Association property built and intended for such purpose;
- c) An easement to use and maintain all pipes, wires, conduits, drainage areas and public utility lines servicing such Member's Lot and located on other Lots or on the Association property;

- d) An easement over Association property and over the property of any adjacent Lot for performance of routine maintenance on a Member's Townhome;
- e) An easement of ingress and egress by foot over the side and rear 10 feet of all Lots for routine and necessary maintenance purposes.
- f) An easement of ingress and egress by foot and vehicle for the use and enjoyment of the paved common access drives.

These rights and easements shall be in common with other Members of the Association and are subject to the rights of the Association (i) to promulgate rules and regulations relating to the use, operation and maintenance of Association property; (ii) to grant easements or rights of way to utility corporations or governmental entities; (iii) to transfer Association property upon the consent of two-thirds (2/3) of all Members; (iv) to charge reasonable fees for the use of Association property; (v) to enter into agreements for the sharing of facilities with other associations, cooperatives or condominiums upon the consent of two-thirds (2/3) of all Members. Such rights shall be subject to the rights of the Sponsor (i) to have or grant easements and rights of way for access to, and utility lines for, the development of the Lots and (ii) to use the Association property for a sales center and parking area for prospective purchasers. The rights of each Member shall further be subject to the right of any other Member to maintain and use the pipes, wires, conduits, etc. servicing such other Member's Lot.

The Association shall have:

- a) The right to use electricity for *incidental* maintenance of Association property without charge;
- b) The right to use water without charge;
- c) An easement to permit the maintenance, repair and replacement of paved areas, light standards, signs and other property of the Association;
- d) An easement for access to each Lot for the maintenance, repair and replacement of the exterior of the dwellings and the storm water, sanitary and utility laterals, either because it is the Association's duty or because the Owner has failed to perform his obligations;
- e) An easement for access to each Lot for the maintenance, repair and replacement of any pipes, wires, conduits, drainage areas, utility lines and facilities and cable television lines and facilities located on any Lot and servicing any other Lot;
- f) An easement over the Lots for placement, maintenance, repair and replacement of utility banks, telephone and cable television pedestals.

Each Lot Owner, excluding the Sponsor, by becoming a Lot Owner shall be deemed to covenant and agree to pay to the Association annual Assessments or charges for the maintenance and operation of Association Property, for utilities and other services, consumed and/or used on or at the Lots and which are not individually metered or billed and for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots. The Assessments shall be the personal

obligation of the Lot Owner and shall, together with any late charges, accelerated installments thereof, interest and the cost of collection, be a charge and continuing lien upon the Lot against which the assessment is made.

The annual maintenance assessment is determined by the Board of Directors of the Association at least 30 days in advance of each annual assessment period. The annual maintenance assessment may be increased or decreased based on the anticipated costs and expenses of the Association during the next annual assessment period.

In addition to the annual maintenance assessment, the Association may levy in any assessment year a special assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements or for any other matter decided upon by the Association. Provided however, that for any special assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any special assessment amounting to more than 20% of the then current amount of annual maintenance assessments, the consent of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose is required.

The Board of Directors may levy fines for the violation of the Restrictions contained in the Declaration, for violations of the By-laws and for violations of the rules and regulations promulgated by the Board. Unpaid fines will become unpaid assessments and will become a lien upon the Lot or other portion of the property owned by the violating Owner. The Sponsor is not obligated for attorney's fees in any action brought by the Association against the Sponsor.

The maintenance assessments on Lots owned by the Sponsor shall be in an amount equal to the difference between the actual Association expenses, exclusive of reserves applicable for completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by the Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot.

The following maintenance services shall be performed by the Association and the cost of such maintenance shall be funded from the Maintenance Assessments:

- a) Maintenance of the common areas including, but not limited to, the paved access and parking areas, landscaped areas and common area lighting. There are no driveways to the Homes.
- b) With respect to the Townhomes, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts, roofs, stoops, walks and pavers, if any. The Association shall paint the wood surfaces of trim, windows and doors. The Association shall not repair or replace windows, skylights, window panes, doors, garage doors, or storm doors. The Association shall not be responsible for the removal of snow from roofs.

- c) With respect to the other improvements on the Townhome Lots, the Association shall stain, repair and replace decks initially installed by the Sponsor, and shall repair those portions of sewer, water, and storm water utility laterals (limited, however, to repair necessitated by leakage or structural failure) servicing one (1) or more Townhomes and not maintained by a utility company, public authority, municipality or other entity. A lateral shall be deemed to terminate at the outer surface of the foundation wall.
- d) Plowing of snow from the paved areas.
- e) Obtain and maintain (i) fire and casualty insurance on the Townhomes, (ii) liability insurance on the Association property and (iii) directors' and officers' liability insurance for the officers and directors of the Association.
- f) Enforcement of restrictive covenants and establishment of rules and regulations governing the use of the Association Property and the conduct of the Lot Owners.
- g) Maintenance, including repair and replacement, as necessary, of the Association property, including paved areas, walks, signs, if any, and those portions of sewer, water, and storm water utility laterals (limited, however, to repair necessitated by leakage or structural failure) servicing one (1) or more Townhomes and not maintained by a utility company, public authority, municipality or other entity. A lateral shall be deemed to terminate at the outer surface of the foundation wall.

The Board of Directors shall enforce certain provisions of the Declaration and control any change in use or any additions, modifications or alterations to any exterior improvement within the Townhomes, such as enlarging a deck, changing the color of a door, and the like, within guidelines and/or policies established by the Board of Directors. No such addition, modification or alteration shall be made until plans setting forth such change are submitted to and approved by the Board and a Building Permit has been issued by the appropriate municipal authority, if required. Any Owner, lessee or occupant may obtain from the Association a written certificate stating whether or not a particular parcel violates any provisions of the Declaration. A reasonable charge may be imposed for the issuance of such certificate.

An easement shall exist for encroachments by any Townhome, including but not limited to patios, porches, decks, privacy fencing and all other improvements, on any adjacent Lot as a result of construction, settling or shifting.

The cost of repair to a party wall shall be borne equally by the Lot Owners who share such wall, assuming the damage was not the result of negligence or a willful act by one of such Lot Owners.

The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors determines to be appropriate, unless otherwise required in the Declaration: (i) liability insurance for Association Property, (ii) directors' and officers' liability insurance, (iii) fidelity bond, and (iv) fire and casualty insurance for the Townhomes. The cost of all insurance obtained by the Board of Directors will be included in the Maintenance Assessment charges billed to each Lot Owner by the Association.

The individual Lot Owner is required to obtain fire, casualty and liability insurance for his personal property, his lot and the interior of his home. Failure to obtain such insurance will result in the Owner being self-insured and without coverage in the event of a loss.

Fire and casualty coverage provided by the Association shall be for the unit value of each Townhome as delivered to the Purchaser at closing, including the flooring, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings, and all machinery servicing the Lots and common facilities on a "single entity" basis, excluding the land, foundations, and the personal property of Lot Owners and occupants. The policies shall not provide for coinsurance. The policies shall provide that adjustment of loss shall be made by the Board of Directors of the Association.

The proceeds of all policies of physical damage insurance shall be payable to the Association or to an insurance trustee (bank, trust company or law firm) to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Lot Owners. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The amount of fire insurance to be maintained until the first meeting of the Board of Directors following the first annual meeting of the Lot Owners shall be in at least the agreed replacement amount. Prior to the completion of dwellings, they will be insured under the provisions of a builder's risk policy maintained by the Sponsor.

Each Townhome Lot Owner and such Lot Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage. Upon request, duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of the Lots.

Liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Lot Owners, but not the liability of Lot Owners arising from occurrences within such Owner's dwelling or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability. Until the first meeting of the Board of Directors elected by the Lot Owners, this public liability insurance shall be in a limit of \$1,000,000.00 per occurrence/\$2,000,000 aggregate covering all claims for bodily injury and property damage.

The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage provides for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association. Until the first meeting of the Board of Directors elected by the Lot Owners, the directors' and officers' liability coverage shall be in at least the sum of \$1,000,000.00.

Employee dishonesty insurance shall cover up to five (5) directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The coverage shall be in the amount of \$250,000.

All policies obtained by Lot Owners must contain waivers of subrogation and the liability of carriers issuing insurance procured by the Board of Directors must not be affected or diminished by reason of any insurance obtained by a Lot Owner.

There are general prohibitions against the following unless the consent of the Board of Directors, where applicable, has first been obtained:

- a) Placing or displaying for public view any advertisement or sign, other than a professional shingle indicating the name of a firm or person and such person or firm's profession and one temporary "For Sale" sign not of reasonable size, unless the size, materials, design, style and color of which has been first approved by the Association, and a permit issued by the City of Rochester.
- b) No more than two pets (dogs and/or cats of reasonable size) are permitted without the consent of the Association. The Association may, from time to time, (i) impose reasonable rules and regulations concerning pets and (ii) prohibit certain types of pets entirely. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any pet, if, in the opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners. Owners and tenants are responsible for any damage done by their pets.
- c) Construction of walls or fences.
- d) Using a temporary building, trailer, basement, tent, shed or garage as a dwelling.
- e) Outside antennas or dishes, subject to Association consent which shall be in compliance with Federal regulations.
- f) Removal of any tree or shrub (this restriction shall not apply to the Sponsor).
- g) Operation of a snowmobile.
- h) Use of the property for wholesale or retail business or service occupations in conflict with applicable municipal laws and ordinances.
- i) Outside storage for more than one 72 consecutive hour period per month of a commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer.
- j) Outdoor performance of repair work (other than minor servicing) on any motor vehicle, boat or machine.



- k) Outdoor drying or airing of any clothing or bedding.
- l) Oil and mining operations.

The following are completely prohibited:

- a) Noxious or offensive activities;
- b) Keeping out of doors overnight any commercial vehicle weighing two (2) or more tons or any unlicensed vehicle in excess of a 72 hour period;
- c) Construction of chain link fences.

The costs of any action brought by the Association to enforce the Declaration, including legal fees, shall be a binding personal obligation of the violator. If the violator is (i) a Lot Owner, or (ii) any family member, tenant, guest or invitee of a Lot Owner, or (iii) a family member of a guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Lot Owner's family or (2) any family member of the tenant of such Lot Owner, such costs shall also be a lien upon the Lot owned by such Lot Owner.

The Association shall have the right to enter Lots to determine whether or not any improvements thereon are in compliance with the Declaration or the rules and regulations of the Association.

The Declaration may be amended or terminated upon the consent of the Members having not less than two-thirds (2/3) of the votes of all Lots subject to the Declaration except that so long as the Sponsor owns a Lot subject to the Declaration, no amendment shall be made which adversely affects the interest of the Sponsor, unless specifically approved by the Sponsor in writing.

The Declaration shall continue in full force and effect until December 31, 2031 and shall be extended, as then in force, automatically and without further notice, for successive periods of ten (10) years.

The business and affairs of the Association shall be managed by a three (3) member Board of Directors except that an initial Board of three (3) directors shall be designated by the Sponsor. The initial Board of Directors shall hold its first meeting within 30 days of transferring title to the first Lot in Charlotte Square Townhomes. The initial Board of Directors designated by the Sponsor shall serve until the first annual meeting after the Sponsor's Class B Membership has been converted to a Class A Membership, that is after the Sponsor no longer has an ownership interest in the Lots of Charlotte Square Townhomes, or until 5 years following the first closing, whichever shall first occur. Thereafter, directors of the Association shall be elected by the Owners.

All Directors shall be required to be a Member of the Association and the number of Directors may be changed by amendment of the By-Laws. Nominations for election to the Board of Directors shall be made by a nominating committee which shall consist of a chairman, who shall be a member of the Board of Directors and two (2) or more Members of the Association. Write in votes for persons other than those nominated shall be permitted.

The term of office of the members of the Board of Directors shall normally be two (2) years or until their successors are elected, except that at the aforementioned first annual meeting of the Association after the Sponsor relinquishes control, the Members shall elect three (3) directors for a two (2) year term and two (2) directors for a one (1) year term. At the expiration of the initial term of office of each member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. A member of the Board of Directors may be removed, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members.

The initial Board of Directors will be composed of Nelson Leenhouts, Megan Houppert and Sarah Hunt. The initial officers of the Association are Nelson Leenhouts, President, Megan Houppert, Vice-President, and Sarah Hunt, Secretary and Treasurer. Nelson Leenhouts, Megan Houppert and Sarah Hunt are the principals of the Sponsor, and Megan and Sarah are Nelson Leenhouts' granddaughters. The business address of these individuals is 180 Clinton Square, Rochester, New York, 14604.

As long as the Sponsor has unsold homes or Lots which are offered for sale pursuant to the Offering Plan, Sponsor shall amend the plan whenever there is a change in the budget or when one year has passed since the last budget was updated, and include the prior year's certified financial statements.

Sponsor may not exercise its veto power or use its control of the Board of Directors to reduce the level of services described in the Offering Plan or prevent capital repairs, or prevent expenditures required to comply with applicable laws or regulations.

The Sponsor agrees not to place a mortgage on any property owned by the Association while it is in control of the Board of Directors, without the consent of 51% of the Lot Owners, excluding itself.

While the Sponsor is in control of the Board of Directors, certified financial statements will be provided each year to the Lot Owners.

The Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots. In addition, so long as the Sponsor owns a Lot subject to this Declaration, the written consent of the Sponsor will be required for an amendment which adversely affects the Sponsor's interest.

The By-laws of the Association may be amended by a vote of 2/3 of Lot Owners present at a meeting at which a quorum is present.

The costs and expenses of operating the Association and of making capital improvements, if any, will be allocated among the Lot Owners, excluding the Sponsor, and assessed by the Board of Directors. Every Owner of a Lot, excluding the Sponsor, merely by becoming an owner, covenants and agrees to pay annual maintenance assessments, payable monthly, and special assessments, if any, payable when due, to enable the Association to carry out its functions. Maintenance Assessments shall commence on the first day of the month following the sale of the first Lot, or at such later time as the Sponsor shall determine. All Maintenance and Special Assessments become a lien and charge against the Lot and shall also be a personal obligation of the Lot 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 30 days of the due date, the Association may collect interest at the rate of ten percent per year on the amount due, accelerate

the remaining installments, if any, bring legal action against the Owner personally obligated to pay the assessment, and/or foreclose the lien against the Lot. Delinquent Lot Owners will also be assessed attorney's fees for collecting unpaid assessments. The waiver of the use or enjoyment of the Association Property or the abandonment of a Lot shall not be grounds for exemption from the obligation to pay assessments. In no event shall voting rights or the right to use Association Property be suspended for the non-payment of assessments.

The annual maintenance assessment is determined by the Board of Directors of the Association at least 30 days in advance of each annual assessment period. The annual maintenance assessment may be increased or decreased based on the anticipated costs and expenses of the Association during the next annual assessment period.

In addition to the annual maintenance assessment, the Association may levy in any assessment year a special assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements or for any other matter decided upon by the Association. Provided however, that for any special assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any special assessment amounting to more than 20% of the then current amount of annual maintenance assessments, the consent of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose is required.

The lien of the Assessments shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, or from the lien of any such subsequent Assessment.

The Maintenance Assessment for each Lot not owned by Sponsor shall be determined by multiplying the total annual Maintenance Assessment by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then subject to the Declaration. Any change in the basis of determining the Maintenance Assessment shall require the consent of not less than two-thirds (2/3) of the total votes of Members. In addition, the written consent of the Sponsor will be required for any change which materially adversely affects the interest of the Sponsor with respect to Lots covered by the Declaration, which consent will not be unreasonably withheld.

**XI. Opinion of Counsel**

700 Crossroads Building  
2 State Street, Rochester, New York 14614  
P 585.987.2800 F 585.454.3968



1900 Main Place Tower  
Buffalo, New York 14202  
P 716.248.3200 F 716.854.5100

woodsoviatt.com

February 1, 2017

Charlotte Square Homes LLC  
180 Clinton Square  
Rochester, New York 14604

Attn: Mr. Nelson Leenhouts

Re: Charlotte Square Townhomes

Gentlemen:

In response to your request for our opinion in conjunction with your proposed sale of Lots in Charlotte Square Townhomes with mandatory membership in the Charlotte Square Townhomes Homeowners Association, Inc., (the "Association") a not-for-profit corporation, please be advised as follows:

Taxation of Lot Owners: Under the provisions of Section 164 of the Internal Revenue Code and Section 615 of the New York Tax Law, each Lot Owner who itemizes deductions will be entitled to deduct from his adjusted gross income for Federal and New York State income tax purposes the real estate taxes assessed against his Lot and paid by him. Maintenance Assessments paid by each Lot Owner to the Association are not deductible from his adjusted gross income for Federal and New York State income tax purposes.

Association Validly Formed: The Association was validly formed under the Not-For-Profit Corporation Law of the State of New York.

Taxation of the Association: Section 528 of the Internal Revenue Code exempts qualifying homeowners associations from income taxes on "exempt function income." Exempt function income includes membership dues, fees, and assessments received from association members. Income which is not exempt function income is subject to income tax at the current rate of 30 percent. Examples of non-exempt function income are interest earned on a sinking fund for capital improvements, amounts from non-members for use of the association's facilities, and amounts paid by association members for special use of the association's facilities.

In order to qualify for this limited tax exemption an association must meet the following requirements:

1. It must be organized and operated for exempt function purposes;
2. At least 60% of its gross income must be received as membership dues, fees, or assessments from the Lot Owners;
3. At least 90% of the association's expenditures must be for the acquisition, construction, management, maintenance and care of association property;
4. No part of the association's earnings may inure to the benefit of any individual except through a rebate of excess membership dues or directly through the acquisition or upkeep of association property;
5. The association must file the appropriate election for the year with the Internal Revenue Service.

Based on our review of the estimate of projected income and expenses which you have provided, it is our opinion that the Association can qualify for the limited income tax exemption for homeowners associations under Section 528 of the Internal Revenue Code. We point out, however, that qualifying under Section 528 is determined on a year by year basis. The Association must therefore carefully monitor its operation to insure that the requirements set out above, as well as those that may be added by new legislation or administrative action, are satisfied each year. We also point out that the tax exemption is limited, so that even in years when the exemption applies the Association may nonetheless incur federal tax liability on non-exempt function income.

The Association will not be subject to a franchise tax imposed under Article 9-A of the New York Tax Law. The Association will not be exempt from New York sales taxes.

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, timeliness and uniformity of enforcement of rules, regulations and architectural standards by the homeowners association.

Site Plan Approval: We have received a copy of the City of Rochester, Bureau of Planning and Zoning letter dated January 9, 2017 approving the Site Plan of the Charlotte Square Townhomes and based upon this information, it is our opinion that, if Charlotte Square Townhomes is built in accordance with the approval requirements, it will conform to applicable zoning ordinances and statutes.

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel bases this opinion will not change. In no event will the Sponsor, the Sponsor's counsel, the Association, counsel to the Association, 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.

We understand that this letter will be made part of the Charlotte Square Townhomes Homeowners Association, Inc. Offering Plan.

Very truly yours,



WOODS OVIATT GILMAN LLP

## **XII. LOCAL GOVERNMENT APPROVAL**

On November 14, 2016, the City of Rochester Planning Commission approved the Final Subdivision for Charlotte Square Townhomes. The Sponsor will provide the Association with a preliminary subdivision map and with a filed subdivision map when received. Site plan approval was received from the City of Rochester Bureau of Planning and Zoning on January 9, 2017.

**XIII. WORKING CAPITAL FUND**

This offering does not involve a working capital fund.



#### **XIV. RESERVE FUND**

The Association's reserve fund is part of the common charge assessment as discussed in the Budget Section of this Plan. It is believed the reserve fund is sufficient to meet the Association's reserve fund needs for the first five years of operation.

The reserve fund will not be used to defray any Lot Owner's (including the Sponsor's) obligation for the payment of Maintenance Assessments. After the first election of a Board of Directors which is not controlled by the Sponsor, the funds will be turned over to the new Board of Directors with an accounting. Neither the New York State Department of Law, nor any other government agency, has passed upon the adequacy of the reserve fund.

## XV. MANAGEMENT AGREEMENT

The Sponsor's related company, Home Leasing, LLC, will act as Managing Agent of the Association during the Sponsor's period of control of the Board of Directors. Home Leasing, LLC's experience in this area includes the management of over 20 residential apartment communities in New York, Pennsylvania and Maryland. For its services, the Sponsor will receive a fee of \$30.00 per Lot per month, which amount is a reasonable market rate. In addition, the Sponsor will receive reimbursement for all out-of-pocket expenditures.

The initial term of the Management Agreement is for one year, subject to the Agent's option to terminate on 60 days' notice to the Association. The Management Agreement is not assignable. The Association may cancel the Management Agreement upon default of the Managing Agent.

As long as the Sponsor shall control the Board of Directors, the Sponsor will not commit the Board of Directors or the Association to any other Management Agreement which extends beyond the date on which the Sponsor's control ceases.

Services rendered to the Association by the Sponsor as Managing Agent will include:

- a. Billing and collecting common charges and expenses;
- b. Supervising landscape maintenance, snow removal from the roadways, driveways, and repairs to the common elements;
- c. Hiring and discharging employees;
- d. Maintaining the Association books and attending meetings of the Board of Directors and Lot Owners;
- e. Maintaining payroll records and filing withholding tax statements for employees, if any ;
- f. Furnishing monthly reports of receipts and disbursements to the President and Treasurer of the Association.

The Sponsor as Managing Agent will not prepare the Association's annual certified financial statement. Such statement will be prepared by an independent certified public accountant employed by the Board of Directors at the expense of the Association. This expense is provided for in the estimate of common expenses for the first year of Association operation contained herein.

The Association will indemnify and defend the Sponsor as Managing Agent against all suits brought in connection with the Association and from liability for loss of person or property. The Association will also pay all expenses of the Sponsor as Managing Agent in defending against such suits.

Except as set forth above, no other contracts or agreements have been entered into by the Sponsor at this time which would bind the Association after closing of title to the first Lot. Any and all such agreements shall be entered into by the Association on its own behalf on its own authority.

## XVI. IDENTITY OF PARTIES

Charlotte Square Homes, LLC, a New York limited liability company with its principal office at 180 Clinton Square, Rochester, New York 14604 was formed on June 29, 2015. It is the Sponsor of this offering.

The sole member of Charlotte Square Homes LLC is Home Leasing, LLC, with a principal address of 180 Clinton Square, Rochester, New York 14604. Nelson Leenhouts is one of the principals of Home Leasing, LLC and is responsible for day to day operations of the company. He has over 50 years' experience in development and management of residential and commercial projects throughout the country. Nelson Leenhouts is a licensed NYS Real Estate Broker. Home Leasing, LLC will act as the selling agent for this Offering Plan.

Another principal of the Sponsor is Sarah Hunt, Nelson Leenhouts' granddaughter. She is Vice President of Property Management for Home Leasing. A member of the Home Leasing team since 2010, she currently oversees management of all Home Leasing's apartment communities in New York, Pennsylvania and Maryland. She holds certification as an Accredited Residential Manager through the Institute of Real Estate Management.

The final principal of the Sponsor is Megan Houppert, also a 3<sup>rd</sup> generation Leenhouts family member. Megan joined Home Leasing in 2010 and is now working with the development team to determine project feasibility, financing and neighborhood relations.

The Sponsor and its principals have not participated in any offerings of cooperative interests in realty in the past five years.

Neither the Sponsor, nor either principal, has been convicted of any felony. Neither the Sponsor, nor any principal, has been the subject of any prior bankruptcy, conviction, injunction or judgment that may be material to this Offering Plan.

Woods Oviatt Gilman LLP, Paula A. Lapin, Esq., of counsel, 2 State Street, 700 Crossroads Building, Rochester, New York, prepared the Offering Plan and will represent Sponsor in Lot sales. There is no relationship, financial or otherwise, between the Sponsor and Woods Oviatt Gilman LLP.

In accordance with the terms of the Offering Plan, the Sponsor's related company, Home Leasing, LLC will act as Managing Agent for the Association's first year of operation.

SWBR, 387 East Main Street, Rochester, New York 14604, is an architectural firm with principals licensed by the State of New York. SWBR has designed the homes to be built on the property. SWBR was founded in 1969. SWBR's representative clients include schools, universities and multi-family residential developers. There is no relationship, financial or otherwise, between the Sponsor and SWBR.

Passero and Associates ("Passero") is an engineering firm with an office at 242 West Main Street, Rochester, New York 14614. Its principals are licensed engineers in the State of New York. Passero has over 40 years of experience in both residential and commercial projects. There is no relationship, financial or otherwise, between the Sponsor and Passero.

## **XVII. REPORTS TO MEMBERS**

All Members of the Association will be entitled to receive annually from the Association, at the expense of the Association, copies of the following:

1. An annual certified financial statement to be received at the Annual Meeting. The Association's annual financial statement will be certified while the Sponsor is in control of the Board of Directors.
2. Notice of the Annual Meeting, to be given not less than ten (10) days or more than thirty (30) days before the date of the Annual Meeting.
3. A copy of proposed budget for the Association 30 days before the date a new monthly common charge becomes effective. While the Sponsor is in control, the budget will be certified by an expert as to adequacy.

**XVIII. DOCUMENTS ON FILE**

Copies of this Offering Plan and all exhibits or documents filed with the New York State Attorney General shall be available for inspection by prospective purchasers at the on-site office of the Sponsor and shall remain available for inspection for a period of six (6) years from the date of transfer of the first Lot.

## **XIX. GENERAL INFORMATION**

The Sponsor is not involved in any litigation, nor is the subject of any investigation, which may materially affect the offering, the property, the Sponsor's capacity to perform all of its obligations under the Plan, or the operation of the Association.

In accordance with the provisions of the laws of the State of New York, the Sponsor represents that it will not discriminate against any person because of race, creed, color, sex, national origin, age, disability, marital status or any basis prohibited by civil rights laws in the sale of Lots or in the offering of memberships in the Association.

The purchaser of a Lot may rescind the purchase offer following a material adverse amendment of this Offering Plan. Rescission shall be in accordance with Section 22.5(a)(5) of Part 22 of the NYCRR governing this Offering Plan.

This Plan is not offered to persons less than 18 years of age.

As of the date this Offering Plan is accepted for filing, no contract of sale has been entered into and no deposits or advances of funds have been accepted. All Townhomes offered in this Offering Plan as part of the Association are vacant as of the date this Offering Plan is accepted for filing.

Except for the Management Agreement referred to above, the Sponsor has entered into no contract which will be binding upon the Association. The Sponsor, however, reserves the right to enter into contract substantially in accordance with the description of services and charges set forth in the projected budget set forth in this Plan.

This Offering Plan contains a fair summary of the pertinent provisions of the various documents referred to herein and does not knowingly omit any material fact or contain any untrue statement of a material fact relating to the offering. Any information or representation which is not contained in this Offering Plan must not be relied upon. This Offering Plan may not be modified orally. No person has been authorized to make any representations which are not expressly contained herein.

**PURCHASE AGREEMENT  
CHARLOTTE SQUARE TOWNHOMES**

This Agreement made the \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between Charlotte Square Homes, LLC, a New York limited liability company, having an office at 180 Clinton Square, Rochester, New York 14604, hereinafter called "Seller" and \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter called "Purchaser".

**WITNESSETH:**

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

1. DESCRIPTION OF PREMISES: Those certain premises known as Lot No. \_\_\_\_\_, also referred to as \_\_\_\_\_, located in the City of Rochester, County of Monroe and State of New York, as shown on the Subdivision Map filed in the Monroe County Clerk's Office on \_\_\_\_\_, 2017.

The Lot is or will be improved with a dwelling unit (the "Unit") (together the Lot and Unit shall constitute the "Premises") in accordance with Seller's plans and specifications for unit type \_\_\_\_\_ on file in the office of Seller, and which are incorporated into this Agreement by reference, exclusive of any "Extras" contained in Seller's model, except for those "Extras", changes or deletions, if any, set forth on Exhibit B attached. The Unit is projected to be completed on or about \_\_\_\_\_ days from commencement of construction subject to the provisions of No. 14 below. It is understood and agreed that Seller will start construction of the Premises after Purchaser removes any and all contingencies for its benefit contained in this agreement along with the issuance of the building permit.

Purchaser understands that the Lot is part of Charlotte Square Townhomes Homeowners Association, Inc., (the "Association" or "HOA") and that membership in the HOA is mandatory. A monthly fee of \$\_\_\_\_ is required to be paid by all owners in the HOA.

2. TITLE: Purchaser agrees to accept insurable title to the premises together with all rights of Seller in and to any and all streets, roads, highways, alleys, driveways, easements and rights of way appurtenant thereto and subject to the following: restrictive covenants of record provided the same have not been violated, unless the enforcement of said covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; water, sanitary sewer, drainage, electrical and telephone easements of record, provided said easements are or may be used to service the Premises and provided the improvements do not encroach upon the easements; the title exceptions set forth in Exhibit A attached hereto and made a part hereof; and also the Declaration of Covenants, Conditions, Restrictions, Easements, and Liens of Charlotte Square Homes (and amendments thereto), and the By-Laws of Charlotte Square Homes Homeowners Association, Inc., both of which are included in the Offering plan for the Association, which Offering plan Purchaser hereby acknowledges having received:

( ) at least three (3) business days prior to the date hereof;

( ) less than three (3) business days prior to the date hereof in which event Purchaser shall have until 4:00 p.m. of the seventh day following the date hereof, to rescind such purchase and to thereafter receive a return of all deposits made;

and which Offering plan is incorporated herein by reference. Purchaser hereby agrees to be bound by the Declaration, By-Laws and any Rules and Regulations of the Association as the same may be amended from time to time. Purchaser acknowledges that Purchaser 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.

3. PRICE: Purchaser shall pay to Seller for said Premises the sum of \$ \_\_\_\_\_ payable as follows:

The total deposit required is 10% of the purchase price, payable by check made to the order of "Woods Oviatt Gilman LLP, as escrow agent for Charlotte Square Townhomes HOA", and due

Upon signing this instrument \$ \_\_\_\_\_

Upon delivery of the deed in cash  
or certified check the sum of: \$ \_\_\_\_\_

Purchaser is advised that, to assure the return of the funds deposited with Seller in the event this Agreement is terminated for reasons other than Purchaser's default, such funds will be held by Woods Oviatt Gilman LLP, as Escrow Agent for Charlotte Square Homes HOA, in a special segregated IOLA escrow account, at M&T Bank Rochester, New York. The funds so deposited will be disbursed upon instruction of Paula A. Lapin Esq., of the law firm of Woods Oviatt Gilman LLP, 2 State Street, Rochester, New York 14614, escrow agent and closing attorneys for the Sponsor, in compliance with the provisions of this Purchase Agreement and the New York State Department of Law regulations regarding escrow accounts. Purchaser acknowledges that Seller's deposit of Purchaser's down payment in an escrow account pursuant to the requirements of the New York State Department of Law shall not be deemed an acceptance of this Purchase Agreement by Seller.

In the event this Agreement is terminated for reasons other than Purchaser's default, such funds, to the extent not utilized for "extras" as provided in this Agreement, will be returned to Purchaser within 15 days of such termination. Upon closing, Purchaser agrees that deposits and advances held in trust may be released to Seller. The full terms of the Escrow Agreement are attached to this Purchase Agreement. **YOU MUST SIGN THE ESCROW AGREEMENT IN ORDER FOR THIS CONTRACT TO BE EFFECTIVE.**



4. CONTINGENCIES. This Contract shall be contingent upon the contingencies set forth below. If these contingencies are not satisfied by the date specified, then either Purchaser or Seller may cancel this Contract by written notice to the other.

- a. Attorney Approval. This Contract is subject to the written approval of attorneys for Purchaser and Seller within seven (7) days from the date of acceptance (the "Approval Period"). If either attorney makes written objection to this Contract within the Approval Period, and such objection is not cured by written approval by all of the parties within the Approval Period, then either Purchaser or Seller may cancel this Contract by written notice to the other and any deposit shall be returned to the Purchaser. If either attorney does not respond within the Approval Period, it shall be deemed that the party whose representative has not responded has waived the benefit of this contingency.
- b. Mortgage Approval. This Contract is subject to Purchaser obtaining a mortgage loan commitment in an amount not to exceed \$ \_\_\_\_\_ at an interest rate not to exceed \_\_\_\_\_%, for a term of \_\_\_\_\_ years. Purchaser shall immediately apply for this loan and shall have until \_\_\_\_\_, to obtain a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this Contract but shall be the sole responsibility of Purchaser. Acceptance of a written mortgage commitment by Purchaser shall be deemed a waiver and satisfaction of this contingency. If Purchaser fails to satisfy this contingency on or before the above date, Seller may terminate this Contract by written notice to Purchaser and any deposit shall be returned to Purchaser.
- c. Sale Contract Contingency. This Contract is subject to Purchaser obtaining a contract for the sale of his/her existing property located at \_\_\_\_\_ no later than \_\_\_\_\_, 201\_. Unless and until Purchaser has removed this sale contingency in writing, if Seller receives another acceptable purchase offer, Seller may notify Purchaser in writing that Seller wants to accept the other offer and Purchaser will then have \_\_\_ days to remove this sale contingency by written notice to Seller. If Purchaser does not remove this sale contingency after receiving notice from Seller, Purchaser's rights under this Contract shall end, and Seller shall be free to accept the other purchase offer and Purchaser's deposit shall be returned. If this contingency is removed by Purchaser, then, pursuant to paragraph (b), above, a transfer of title contingency contained in Purchaser's mortgage commitment shall not be deemed a contingency of this Contract but shall be the sole responsibility of Purchaser. A removal of this contingency will require that Purchaser provide to Seller a written confirmation of sufficient funds to close the transaction.

- d. Transfer of Title Contingency. This Contract is subject to the transfer of title to Purchaser's existing property located at \_\_\_\_\_ no later than \_\_\_\_\_.

( ) Purchaser represents that Purchaser has entered into a contract for sale of Purchaser's existing property which is now subject to the following contingencies:  None;  Mortgage;  Assumption of Mortgage;  Sale of Property;  Transfer of Title;  Attorney Approval and/or  Other \_\_\_\_\_

Unless and until Purchaser has obtained a contract for sale of Purchaser's existing property which is not subject to any unsatisfied contingencies, and has so notified the Seller in writing, if Seller receives another acceptable purchase offer, Seller may notify Purchaser in writing that Seller wants to accept the other offer and Purchaser will then have two (2) days to remove this transfer of title contingency by written notice to the Seller. If Purchaser does not remove this transfer of title contingency after receiving notice from Seller, Purchaser's rights under this Contract shall end, and Seller shall be free to accept the other purchase offer and Purchaser's deposit shall be returned. If this contingency is removed by Purchaser, then, pursuant to Paragraph (a) above, a transfer of title contingency contained in the Purchaser's mortgage commitment shall not be deemed a contingency of this Contract, but shall be the sole responsibility of the Purchaser.

5. UNIT: Seller agrees to construct and complete on the Premises the Unit identified in Paragraph 1 above. In the event Seller is unable to obtain the exact materials specified on the plans and specifications through Seller's ordinary and usual source of supplies, Seller shall have the right to substitute materials of similar pattern, design and quality. Seller shall also have the right to determine the grading, elevation and of the plot and dwelling to fit into the general pattern of the development.

6. ADJUSTMENTS AT CLOSING: Taxes computed on a fiscal year basis and Association assessments shall be pro-rated and adjusted as of the date of delivery of the deed. Purchaser will accept title subject to, and will pay all assessments and installments of assessments for local improvements which are not payable as of the date of delivery of the deed and which, if any, appear on the current tax rolls.

7. SEARCH AND SURVEY: Seller, at Seller's expense, shall furnish and deliver to Purchaser or Purchaser's attorney at least 15 days prior to the date of closing: (1) a fully guaranteed tax and title search ("Abstract"), and (2) a copy of the title insurance policy or policies insuring the title of the Association to the common areas designed to afford access to the premises in such amount as substantially approximates the value of such common areas. Such search shall be dated subsequent to the date of this Agreement and shall include a local tax certificate. Seller shall also furnish Purchaser with a survey made by a land surveyor duly

licensed by the State of New York, which survey may include the entire Development in which the premises are located. A survey covering only the Lot being purchased will not be furnished.

8. **DEED:** At the time of closing herein, Seller shall tender to Purchaser a Bargain and Sale deed with covenant against grantor's acts and with lien covenant conveying insurable title in fee simple free and clear of all encumbrances except as otherwise provided herein.

9. **INSPECTION:** Prior to closing Purchaser shall have the right to inspect the Premises upon reasonable notice to Seller.

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

11. **COSTS:** Seller shall pay for the continuation of the title search to the time of closing. Purchaser shall pay for any fees incurred in obtaining a mortgage, for recording of the deed and mortgage including mortgage tax and transfer tax, and for any title insurance desired or required by the Purchaser.

12. **FAILURE TO DELIVER OR REJECTION OF TITLE:** Should Seller be unable or fail to deliver insurable title to the premises in accordance with the provisions of this Agreement, or in the event Purchaser shall raise objections to Seller's title or to the improvements, which, if valid, would render the title uninsurable, or if the intended use of the improvements for a single family dwelling is illegal (being in violation of any effective law, ordinance, regulation or restriction), either Purchaser or Seller shall have the right to cancel this Agreement by giving written notice of such cancellation to the other and it is agreed that Seller's liability shall be limited to the return to Purchaser of its deposit, and upon return of such sum, 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 thereafter either party secures a commitment for title insurance at standard rates to insure against the objection raised, Purchaser shall pay the cost thereof and in such event this Agreement shall remain and continue in full force and effect.

13. **CLOSING:** This Agreement shall be closed at the office of the Seller's Attorney on or about the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, except that if the Premises shall not be ready for occupancy on such date, the closing may be postponed by Seller to a date to be set by Seller upon notice provided to Purchaser at Purchaser's address set forth above, or by acknowledged email receipt. Seller shall not be responsible for any delay in completing the dwelling if such delay is caused by the unavailability of materials, labor or transportation or by other causes beyond the control of Seller.

14. **PURCHASER'S FAILURE TO TAKE TITLE:** If you default under this Agreement, we shall have all available legal remedies including (i) terminating the Agreement and retaining your deposit as liquidated damages as set forth in the next sentence, or (ii) suing you for damages. Our liquidated damages shall be all amounts you have paid to us up to ten percent (10%) of the base purchase price of your Unit. If you have paid us less than ten percent (10%) of the base purchase price of the Unit before you default, we may collect, also as our liquidated damages, the difference between what you paid and ten percent (10%) of the base purchase price. In addition, we

shall retain, as part of our liquidated damages, any payments made by you that we have expended for "extras" you contracted for.

15. **WARRANTIES.** Seller shall deliver to Purchaser at closing all manufacturer's warranties relating to appliances installed by Seller. The dwelling shall be covered by the Rochester Homebuilder's Association, Inc. Limited Warranty and Construction Performance Guidelines in effect at the time of the execution of this Contract (collectively, "Warranty Documents") with Seller's maximum total aggregate liability limited to 90% of the Contract price in the first year of warranty coverage and 75% in years 2-6 of warranty coverage which Warranty Documents shall be delivered to Purchaser at closing.

**NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE IN CONNECTION WITH THIS AGREEMENT. THE TERMS OF THE LIMITED WARRANTY SET FORTH IN THE OFFERING PLAN ARE INCORPORATED IN THIS AGREEMENT.**

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

16. **THIS AGREEMENT SUBJECT TO BUILDING LOAN MORTGAGE:** Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage or other purchase money mortgages on the premises heretofore or hereafter made and any advances made thereon, and any payments or expenses already made or incurred or which may hereafter be made or incurred, pursuant to the terms thereof, to the full extent thereof without the execution of any further legal documents by Purchaser.

17. **ESCROW FOR COMPLETION:** In the event that the dwelling shall not be fully completed at the time set by Seller for the closing of title, the same shall not constitute an objection to such closing provided that the lending institution granting Purchaser's mortgage shall issue an inspection report and an escrow fund shall be deposited by Seller with the lending institution or lending institution's counsel if required under said report, and further provided that Purchaser shall have the right to delay the closing of title until a Certificate of Occupancy has been issued. The escrow fund shall be paid by the lending institution directly to 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 of its funds so held in escrow. No escrow shall be held for completion of improvements on common areas owned by the Association.

18. **REPRESENTATIONS:** This Agreement constitutes the entire agreement between the parties hereto relating to said sale and purchase and supersedes all prior or other agreements and representations in connection with said sale and purchase. All the terms, covenants, provisions, conditions and agreements above set forth or provided for shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors and assigns. Any inconsistencies between this Agreement and the Offering Plan shall be resolved in favor of the Offering Plan.



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

**Purchaser**

\_\_\_\_\_  
**Purchaser**

**ACCEPTANCE: I hereby accept this offer and agree to sell on the terms and conditions set forth.**

**Charlotte Square Homes, LLC  
BY: Home Leasing, LLC, its sole member**

**By: \_\_\_\_\_  
Nelson Leenhouts, Manager**

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

Administrative Information

Property Address \_\_\_\_\_

**Seller:** Charlotte Square Homes LLC

**Buyer:** \_\_\_\_\_

**Address:** 180 Clinton Square

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

Rochester, New York                      ZIP: 14604

\_\_\_\_\_ Zip: \_\_\_\_\_

**Email:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** (H) \_\_\_\_\_ (W) \_\_\_\_\_

**Phone:** (H) \_\_\_\_\_ (W) \_\_\_\_\_

**Attorney:** Paula Lapin, Woods Oviatt Gilman LLP

**Attorney:** \_\_\_\_\_

**Address:** 700 Crossroads Bldg., 2 State Street

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

Rochester, New York                      ZIP: 14614

\_\_\_\_\_ ZIP: \_\_\_\_\_

**Email:** plapin@woodsoviatt.com

**Email:** \_\_\_\_\_

**Phone:** (585) 445-2750    **Fax:** (585) 445-2650

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Listing Broker:** \_\_\_\_\_

**Selling Broker:** \_\_\_\_\_

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

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

\_\_\_\_\_ ZIP: \_\_\_\_\_

\_\_\_\_\_ ZIP: \_\_\_\_\_

**Email:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Listing Agent:** \_\_\_\_\_

**Selling Agent:** \_\_\_\_\_

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

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

\_\_\_\_\_ ZIP: \_\_\_\_\_

\_\_\_\_\_ ZIP: \_\_\_\_\_

**Email:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**ID#** \_\_\_\_\_

**ID#** \_\_\_\_\_

**EXHIBIT A to Purchase Agreement**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.  
LIENS, ENCUMBRANCES AND OTHER TITLE EXCEPTIONS**

1. The terms, conditions, covenants, easements and provisions of Charlotte Square Townhomes Declaration and the provisions of the By-Laws of Charlotte Square Townhomes Homeowners Association, Inc.
2. State of facts as shown on the Subdivision Map recorded in the Monroe County Clerk's Office on \_\_\_\_\_, 2017 as the same may be updated and revised from time to time.
3. Zoning regulations and ordinances and any amendments thereto provided that neither the building in which the Unit is located nor its use as contemplated by the Plan are prohibited thereby.
4. New York State franchise taxes of any corporation in the chain of title, provided that any title company licensed to do business in the State of New York is willing to insure that such taxes will not be collected out of the Unit.
5. Sewer, water, electric, plumbing, heating, gas, telephone, television, and other utility easements and consents, if any, including the right to maintain and operate lines, wires, cables, pipes, conduits, poles and distribution boxes in, over, under, and upon the Property and the buildings in the development.
6. Future installments of special assessments for improvements.
7. Utility, drainage, sewer and water easements, rights of way, and agreements granted to or made with any utility company or municipality.

All of the above shall survive delivery of the deed.



**EXHIBIT B to Purchase Agreement**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.  
NEW HOME QUOTE**

**EXHIBIT C to Purchase Agreement**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION INC  
HOME FIRE SPRINKLER SYSTEMS**

This is an addendum to Contract for all contracts in Charlotte Square Townhomes

**NOTIFICATION:** New York State law requires that all new home buyers receive a copy of the pamphlet "Home Fire Sprinkler Systems: The Future of Fire Safety Here Today", written by the Home Fire Sprinkler Coalition and distributed through the State Office of Fire Prevention and Control . The pamphlet contains important information about the benefits of installing automatic fire sprinklers in your new home.

A fire sprinkler system is not included in the purchase price of the home and such installation would be at additional cost to the Purchaser.

Confirmation by Purchaser – receipt of required pamphlet.

The undersigned Purchaser(s) hereby acknowledge(s) as follows:

I have received a copy of the pamphlet "Home Fire Sprinkler Systems: The Future of Fire Safety Here Today", informing me of the benefits of automatic fire sprinklers.

Purchaser: \_\_\_\_\_

Purchaser: \_\_\_\_\_

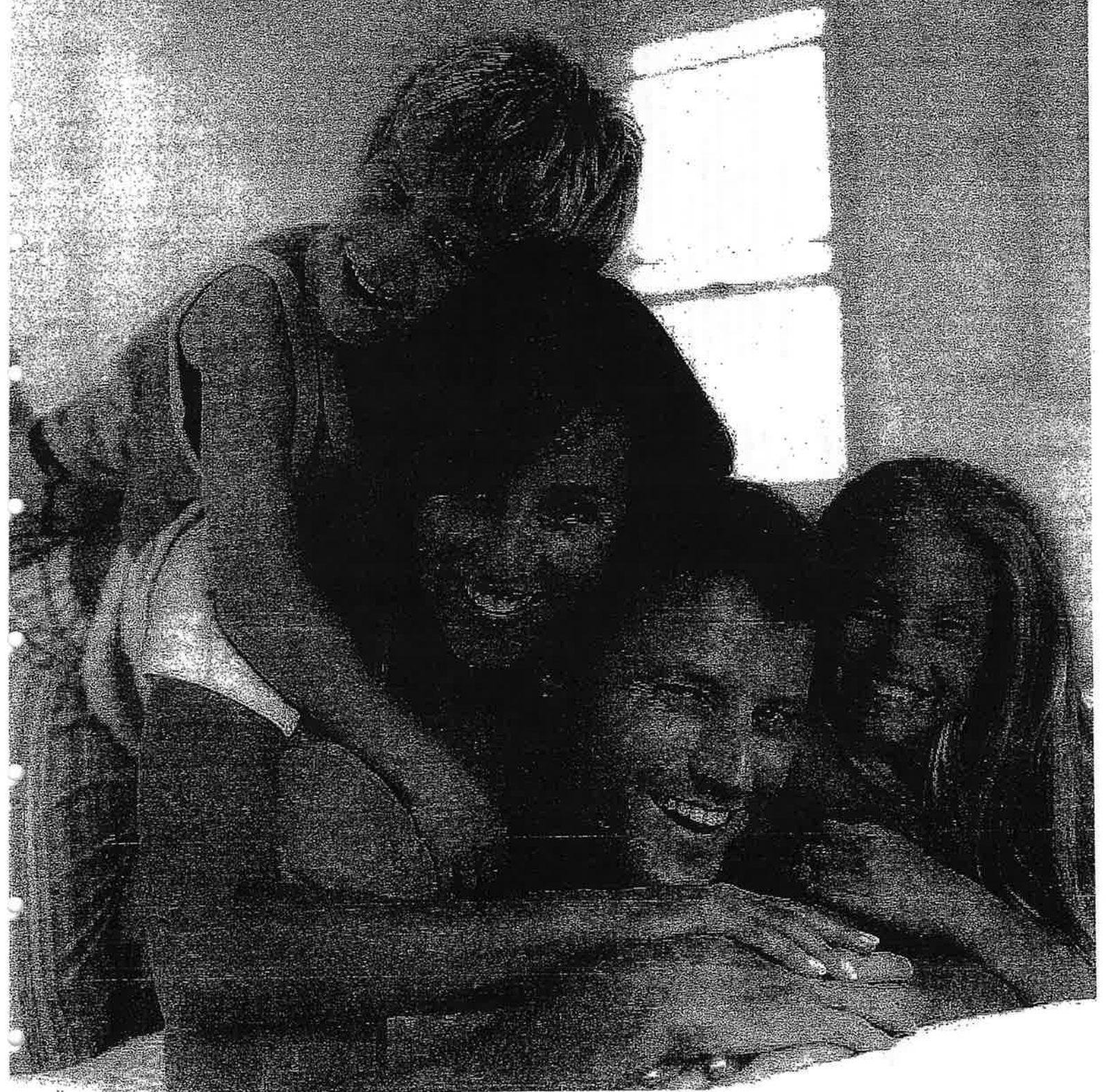
Date: \_\_\_\_\_

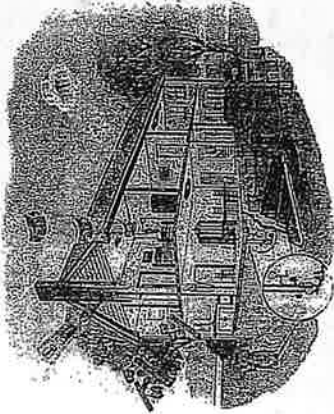
Home Fire Sprinkler

C O A S E L I T E I O N  
P R O T E C T W H A T Y O U V A L U E M O S T

HOME FIRE  
SPRINKLER SYSTEMS

the future of **fire safety**  
here today





**"Fire sprinklers give me peace of mind, especially at night when my children are sleeping."**

SANDRA KUHN, HOMEOWNER, OREGON

## UNDERSTANDING FIRE SPRINKLER PROTECTION FOR HOMES

Fire kills more people in the United States annually than all natural disasters combined. Ironically, most fire deaths occur in the very place where we feel safest — our own homes. Those at highest risk are very young children and older adults, who may have difficulty making a quick escape.

Fire sprinkler systems provide powerful protection from fire. They work automatically and immediately, before a fire spreads. Sprinklers put water right where it is needed, slowing or stopping the flames and poisonous smoke, so people can get out safely.

The ideal time to install fire sprinkler systems is during new construction. Many homeowners opt to install, or retrofit, sprinklers when they remodel their homes.

### You are at Greatest Danger from Fire at Home

According to the National Fire Protection Association (NFPA), nine out of 10 structure fire deaths happen in homes. Many people don't realize how fast a home fire grows and spreads from room to room. Too often, people think they'll have plenty of time to get out.

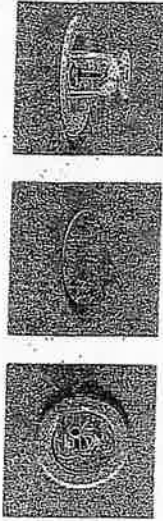
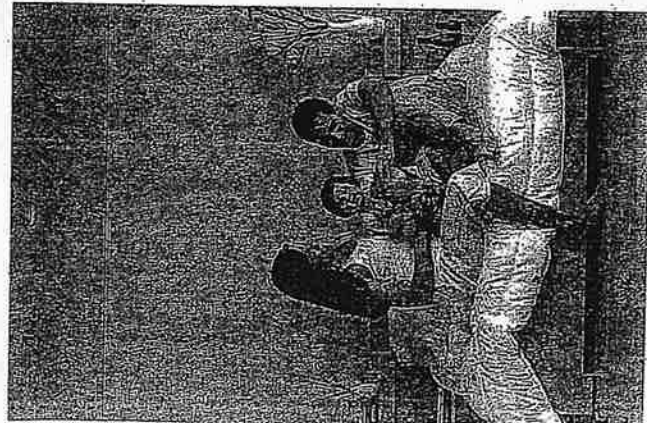
Having fire sprinklers installed at home can save your life if fire strikes. In fact, when fire strikes at home, it can become deadly in as few as three minutes. Most fatal fires take place at night when people are sleeping. A fire sprinkler system is like having a firefighter on duty 24 hours a day.

Watch a video that demonstrates how fast a home fire can become deadly at [HomeFireSprinkler.org](http://HomeFireSprinkler.org).

### A Total System of Safety

Sprinkler systems are the ultimate home fire safety technology available today. Experts agree the most comprehensive protection from a home fire is a total system of safety:

- Prevention
- Early warning (working smoke alarms on every level)
- Quick Evacuation (well-planned and practiced home fire drills)
- Suppression (fire sprinkler system)



Sidewall Sprinkler

Concealed Sprinkler

Pendant Sprinkler

## HOW FIRE SPRINKLERS WORK

Fire sprinklers protect your home around the clock, automatically. Each sprinkler system is unique to the home where it's installed. Most fire sprinkler systems are connected to the household water main. If the water supply is from a well or if the water pressure is too low, a pump and storage tank may be needed.

Fire sprinklers are linked throughout the home by a network of piping. Most home systems today use strong, noncombustible plastic pipe known as CPVC or PEX. Just like plumbing, sprinkler piping is typically hidden behind walls and ceilings. In unfinished basements, you may be able to see the piping in the ceiling, and it may be copper rather than plastic.

There are several types of fire sprinklers made just for homes. They can be installed on walls or in ceilings. Some sprinklers are concealed by a plate. Home fire sprinklers are much smaller than the types of sprinklers used in commercial properties and use much less water.

### Heat Activates a Sprinkler, Not Smoke

Each sprinkler has a temperature-sensitive element and is individually activated by heat. Water flows from the sprinkler when the temperature reaches between 135°-165°F. In the vast majority of fires in sprinklered homes, only a single sprinkler will operate.

Smoke, cooking vapors or steam cannot cause home fire sprinklers to activate. Only the high temperature of a fire will operate the sprinkler.

### Maintenance is a Snap

Home fire sprinklers require very little maintenance. It's essential to keep the water valve turned on, so a simple visual inspection should be done routinely to ensure the valve is open. (Keeping the valve padlocked in the "on" position is a good idea.)

Inspect the pipes and sprinklers occasionally to make sure nothing is obstructing them.

Every home sprinkler system should have a water flow test on a regular basis. It's a simple test that can be done by the homeowner or a fire sprinkler contractor.

A SPRINKLER COVER IS APPROXIMATELY 12 X 12 FOOT AREA. EXTENDING COVERAGE SPRINKLER CAN COVER A MAXIMUM AREA OF 200 X 70 FEET.

CPVC PLASTIC PIPE

BUBBLES PASS THROUGH THE BULB BRASS RELIEFING WATER

CONCEALED FIRE SPRINKLER. THE PLATE FALLS OFF AT ABOUT 135°-165°F.

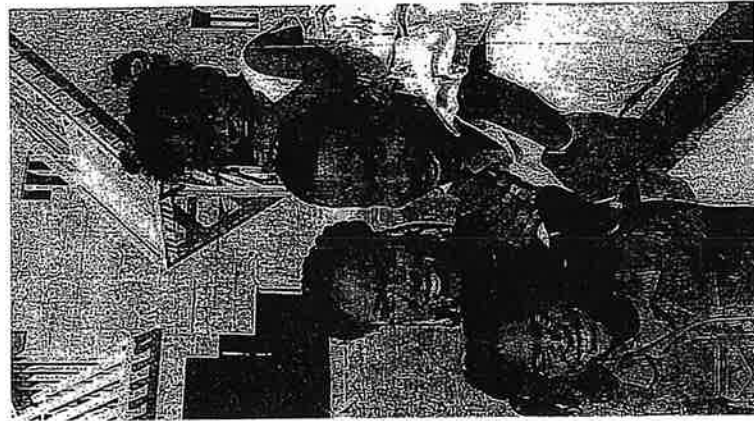
SPRINKLERS ARE LINKED BY A NETWORK OF PIPING, USUALLY HIDDEN BEHIND WALLS AND CEILINGS IN UNFINISHED BASEMENTS UPON HOUSEHOLD WATER SERVICE.

Explains how water flows from the valve and disperses locally to activate.

Shows how the sprinkler is activated by heat.



"An electrical short started a fire in our house. That fire was so fast and furious. The sprinkler system activated immediately. Our house is still standing. We are all still alive including our pets." JIM McCOLLISTER, HOMEOWNER, ARIZONA



## THE ADVANTAGES OF A HOME FIRE SPRINKLER SYSTEM

### With Fire Sprinklers

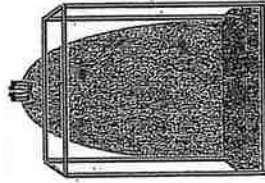
- The sprinkler closest to the fire activates
- Water contains or extinguishes fire
- Residents have time to safely escape
- Surrounding rooms are protected from damage

Fire sprinklers work so fast they often put out a home fire before the fire department arrives. Instead of launching a major fire suppression effort, arriving firefighters will simply turn off the sprinkler system and mop up the water.

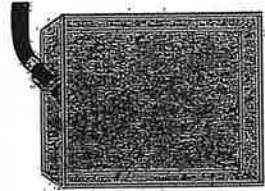
### Without Fire Sprinklers

- Flames grow and move room to room
- Heat and toxic gases spread
- In as few as three minutes, the fire becomes deadly
- Flashover occurs and the gases and combustible materials burst into flames

It typically takes 9-12 minutes from the time a fire starts to the time the fire department arrives. In that time, the fire will be so advanced that firefighters will have to use high-pressure hoses, applying water at 250 gallons per minute. Even if the family is lucky enough to get out unharmed, the home will likely be lost and the family displaced.



Sprinkler - 25 Gallons of Water/Minute



Fire Hose - 250 Gallons of Water/Minute

Learn more about how home fire sprinkler systems work at [HomeFireSprinkler.org](http://HomeFireSprinkler.org)

## HOME FIRE SPRINKLERS ARE A SMART CHOICE

Homebuilders know that homeowners are safety conscious. They want to protect their families and they want to secure their investment. That's why more and more homebuilders are offering their customers the option of installing a fire sprinkler system in new homes. A home fire sprinkler system is a smart choice. Unlike the many upgrades that are available in new construction — such as gourmet kitchen amenities, whirlpool tubs and high-end flooring — only a home fire sprinkler system can save your life if there is a fire. And, the fire sprinkler system also protects your home and your valuables. No other upgrade can do that.

Nearly 70% of homeowners believe having a fire sprinkler system increases the value of a home, according to a survey conducted by Harris Interactive. Nearly half say a sprinklered home is more desirable than an unsprinklered home.

### Affordable Fire Protection

The cost to install a fire sprinkler system is rolled into a new home mortgage, as are the plumbing and electrical systems.

Sprinklered homes qualify for valuable discounts on homeowner insurance premiums. Discounts vary by company and by state, so shop around to find the best discount in your area.

The cost to install a home fire sprinkler system also varies by region. Nationally on average, the cost to install sprinklers is \$165 per sprinklered square foot. Retrofitting a home with sprinklers is typically higher. In many municipalities, increased installations have brought the cost down significantly.

### Unmatched Peace of Mind

Home fire sprinklers are proven lifesavers. In Scottsdale, Arizona, sprinklers have been required in new homes since 1986. A 15-year study of fire loss in Scottsdale since then found that no deaths occurred in the fires that took place in sprinklered homes during the period; 13 people died in unsprinklered homes.

Fire sprinklers also protect property and valuables. The Scottsdale study showed that where fires occurred in sprinklered homes, there was less fire damage and less water damage from suppression. The average loss per sprinklered single-family home fire was \$2,166, compared to \$45,019 for the unsprinklered home fires.

## HARRIS INTERACTIVE SURVEY FINDINGS

- 69 PERCENT OF HOMEOWNERS BELIEVE HAVING A FIRE SPRINKLER SYSTEM INCREASES THE VALUE OF A HOME.
- 38 PERCENT SAY THEY WOULD BE MORE LIKELY TO PURCHASE A NEW HOME WITH SPRINKLERS THAN WITHOUT.
- 45 PERCENT SAY A SPRINKLERED HOME IS MORE DESIRABLE THAN AN UNSPRINKLERED HOME, MOST OF EN BECAUSE OF THE ADDED SAFETY PROVIDED BY THE SPRINKLERS (53 PERCENT).
- IF OFFERED, 36 PERCENT WOULD CHOOSE FIRE SPRINKLERS OVER HARDWOOD FLOORS, AND 35 PERCENT WOULD CHOOSE THEM OVER GARBLE IN THE BATH.
- FOR 45 PERCENT, THE ABILITY TO INCLUDE THE COST OF INSTALLING SPRINKLERS IN THE MORTGAGE IS AN INSTALLATION INCENTIVE.

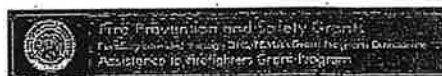
NATIONAL SURVEY CONDUCTED IN DECEMBER 2000 COMMISSIONED BY HESIC



# HFSC MEMBERS



FEMA



Home Fire Sprinkler

COALITION  
Protect What You Value Most

HomeFireSprinkler.org

**EXHIBIT D to Purchase Agreement**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.  
FLOOR PLAN**





**EXHIBIT E to Purchase Agreement**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.  
INCLUDED FEATURES**



## BARGAIN AND SALE DEED

THIS INDENTURE, made \_\_\_\_\_, 2017 between CHARLOTTE SQUARE HOMES LLC, a New York limited liability company having an office at 180 Clinton Square, Rochester, New York 14604 ("*Grantor*") and CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC., with an office at 180 Clinton Square, Rochester, New York 14604 ("*Grantee*");

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

Tax Map Number: 106.81-2-47.002

Tax Mailing Address: Charlotte Square Homes LLC  
180 Clinton Square  
Rochester, New York 14604

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

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

Hereby intending to convey part of the same premises conveyed to the Grantor by deed recorded in the Monroe County Clerk's Office on July 24, 2015 at Liber 11566 of Deeds, Page 536.

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

GRANTOR covenants as follows:

FIRST, that the said Grantor has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid; and

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

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

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

**CHARLOTTE SQUARE HOMES LLC**

By: Home Leasing, LLC, its sole member

By: \_\_\_\_\_  
Nelson Leenhouts, Manager

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Nelson Leenhouts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

20141995.0004

12-22-16

Rev. 12-29-16

### DESCRIPTION OF LOT 211

All that tract or parcel of land containing 0.180 acres, more or less, situate in the City of Rochester, County of Monroe, State of New York, all as shown on a map entitled, "Resubdivision of Lot 2, Charlotte Square Phase II" prepared by Passero Associates, having drawing No. 20141995.0004 - V100 and being more particularly described as follows:

Beginning at a point on the southerly line of Haags Alley (15 feet wide), said point being a distance of 51.67 feet westerly from the intersection with the westerly line of Pitkin Street, as measured along said southerly line of Haags Alley; thence,

1. S 21° 47' 15" W, a distance of 74.56 feet to a point; thence,
2. S 68° 12' 45" E, a distance of 63.21 feet to a point of intersection with the aforementioned westerly line of Pitkin Street; thence,
3. S 12° 59' 33" W, along said westerly line of Pitkin Street, a distance of 10.18 feet to a point; thence,
4. N 68° 12' 45" W, a distance of 196.40 feet to a point; thence,
5. N 21° 47' 15" E, a distance of 10.06 feet to a point; thence,
6. S 68° 12' 45" E, a distance of 52.93 feet to a point; thence,
7. N 21° 47' 15" E, a distance of 74.56 feet to a point of intersection with the aforementioned southerly line of Haags Alley; thence,
8. S 68° 12' 45" E, along said southerly line of Haags Alley, a distance of 78.71 feet to the Point of Beginning.

Intended to describe Proposed Lot 211 as shown on the above referenced map.

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

1000-2000 2000-2000

\*\*\*\*\*

**DESCRIPTION OF HOA PROPERTY AND  
SPECIFICATIONS OR BUILDING CONDITIONS**

**CHARLOTTE SQUARE TOWNHOMES  
HOME OWNERS ASSOCIATION**

**10 UNITS  
CITY OF ROCHESTER  
COUNTY OF MONROE, NEW YORK**

**PREPARED BY:**

**PASSERO ASSOCIATES  
Jess D. Sudol, PE, CPESC, CPSWQ**

**New York State Registered Engineer  
License No. 092235**

**DATED: January 20, 2017**

**DESCRIPTION OF HOA PROPERTY AND  
SPECIFICATIONS OR BUILDING CONDITIONS**

**CHARLOTTE SQUARE TOWNHOMES  
HOME OWNERS ASSOCIATION**

**10 UNITS  
CITY OF ROCHESTER  
COUNTY OF MONROE, NEW YORK**

(a) Describe the location of the property.

The property subject to the Home Owners Association is a lot within the Charlotte Square Townhomes subdivision (Lot 11) City of Rochester, County of Monroe, State of New York. The development is located on the north side of Charlotte Street, west of Pitkin Street and the inner loop.

The property comprised a portion of tax parcel 106.810-02-47.1, prior to filing of the subdivision plans with the Monroe County Clerk's Office, with revised tax parcel numbers to be assigned by the taxing authority.

The current zoning of the property is CCD-E Center City District – East End with Townhomes and associated parking areas being permissible use in said zoning district. The property and proposed use will comply with all zoning and use requirements at closing.

(b) Site.

Discuss:

(1) size (acreage);

The total size of the association property (Lot #11) is 0.610 acres (26,620 square feet).

(2) number of buildings and use;

N/A, the associate property does not include any buildings.

(3) streets owned or maintained by the HOA:

The property does not include streets.

(i) paving (materials, thickness, width and condition); n/a

(ii) curbing (material and condition); n/a

(iii) catch basins, drainage (location and condition); n/a

{4707336: }



(iv) street and sidewalk lighting (material, type, location and condition); Street lighting on Charlotte Street within the City of Rochester right of way, will consists of LED fixtures placed on 16' tall fiberglass poles. These fixtures provide lighting that meets City of Rochester street design standards. Lighting on Haags Alley consists of existing fixtures on wooden utility poles. See also Section (4)(iv) regarding onsite lighting.

(v) whether streets will be built according to applicable governmental standards for public streets and/or will be dedicated to the local governing authority; n/a

(4) drives, sidewalks and ramps:

The property will include a private parking area and drive aisles to service the homeowners of the adjacent 10 Townhomes. Of the 0.61 acres, approximately 0.05 acres will be greenspace and the remaining 0.56 acres will be pavement. The parking lot has access to Haags Alley which is a public street owned and maintained by the City of Rochester.

(i) paving (materials, thickness, width and condition);

The width of the parking lot varies throughout the property. The pavement section is consistent throughout and shall be constructed to the following specifications.

- 1" Lift Top Course Type F2, 80 Series
- 2" Lift Binder Course Type F9, 80 Series Compaction
- 6" Subbase Course Type 2
- 5" Subbase Course Type 1

(ii) curbing (material and condition);

Granite curbing with a 7" reveal is provided within the property around landscape islands and at the entrance to Haags Alley.

(iii) catch basins, drainage (location and condition).

Catch Basins are provided within the property for drainage. The catch basins are 6" thick precast concrete and placed at low areas. A total of five catch basins (see attached utility plan) placed around the site will collect runoff, and convey it via 12" PVC storm sewers to the combined sewer on Haags Alley.

(iv) lighting

A dual head, 14' high, fiberglass light pole is provided within the landscaped island. The fixture is LED and provides lighting levels that exceed the minimums specified by IES for parking lots.

(c) Sub-soil conditions.

Describe (including water conditions):

{4707336: }

There is no evidence of groundwater in the sub-soil. The soil consists of structural fill placed in lifts by the City of Rochester after removal of unsuitable soil. Any soils which are not suitable fill are classified as Urban Fill.

- (1) whether load-bearing capacity and porosity is sufficient to support buildings;

N/A, the associate property does not include any buildings.

- (2) whether there is any moisture or seepage and indicate whether corrective action is needed;

There is no evidence of moisture or seepage. No corrective action is required.

- (3) whether there is any danger from flooding, either due to water table in the area or overflow from other bodies of water. Note potential for mudslides or erosion and what preventive action is appropriate.

The property is neither within a designated floodplain nor proximate to any bodies of water. The water table is not at a depth which would impact the parcel.

- (d) Landscaping and enclosures.

Generally describe the following. Where an item is not specifically identifiable, it may be generally described, *e.g.*, "two rows of deciduous trees" rather than "12 poplar and 12 maple trees in two lines":

- (1) grass cover (type, location);

No grass cover is proposed. Landscaping will be as described below.

- (2) plantings (type, location);

Low maintenance deciduous shrubs, perennials, and ornamental grasses will be planted throughout the site. This includes parking lot islands, areas surrounding private porches and space between sidewalk and building along Charlotte St, Pitkin St and Haags Alley. Areas between townhome Buildings B, C, and D will be filled with stone or low maintenance ground cover behind fence enclosure.

- (3) trees (location);

13 trees will be planted throughout the site. This includes on parking lot islands, in front of porches and along the street.

- (4) fencing (type, location);

4' high decorative fencing will be placed at the west and east ends of the parcel to limit pedestrian activity through the parcel. 6' high fencing will also be placed between townhome Buildings B, C, and D.

(5) gates (type, location);

A gate will be provided on the west end of the site to allow future residence access to the pocket park west of the parcel.

(6) garden walls (type, location); n/a

(7) retaining walls (type, location); n/a

(8) display pools and foundations (location, materials). n/a

(e) Utilities.

Identify source or provider of each utility. Specifically identify which are public utilities or regulated companies and which are solely the obligation of the HOA.

Electricity, natural gas, and telephone and cable services will be located underground within the parking area (with the exception of above-ground t service boxes) in easements granted for such utilities (7' wide easement for electrical service and a similar easement for gas service). The following regulated companies will initially own, operate, and maintain all related utility facilities and provide such services accordingly, all of which will be separately metered and/or charged to each Townhome Owner.

Electricity and Gas - Rochester Gas & Electric Corporation  
Telephone - Time Warner Cable  
Cable Television - Time Warner Cable.

RG&E will install a gas main that will connect to Pitkin Street. This main will enter the south side of the site between Townhome buildings 4 and 5 and branch to the north towards Haags Alley In the Association lands. The individual gas services for each Townhome will be connected from this main to the meter for each building and have the ability to be isolated from the main with a service valve.

RG&E will provide electric from a transformer vault under Charlotte Street. The electric main will enter the site between proposed Townhome Building 3 and 4. The conduit will then branch out onto the site and into several handholes, where the services for each Townhome will connect.

Water will be supplied by The Rochester Water Bureau ("RWB") through individual private water services constructed by the Sponsor in accordance with all RWB specifications. The Association will maintain the lateral water service lines between the curbbox valve and the Townhome wall for each individual Townhome. The cost of the

maintenance of such lateral lines shall be funded through the Association budget via common charges/assessments as applicable.

Storm and sanitary sewers will be provided by Rochester Pure Waters District (Monroe County Pure Waters). Each unit will be provided with its own sanitary lateral and the Association will provide maintenance of 1 laterals between the cleanouts at the right of way line and the Townhome wall for each individual Townhome. The cost of maintenance of such laterals shall be funded by the Association.

(f) Sewers.

(1) Sanitary sewage system.

Describe, including:

(i) sewage piping (materials);

Individual sanitary sewer laterals are provided from the dedicated sewer within Haags Alley, through the subject parcel to the Townhomes. The laterals are 4" PVC SDR-21 and constructed to Rochester Pure Waters standards and specifications.

(ii) sewage pumps (if any); N/A

(iii) sewage disposal (public/private; treatment; drainfield, sewer).

Sewage is disposed through the private laterals which convey the effluent to the public sewer within Haags Alley.

(2) Permit(s) required.

List and include date(s) obtained.

Plumbing Permits for sewage connections will be issued by City of Rochester Plumbing Department but have not yet been obtained.

(3) Storm drainage system.

Describe system, method of disposal and materials including:

(i) catch basins (number, location);

Catch Basins are provided within the property for drainage. The catch basins are 6" thick precast concrete and placed at low areas as shown on the Grading and Erosion Control Plan.

(ii) yard and roof drains (number, location); n/a

{4707336: }

(iii) piping (materials);

Storm sewers are PVC SDR-35 and range in size from 8"-12"

(iv) eject or sump pumps (describe in detail and describe conditions requiring pumps). n/a

(g) Refuse disposal.

Describe, including:

Refuse will be disposed by individual totes for each of the Townhomes. A staging area for the totes is provided within the parcel adjacent to Haags Alley. Refuse is collected by the City of Rochester.

(1) incinerator(s) (number, location, capacity, type, manufacturer); n/a

(2) compactor(s) (number, location, capacity, type, manufacturer); n/a

(3) approvals by authority having jurisdiction (date of each approval); n/a

(4) initial storage location (ultimate storage location);

Totes will not be stored within the limits of the parcel except for during pick up when they will be placed adjacent to Haags Alley.

(5) pick-up schedule and whether public or private provider.

Pickup is provided once weekly by the City of Rochester.

(h) Garages and parking areas.

Describe, where applicable:

(1) location of garages (description of facility);

Not applicable, the HOA property does not include garages.

(2) location of parking areas (number of spaces in each);

Ten parking spaces are provided and centered within the parcel.

(3) surfaces (materials used, lighting, fencing, etc.);

The parking area is asphaltic pavement constructed over a stone base course as provided in the construction details.

(4) parking (attended or not attended);

Not attended

(5) garage ventilation (method and equipment); n/a

(6) garage fire protection (method and equipment); n/a

(7) drainage.

Drainage is provided through private storm sewers which will be maintained by the HOA. The sewers are 8" and 12" PVC SDR-35 and connect to the public sewer in the Haags Alley right-of-way.

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

There are no buildings or structures on the HOA Common Area, thus subdivisions (i) through (q) are not applicable.

(t) General Information.

Describe any fire or smoke safety devices installed. N/A

(u) Additional information required.

Include the following in Part II of the plan. Maps and plans must be easily readable. Fold out maps or plans should be used when needed.

(1) A site plan showing all roads, the outside dimension of all buildings and clearly designated common areas including parking, recreation and refuse disposal areas. Differentiate sections or phases of the HOA.

(2) An area map showing the location of the homeowners association property with respect to its surroundings.

(3) If individual homes or lots cannot be easily identified from the site plan, include a plot plan.

(4) For all buildings described, include floor plans which show dimensions of rooms.

(5) State whether site plan and/or subdivision map have been approved by the local governmental agencies whose approvals are required; list special conditions, if any, which are part of said approvals.

(v) Asbestos.

All buildings will be newly constructed. Thus this section is not applicable.

ADDITIONAL INFORMATION:

The following documents are attached to this report:

1. Survey Map and Site Plan with Area Location
2. Utility Plan
3. Grading and Erosion Control Plan
4. Construction and Utility Details

Dated: January 20, 2017

Passero Associates

By:

Jess Sudol

Jess D. SUDOL

Professional Engineer

NYS License No. 092235





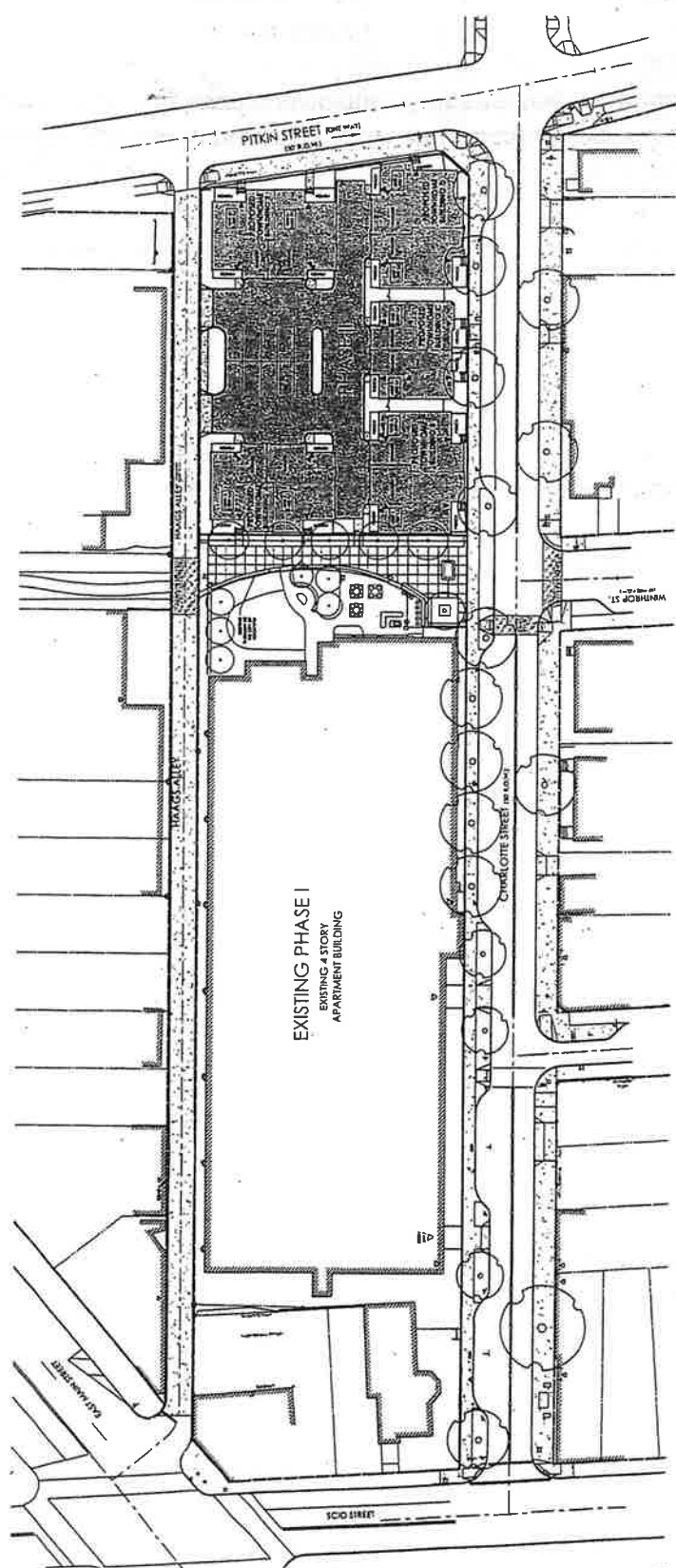
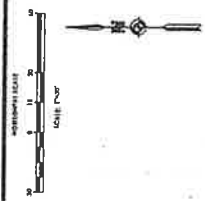






# CHARLOTTE SQUARE TOWNHOMES

## PHASE II



- DRAWING INDEX
- C 101 COVER
  - C 102 SITE PLAN
  - C 103 UTILITY PLAN
  - C 104 GRADING AND EROSION CONTROL PLAN
  - C 201 DETAILS
  - C 202 DETAILS

**PA**  
PASSERO ASSOCIATES  
engineering architecture

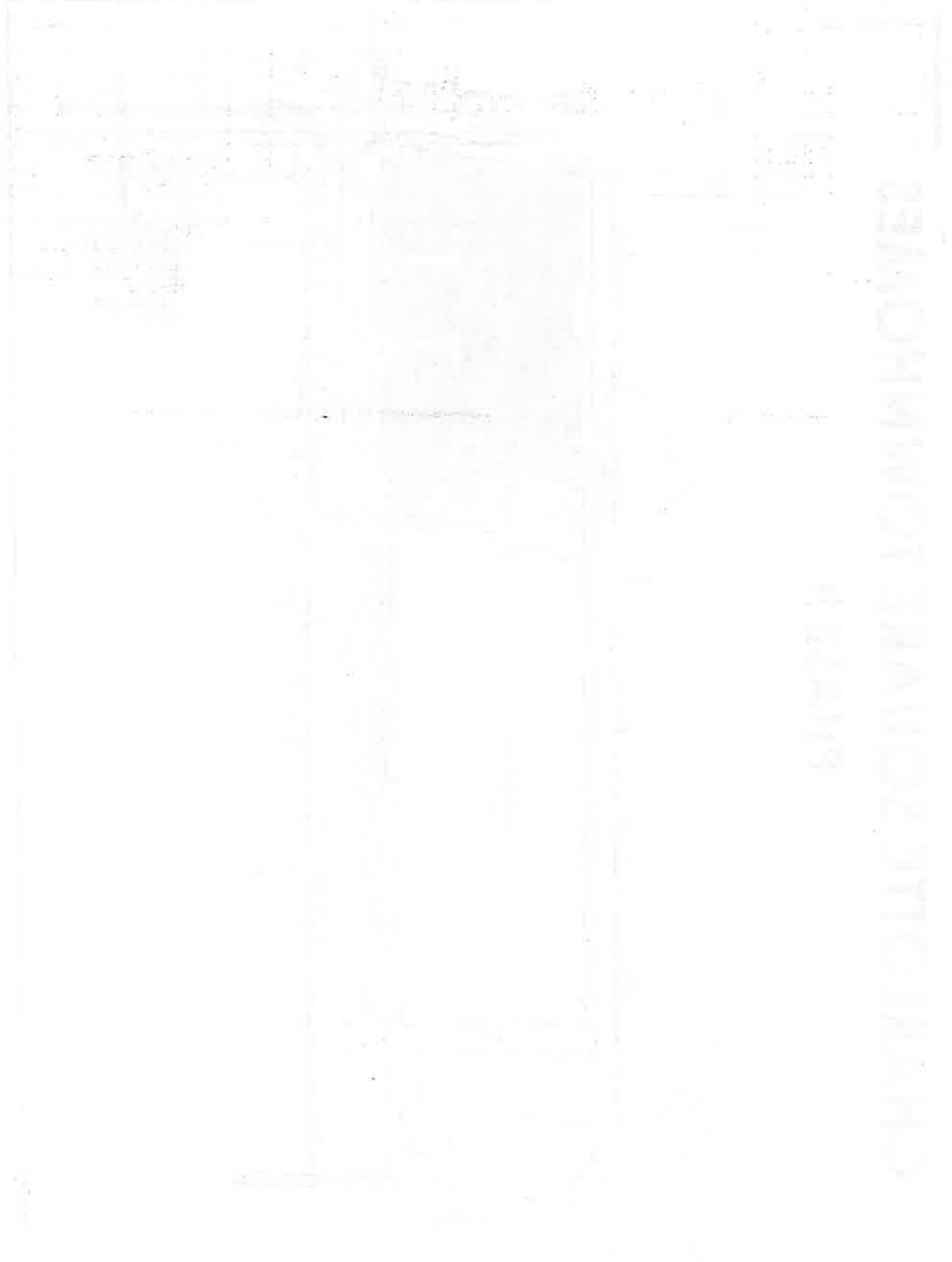
SWBP Architects  
387 E. MAIN STREET  
ROCHESTER, NY 14604

**PASSERO ASSOCIATES**  
1000 WEST 10TH STREET  
SUITE 200  
ROCHESTER, NY 14609  
JAMES C. PASSERO, P.E.  
Professional Engineer  
Civil & Survey  
Designated by



Project No. 2014.1995.0004  
Drawing No. C 101  
Scale: 1" = 30'

COVER  
CHARLOTTE SQUARE II  
DATE: 06/01/16  
PROJECT: 2014.1995.0004  
DRAWING NO.: C 101  
SCALE: 1" = 30'  
DATE: 06/01/16



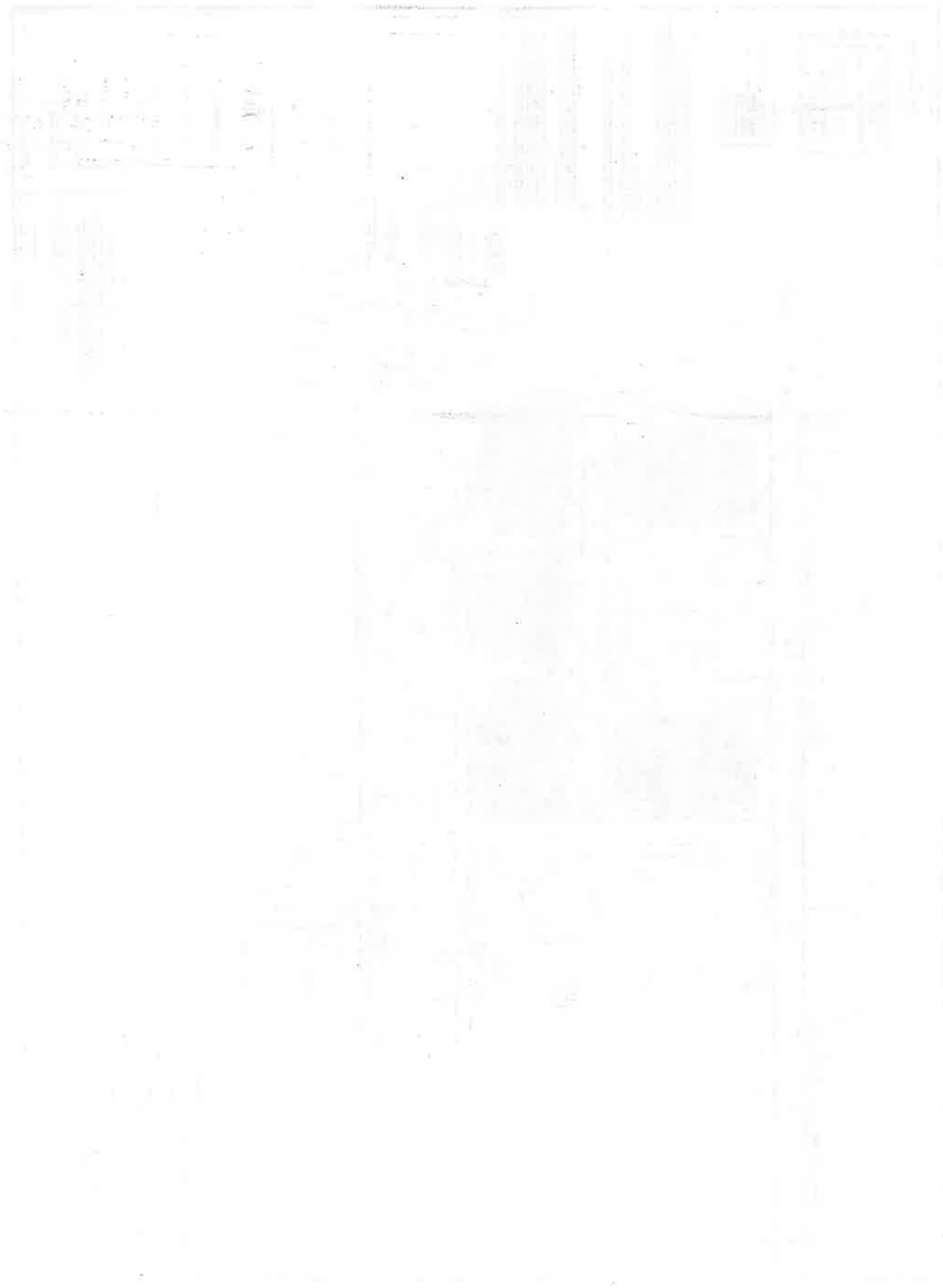
ИЗДАНИЕ

СЕРИЯ ИЛИ КОМПОНЕНТ













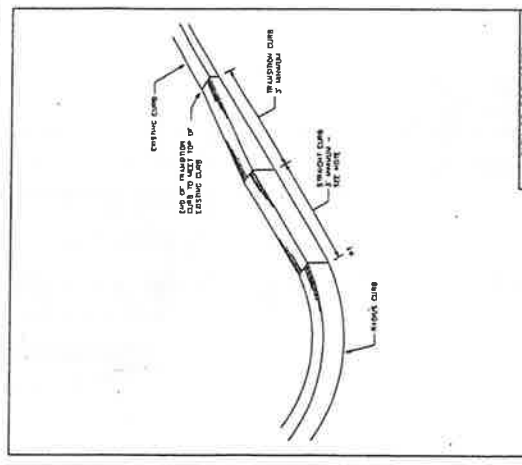




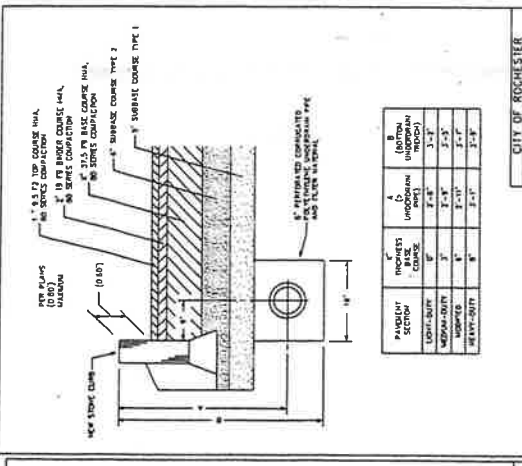
DATE	DESCRIPTION
11/11/11	ISSUED FOR PERMITS
11/11/11	REVISED PER PERMITS
11/11/11	REVISED PER PERMITS
11/11/11	REVISED PER PERMITS

DETAILS  
CHARLOTTE SQUARE II  
GENERAL NOTES  
DATE: 11/11/11  
PROJECT NO: 20141995.0004  
DRAWING NO: C-201  
SHEET NO: 5  
SCALE: N.I.S.

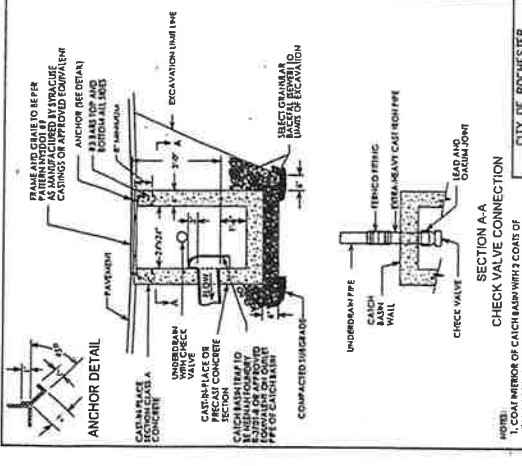
DATE: JUNE 2016



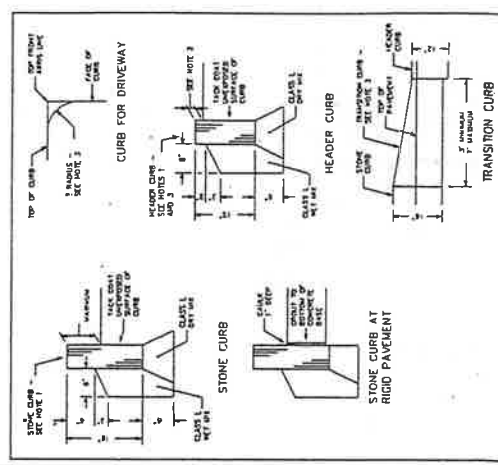
CITY OF ROCHESTER  
NEW CURB  
TRANSITION TO  
EXISTING CURB  
REVISION: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-2



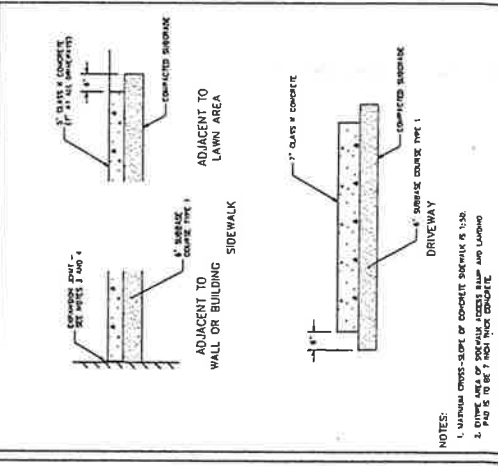
CITY OF ROCHESTER  
ASPHALT  
PAVEMENT SECTION  
WITH CURB  
REVISION: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-1



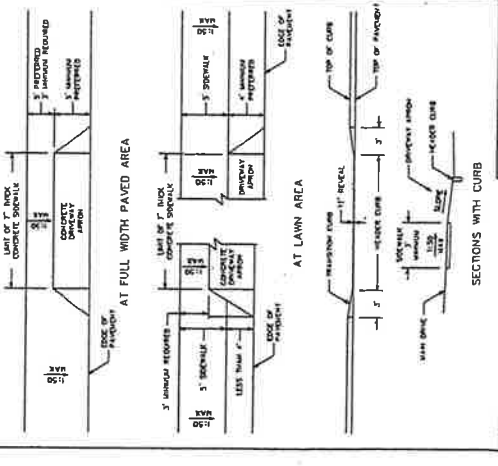
CITY OF ROCHESTER  
CATCH BASIN  
TYPE C  
ISSUED: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
REVISED: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-2



CITY OF ROCHESTER  
STONE CURB  
REVISION: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-1



CITY OF ROCHESTER  
CONCRETE  
SIDEWALK AND  
DRIVEWAY  
REVISION: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-5



CITY OF ROCHESTER  
DRIVEWAY APRON  
REVISION: 11-21-11 (D) (M) (R) (S) (J) (K) (L) (P) (Q) (R) (T) (U) (V) (W) (X) (Y) (Z)  
NO. RD04-5

**NOTES:**

1. TOP OF CURB FINISHES IS TO BE AS SHOWN IN THESE PERMITS. TOP OF CURB FINISHES SHALL BE 6\"/>
- 2. CURB FINISHES SHALL BE 6\"/>
- 3. CURB FINISHES SHALL BE 6\"/>
- 4. CURB FINISHES SHALL BE 6\"/>
- 5. CURB FINISHES SHALL BE 6\"/>













Client: SWBR Architects  
387 E. MAIN STREET  
ROCHESTER, NY 14604

PASSERO ASSOCIATES

Professional Engineer  
Professional Architect  
Professional Landscape Architect  
Professional Surveyor



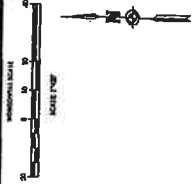
Project No.	20141995.0004
Sheet No.	C-102
Scale	1" = 20'
Date	JUNE 2016

**SITE PLAN**

CHARLOTTE SQUARE II

Location: ROCHESTER  
Client: SWBR  
Project No.: 20141995.0004

Sheet No.: C-102  
Scale: 1" = 20'  
Date: JUNE 2016



**SITE DATA**

1. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

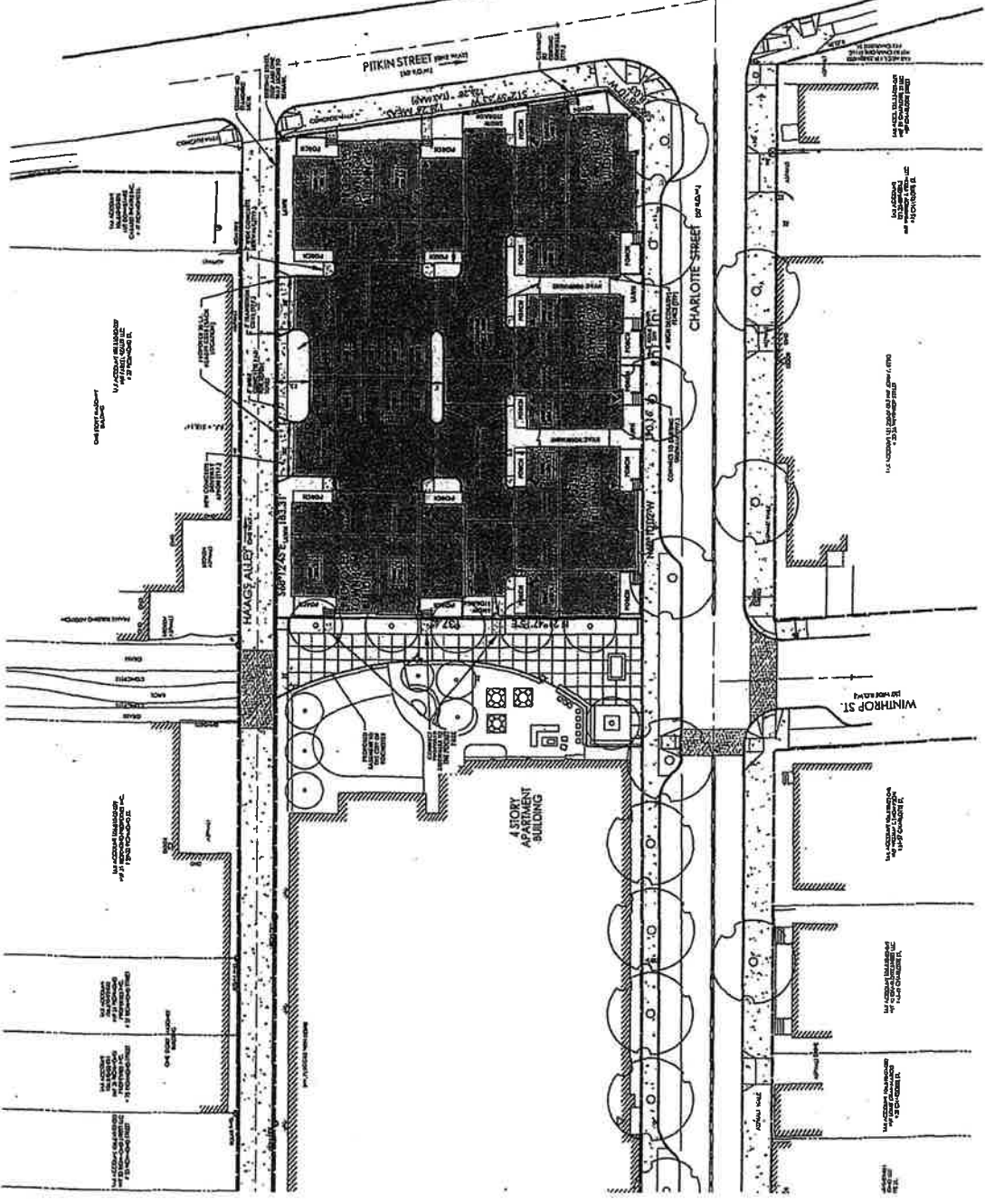
2. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

3. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

4. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

5. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

UTILITIES SHOWN IN L.O.W.  
INCLUDING ALL UTILITIES,  
PAVING, CURBS &  
LANDSCAPING, ETC. TO  
BE PROVIDED BY THE CITY  
OF ROCHESTER.



DATE	
BY	
PROJECT NUMBER	
DATE	



## LIMITED WARRANTY

**WARRANTOR:**

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

**HOME WARRANTED:**

The Dwelling warranted is the Dwelling constructed by the Seller as identified in the Contract.

**TO WHOM WARRANTED:**

The Dwelling is warranted to the person or persons identified as the Buyers in the Contract.

**WARRANTY DATE:**

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

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

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

The maximum total aggregate liability of the Seller under this Limited Warranty shall be equal to a maximum of 90 percent of the full contract price of the Property (as defined in the Contract) paid by the Buyer to the Seller for the first year of warranty coverage and 75 percent in years 2 through 6.

**CONSEQUENTIAL DAMAGES:**

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

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

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

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

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

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

The Seller's responsibility is limited to:

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

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

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

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

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

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

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

Workmanship, materials and design will be considered to be defective under this Limited Warranty if they fail to meet or exceed the relevant standards and specifications of the New York State Uniform Fire Prevention and Building Code ("*Building Code*"); or if the Building Code does not provide a relevant specific standard, if they fail to meet or exceed the Residential Construction Performance Guidelines ("*Guidelines*") attached hereto, and which Guidelines are

expressly made a part hereof or if neither the Building Code nor the Guidelines provide a relevant specific standard, if they fail to meet or exceed locally accepted building practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

respect to such goods shall be governed by the Magnuson-Moss Warranty Act, the New York Uniform Commercial Code, and other applicable statutes.

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

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

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

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

**f. Other Exclusions from Coverage.**

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

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

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

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

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

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

- (a). negligence, improper maintenance, or improper operation by anyone other than the Seller, its employees, agents, or subcontractors; or
  - (b). failure by the Buyer or anyone other than the Seller, Seller's employees, agents, or subcontractors, to comply with the warranty requirements of manufacturers or supplier of appliances, fixtures, or items of equipment; or
  - (c). failure of the Buyer to give notice to the Seller of any defects or damage within a reasonable time; or
  - (d). changes in the grading of the ground by anyone other than the Seller, Seller's employees, agents, or subcontractors; or
  - (e). changes, alterations or additions made to the Dwelling by anyone after the Warranty Date; or
  - (f). dampness or condensation due to the failure of the Buyer or occupant to maintain adequate ventilation;
- (7). Conditions, loss or damage caused by or resulting from accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, ground water springs, ground gas emissions, changes not reasonably foreseeable in the underground water table, and generally, caused by or resulting from acts of commission or omission beyond the Seller's control;
- (8). Loss or damage caused by the seepage of water, unless caused by a construction defect;
- (9). Loss or damage caused by the failure of Buyer to take timely action to minimize any such loss or damage;
- (10). Loss or damage caused by insects;
- (11). Loss or damage resulting from failure of the Seller to complete construction of the Dwelling, or to complete the construction timely;
- (12). Loss or damage caused by or which arises while the Dwelling is being used primarily for nonresidential purposes;
- (13). Loss or damage resulting from abnormal loading on floors by the Buyer which exceeds design loads as mandated by the Building Code.
- (14). Any condition which does not result in actual physical damage to the Dwelling;
- (15). Normal wear and tear and normal deterioration;



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

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

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

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

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

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

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

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

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

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

(1). In the event:

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

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

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

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

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

c. in the event:

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

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

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

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

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

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

8. *LEGAL ACTIONS, JURISDICTION AND CONDITIONS PRECEDENT.* No claim or cause of action under the Limited Warranty may be commenced or asserted against the Seller in any Conciliation Proceeding, suit, action, or other legal proceeding in any forum or court unless a written Notice of Claim, furnishing the information requested, has been received by the Seller as provided in Paragraph 7 above and the procedures set forth in Paragraph 7 above are followed. Notwithstanding anything to the contrary contained in this Limited Warranty, in the event (a) the defect(s) described in the Notice of Claim cause the Dwelling to be uninhabitable or (b) the applicable statute of limitations for commencing an action under this Limited Warranty will or may expire at any time after the Notice of Warranty Claim has been timely given, but prior to the completion of the procedures described in Paragraph 7 above, then the Buyer is not required to follow any further procedures described in Paragraph 7 above, and the Buyer may apply directly to the appropriate forum or court for relief.

9. *GENERAL PROVISIONS.*

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

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

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

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

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



***Declaration***

establishing

***CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.***

Charlotte Square Homes LLC  
180 Clinton Square  
Rochester, New York 14604

**SPONSOR**

**DATED:**

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

**RECORDED:**

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

**WOODS OVIATT GILMAN LLP  
700 Crossroads Building, 2 State Street  
Rochester, New York 14614**

**ATTORNEYS FOR THE SPONSOR**

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

TABLE OF CONTENTS

	Page Number
ARTICLE I     DEFINITIONS.....	2
ARTICLE II    PROPERTY SUBJECT TO THIS DECLARATION.....	3
ARTICLE III   THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS.....	3
ARTICLE IV    PROPERTY RIGHTS AND EASEMENTS.....	6
ARTICLE V     ASSESSMENTS.....	9
ARTICLE VI    MAINTENANCE BY THE ASSOCIATION.....	13
ARTICLE VII   ARCHITECTURAL CONTROLS.....	15
ARTICLE VIII  ENCROACHMENTS.....	18
ARTICLE IX    INSURANCE AND RECONSTRUCTION.....	18
ARTICLE X     GENERAL COVENANTS AND RESTRICTIONS.....	20
ARTICLE XI    ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION.....	24
ARTICLE XII   GENERAL.....	27

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

THIS DECLARATION, made on \_\_\_\_\_, 2017, by Charlotte Square Homes LLC a New York limited liability company, which has offices at 180 Clinton Square, Rochester, New York 14604 being hereinafter referred to as "the Sponsor".

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

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

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

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

WHEREAS, the Sponsor has incorporated Charlotte Square Townhomes Homeowners Association, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the aforesaid functions, and

WHEREAS, Charlotte Square Homes LLC is the owner of the Property, and in furtherance of the Sponsor's development plan, desires to submit and subject the Property to the lien of this Declaration.

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

**ARTICLE I**  
**DEFINITIONS**

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

- A. "ASSOCIATION" shall mean and refer to CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties owned by or in possession of the Association.
- C. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended.
- D. "HOME" shall mean and refer to each completed dwelling, as evidenced by issuance of a Certificate of Occupancy by the City of Rochester ("City"), including garage, situated upon a Lot or any such structure or improvement on the Property which is intended to be occupied as a residence or in conjunction with a residence.
- E. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- F. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- G. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities, of the fee interest in any Lot, whether or not such holder actually resides in the Home constructed on such Lot.
- H. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration as described in Schedule A attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- I. "SPONSOR" shall mean and refer to Charlotte Square Homes LLC.



ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION

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

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

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

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

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

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a

Class B Member. Until all Lots then subject to the lien of this Declaration owned by Sponsor are transferred, or until 5 years following the closing of the first Home, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned.

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

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

In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

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

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

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

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

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

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

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

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

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

#### ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

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

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

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

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

(a) to promulgate rules and regulations relating to the use, operation and maintenance of the Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

(b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

(c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Members who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof.

(d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than thirty (30) days nor more than 60 days in advance of the vote on the proposed agreement;

(e) to use electricity from outdoor sockets on any Lot, the cost of which shall be reimbursed to the Lot Owner based upon the difference calculated between the current utility bill and the average of the last two (2) preceding utility bills;

(f) as may be needed from time to time, to draw water more or less equally from Lot Owners' outdoor hose bibs for maintenance. Lot Owners shall have the responsibility to have their water supply valve for the outdoor bibs in the open position from May 1st through October 31st of each year. Notwithstanding the above, pursuant

to Article X of the Declaration, the Lot Owner has the duty to water the landscaping associated with the Home;

(g) to maintain Association entrance signs whether located on Association Property or one or more Lots.

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

(a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not limited to, water, gas, electric, telephone, cable television and sewer to service the Property;

(b) to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property;

(c) to use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration);

(d) to operate a sales center/office, with additional parking area (to be removed and the area restored when construction and use of the sales center/office is complete) and to have prospective purchasers and others visit such sales center/office and use the Association Property in furtherance thereof;

(e) to grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of the Property.

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

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot.

Section 4.06. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.07. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.

Section 4.08. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Association shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and, in its discretion, may establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment.

Section 4.09. Common Access Easement. The Sponsor and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over the private rights of way, all walkways and drives located on the Association Property and the Association shall have an access easement to each Lot for the maintenance, repair and replacement of property or facilities, the maintenance of which is the responsibility of the Association, including but not limited to the entrance signage announcing the development.

Section 4.10. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration. The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association. In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of New York.

#### Section 4.11. **PARTY WALLS.**

(a) Each wall built as part of the original construction of the Homes on the Lots whether or not such wall is on the dividing line between two (2) adjacent Lots, which shall serve and separate two adjoining Homes shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Each Owner shall have an easement to enter upon the Lot of an adjacent Owner for the purpose of maintaining or making repairs to a party wall. This easement is to be limited to the area of the other Owner's Lot reasonably necessary to effect said repairs, and such easement must be used in a reasonable manner so as not to unnecessarily interfere with the other Owner's enjoyment of his or her Lot. The area where such work is performed is to be restored to its condition prior to entry, as near as possible.

(c) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(d) If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. Any restoration of the wall shall be of the same or similar materials as the original wall. All work shall be performed in a good and workmanlike manner.

(e) Notwithstanding any other provision of this section, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by willful acts or negligence causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(f) The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title

#### ARTICLE V ASSESSMENTS

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

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

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as, and not in limitation, the private rights of way, landscaped areas, and for such other needs as may arise. The maintenance assessment shall also be used for maintenance and repair of portions of the townhomes as set forth below.

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

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration, excluding the Sponsor, shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any. For so long as Sponsor owns a Lot then subject to the Declaration, the Maintenance Assessment for Lots owned by someone other than Sponsor shall not be less than the amount set forth in the offering plan (with Exhibits), as amended, without the prior written consent of the Sponsor. The Maintenance Assessment on the Lots owned by the Sponsor shall be an amount calculated in accordance with the following: The Sponsor shall be obligated for the difference between the actual Association expenses, exclusive of reserves applicable to completed improvements, and the Association charges levied on owners who have closed title to their Lots. In addition to deficit funding above defined, for those Lots owned by Sponsor upon which a home has been completed, the Sponsor shall pay for reserves only from and after the issuance of a Certificate of Occupancy. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. This Section may not be amended without the prior written consent of the Sponsor.

Notwithstanding the above, if Sponsor has conveyed a vacant Lot to an Owner, the unimproved Lot will pay reduced Maintenance Assessments to reflect the expenses for the services not provided to the vacant Lot, provided, however, all Lot Owners will pay Maintenance Assessments for the cost of common area utilities, insurance, management fee, legal fee, accounting fee, taxes, maintenance and repair of the common area and private right of way, and miscellaneous items assessed against all Lot Owners.



Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot transferred to a third party purchaser for which Assessments have commenced pursuant to this Declaration shall be apportioned by dividing the total annual Maintenance Assessment by the total number of Lots then subject to the lien of this Declaration.

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

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

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

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

If the Assessment or any installment thereof, is not paid within 30 days after the due date, the Assessment (i) shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed ten percent (10%) per annum, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

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

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

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

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

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

Section 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall issue and furnish a certificate in writing signed by an officer or designee of the

Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

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

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject to (i) the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

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

(a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;

(b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

- (1) assess the Maintenance Assessment on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
- (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
- (3) provide for the custody and safeguarding of all funds received by it;

- (4) establish sinking funds and/or other security deposits;
- (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

ARTICLE VI  
MAINTENANCE AND REPAIR

Section 6.01. Maintenance and Repair by the Association. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including the private rights of way, common area walks and common area landscaping. The Association shall be responsible for snowplowing of the private rights of way and the individual driveways serving each Home.

In addition, the Maintenance Assessment shall be used to provide services to the Lots to repair, maintain and replace exterior siding, roofs, gutters, downspouts, decks and driveways (including plowing), and to repair and maintain all security lighting fixtures on the Property. The Maintenance Assessment shall also be used to establish reserves for capital improvements that are required to be performed by the Association. Notwithstanding the foregoing, the Association shall not be responsible for repair or replacement of foundations, windows, (including skylights and egress windows), window wells, or doors (including garage doors, screen or storm doors).

The Association shall also provide road and driveway re-sealing and re-surfacing, when needed. Except as provided above, The Lot Owner shall be responsible for all maintenance, repair and replacements to his Lot and all improvements located thereon, whether ordinary or extraordinary. The Lot Owner may take steps to control or remove ice, but may not use salt or any other corrosive material or chemical that may harm or degrade the improvement over time. Additionally, and not in limitation of the foregoing, the water, storm sewer and sanitary sewer laterals servicing a Home shall be maintained at the sole cost and expense of the Lot Owner.

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

Section 6.02 Maintenance of Lots and Homes. Except as specifically assumed by the Association as set forth above, individual Lot Owners are responsible for the interior and exterior maintenance of their Lots and Homes. If Homes are not appropriately maintained by the Lot Owner, then the Association may maintain the Home and charge the Lot Owner the cost of performing the maintenance, said charge shall be deemed to be a Maintenance Assessment and payable as such, and if unpaid the Association shall have the same rights and privileges as for the

non-payment of Maintenance Assessments, including without limitation the right to place a lien on the Lot and foreclose the lien in collection proceedings.

Section 6.03. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 and 6.02 above, including but not limited to the appropriate maintenance of the Home by the Lot Owner, which is occasioned by the failure or a negligent or willful act or omission of a Lot Owner, shall be made at the cost and expense of such Lot Owner. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.04. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.05. Access for Repairs. The Association (and its employees, contractors and agents) upon reasonable notice to the Owner(s), shall have the right to enter upon any portion of the Property and into and upon any Home at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Home to make necessary repairs or to prevent damage to any Home or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

## ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Sponsor to any Lot, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot including but not limited to Article X, shall be the responsibility of the Association, acting through the Board of Directors.

Section 7.02. Submission of Plans to Board of Directors. After transfer of title to any Lot by the Sponsor no improvement, exterior addition, modification or alteration shall be made on or to such Lot or the improvements located thereon, unless and until a plan therefore, in such form and detail as the Board requires, have been approved by the Board, The Board may collect a reasonable fee for the examination of plans submitted for approval.

Section 7.03. Basis for Disapproval of Plans by the Board The Board of Directors may disapprove any plans submitted pursuant to Section 7.02 above for any of the following reasons:

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

Section 7.04. Approval of Board of Directors. Upon approval or qualified approval by the Board of any plans submitted pursuant to Section 7.02 above, the Board shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval.

Section 7.05. Written Notification of Disapproval. In any case where the Board disapproves any plans, it shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.03.

Section 7.06. Failure of Board to Act. If any applicant has not received notice from the Board approving or disapproving any plans within 45 days after submission, the plans shall be deemed approved.

Section 7.07. Liability of Board. No action taken by the Board or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot. Neither the Association nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or

nonfeasance. Every person or other entity submitting plans to the Board agrees, by submission of such plans, that no action or suit will be brought against the Association, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 7.08. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Association, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Certificate") signed by a member of the Board stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board, may be imposed for issuance of such Architectural Certificate. Any such Architectural Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Architectural Certificate was issued.

#### ARTICLE VIII ENCROACHMENTS

Section 8.01. If any home or other improvements associated with it, such as decks, walks or other improvements installed by Sponsor encroaches on another Lot by up to two feet as a result of the construction of the home, then there shall be an easement for such encroachment and for the maintenance of same as long as the Home shall stand.

#### ARTICLE IX INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) liability insurance on the Association Property, (ii) directors and officers' liability insurance, (iii) fidelity bond or surety bond, (iv) fire and casualty insurance on the property and the Homes and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

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

The policy shall have the following provisions: (a) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association, (b) a provision that the policy cannot be canceled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (c) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (d) a provision that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all known mortgagees of Lots, and (e) waiver of reduction of pro-rata liability of the insurer as a result of insurance carried by the Lot Owner.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less shall be payable to the Association, and if \$50,000.00 or more, to an Insurance Trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 2 below.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of two-thirds (2/3) of the Board of Directors. All fees and disbursements of the Trustee shall be paid by the Association and shall be a common expense of the Lot Owners.

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

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

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

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



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

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds.

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

6. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section 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.

7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any improvement, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency, taking into account any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such excess funds shall be retained by the Association and used in any manner approved by the Board of Directors.

Section 9.03. Insurance Carried by Owners. Owners of Homes shall carry insurance for their own benefit, covering their furniture, personal property, betterments and liability within their Home and such policies shall contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance procured by the Board of Directors

shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

ARTICLE X  
GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property, except for temporary signs advertising property for sale or rent, except with the consent of the Association.

Section 10.02. Pets. Up to two pets (dogs or cats of reasonable size) shall be allowed to live in any Home. However, the Association may, from time to time, (i) impose reasonable rules and regulations setting forth the type of pets and (ii) prohibit certain types of pets entirely. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to remove any pet, if, in the opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners.

Section 10.03. Out Buildings, Protective Screening and Fences. No out building, fence, or wall of any kind shall be installed or erected upon any portion of the Property. No screen planting of any kind shall be planted, installed or erected upon any portion of the Property unless approved by the Association. Adherence to City code and zoning requirements of the governing municipality shall be the sole responsibility of the Lot Owner.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 12 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Association so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

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

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

Section 10.07. Pools. No pool shall be permitted on any portion of the Property.

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

Section 10.09. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association. The Association in regulating antenna or dishes shall abide by the requirements of the Federal Telecommunications Act of 1996, as amended.

Section 10.10. Trees and Other Natural Features. After the transfer of title by the Sponsor to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

Section 10.11. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association, subject, however, to the City Zoning Code and the Parks and Recreation Law of the State of New York.

Section 10.12. Commercial and Professional Activity on Property. No wholesale or retail business, service occupation or home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, except by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots, except that Association consent shall not be required for a legal home occupation requiring no visitor parking or employee parking.

Section 10.13. Outside Storage. Outside storage or parking for more than one 48 consecutive hour period per month of any commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited.

Section 10.14. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

While using the garage for repair work, or painting, sanding, refinishing and such other similar activities, the overhead garage door shall be closed.

Section 10.15. Oversized, Commercial and Unlicensed Vehicles. Unless approved by the Association or used in connection with the construction or sale of Lots by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property for more than 48 hours within any month:

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

Section 10.16. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property.

Section 10.17. Permanent Outdoor Recreational Equipment. No permanent outdoor recreational equipment shall be permitted.

Section 10.18 Garages. Garages may be used for vehicular parking only and may not be modified for any other use. Occupants of homes shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage and shall cause the garage door to be kept in a closed position, except for ingress and egress, whenever possible.

Section 10.19 Awnings and Window/Door Coverings. No awnings, shutters, window guards or other exterior window and/or door coverings, decorative or protective, may be installed without the prior written consent of the Association.

Storm doors may be installed and shall be full glass panels only.

Section 10.20 Machinery. No machinery, refrigeration or heating devices, other than those originally provided by the Sponsor, or similar replacements of the same, or lighting fixture other than standard electric lights shall be installed or operated in or about any home without prior written consent of the Association.

Section 10.21 Unauthorized Parking. Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the Property or an occupant's driveway, shall be towed from the premises at the expense of the respective owner of such vehicle. The Association, Managing Agent or authorized employee of either, may order such removal on behalf of the Association after giving reasonable notice to the owner of the vehicle to remove such unauthorized parked vehicle, if such owner can be readily located, and shall not be liable for any costs, loss or damage of any nature whatsoever, directly or indirectly, resulting therefrom or connected therewith. Notice is not required prior to removing a vehicle blocking the egress and ingress of another party or impeding access by emergency vehicles.

Section 10.22 Flammable Substances. No flammable substances or articles deemed hazardous to life, limb or property shall be stored or permitted to be stored anywhere on the Property, in any dwelling or garage, except in an area so designated for such storage by the Association.

Section 10.23 Lot Owner Improvements. No Lot Owner shall make changes or improvements to the exterior of the Home, its color, or its landscaping, unless he has first received the written permission of the Association. Once any changes or improvements have been made, the Lot Owner shall be solely responsible for its care and maintenance, which care and maintenance shall be of the highest standards as is the custom of the local community.

Any exterior lighting shall not adversely impact the Association's property or the adjacent Homes. Exterior lighting type, style, location, intensity, duration of use, and any other relevant matter shall be subject to the written consent of the Association prior to installation.

All mailboxes shall be the same throughout the Property, as per Sponsor specifications.

Holiday ornaments and decorations shall be permitted for the holiday season only. The holiday season is defined to be 20 days before and after the holiday.

Section 10.24 Flag Poles. No free standing flag poles or halyards shall be permitted, subject to Association approval.

Section 10.25 Association Property. All members shall have the right to use Association Property for their recreational pleasure, consistent with the terms of this Declaration, and subject to the following: (1) use shall be in common with all Members and not exclusive by any one Member; (2) use by one Member shall not be a disturbance or annoyance to another Member; (3) use shall be limited to daylight hours; (4) Members are personally responsible for any damage they cause to Association Property, same being repaired and restored at the Member's sole cost and expense. If not promptly completed by the responsible Member, the Association shall have the option to complete repairs and restoration, and cost of such work shall be assessed to the responsible Member as a special assessment, shall be due upon invoicing by the Association, and shall be a lien upon the Lot of the responsible Member until paid in full.

ARTICLE XI  
ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

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

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

Section 11.05. Inspection and Entry Rights. Any agent of the Association or the Association may at any reasonable time or times, upon not less than 24 hours' notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued

pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Association determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the view of street traffic or lake vistas, or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

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

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

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

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

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

Section 11.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2046, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

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

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

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

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

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

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

## ARTICLE XII GENERAL

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

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



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

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

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

Charlotte Square Homes LLC  
By: Home Leasing LLC, its sole member

By: \_\_\_\_\_  
Nelson B. Leenhouts, Manager

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Nelson B. Leenhouts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

## SCHEDULE A

20141995.0004

12-23-16

Rev 12-29-16

### DESCRIPTION OF CHARLOTTE SQUARE TOWNHOMES PARCEL

All that tract or parcel of land containing 0.611 acres, more or less, situate in the City of Rochester, County of Monroe, State of New York, all as shown on a map entitled, "Resubdivision of Lot 2, Charlotte Square Phase II" prepared by Passero Associates, having drawing No. 20141995.0004 - V100 and being more particularly described as follows:

Beginning at the point of intersection of Haags Alley (15 feet wide) and the westerly line of Pitkin Street; thence,

1. S 12° 59' 33" W, along said westerly line of Pitkin Street, a distance of 126.24 feet to a point of intersection with the northerly line of Charlotte Street (50 feet wide); thence,
2. N 68° 10' 02" W, along said northerly line of Charlotte Street, a distance of 190.16 feet to a point; thence,
3. N 21° 47' 15" E, a distance of 137.65 feet to a point of intersection with the aforementioned southerly line of Haags Alley; thence,
4. S 68° 12' 45" E, along said southerly line of Haags Alley, a distance of 183.31 feet to the Point of Beginning.

Intended to describe lots 201 through 211 as shown on the above referenced map.

**CERTIFICATE OF INCORPORATION**

**OF**

**CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

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

**WOODS OVIATT GILMAN LLP  
700 CROSSROADS BUILDING  
2 STATE STREET  
ROCHESTER, NEW YORK 14614**

FILING RECEIPT

=====

ENTITY NAME: CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: N COUNTY: MONR

=====

FILED:08/11/2016 DURATION:PERPETUAL CASH#:160811000678 FILM #:160811000635

FILER:

EXIST DATE

-----  
WOODS OVIATT GILMAN LLP  
700 CROSSROADS BLDG 2 STATE ST

-----  
08/11/2016

ROCHESTER, NY 14614

ADDRESS FOR PROCESS:

-----  
THE CORPORATION  
180 CLINTON SQUARE  
ROCHESTER, NY 14604

REGISTERED AGENT:  
-----

=====

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE

SERVICE CODE: 12

FEEs 110.00

PAYMENTS 110.00

-----  
FILING 75.00  
TAX 0.00  
CERT 0.00  
COPIES 10.00  
HANDLING 25.00

-----  
CASH 0.00  
CHECK 0.00  
CHARGE 0.00  
DRAWDOWN 110.00  
OPAL 0.00  
REFUND 0.00

=====

DOS-1025 (04/2007)

**CERTIFICATE OF INCORPORATION  
OF  
CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

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

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

1. The name of the Corporation is Charlotte Square Townhomes Homeowners Association, Inc.

2. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain and no part of the assets, income or profit of the Corporation shall be distributable to, or inure to the benefit of, its members, directors or officers, or any private person, except to the extent permissible under the Not-for-Profit Corporation Law. The Corporation is a non-charitable corporation under section 201 of the Not-for-Profit Corporation Law.

3. The Corporation is a homeowners association formed to promote and provide for the maintenance, preservation, and architectural control of the homes and common area of Charlotte Square Townhomes, City of Rochester, County of Monroe, New York (the "Property"), to promote the health, safety, and welfare of the residents of the community.

4. In furtherance of, and not in limitation of, the purposes of the Corporation, the Corporation shall have all the powers now or hereafter granted to non-charitable corporations under the Not-for-Profit Corporation Law and any successor statute, including, without limiting the generality of the foregoing, the power to acquire, invest in, hold, sell, exchange and dispose of real and personal property of all kinds and varieties and interests, including security interests and mortgages therein.

5. The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any State official, department, board, agency or other body. No such consent or approval is required. Further, the Corporation is not formed to operate a hospital, drug maintenance program, certified home health agency, health maintenance organization or to provide hospital or health related services, or to offer a comprehensive health services plan as any of the foregoing are respectively defined in Articles 28, 33, 36, and 44 of the Public Health Law.

6. The office of the Corporation will be located in the County of Monroe, State of New York.

7. The initial directors of the corporation until the first annual meeting are as follows:

Nelson Leenhouts  
62 Woodbury Place  
Rochester, New York 14618

Sarah Hunt  
15 French Road  
Rochester, New York 14618

Megan Houppert  
33 Varden Street  
Rochester, New York 14609

8. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is 180 Clinton Square, Rochester, New York 14604.

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

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

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

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned hereby subscribes and affirms that this Certificate is true and correct under the penalties of perjury this 5<sup>th</sup> day of August, 2016.

A handwritten signature in cursive script, reading "Paula Lapin", written in black ink. The signature is positioned above a horizontal line that underlines the name.

Paula Lapin, Incorporator  
700 Crossroads Building  
2 State Street  
Rochester, New York 14614





BY-LAWS OF  
*CHARLOTTE SQUARE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.*

ARTICLE I  
IDENTITY

These By-Laws provide the method by which Charlotte Square Townhomes Homeowners Association, Inc., a homeowners association in the City of Rochester, Monroe County, New York, organized under the Not-For-Profit Corporation Law, shall be governed.

The office of the Association shall be as designated by the Board of Directors, or at the address of the Declarant (as defined herein below), 180 Clinton Square, Rochester, New York 14604.

The fiscal year of the Association shall be August 1 to July 31.

ARTICLE II  
DEFINITIONS

The following words, phrases or terms, when used herein or in any Amendment hereto shall, unless the context otherwise prohibits, have the following meanings. Any capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them as set forth in the Declaration (Declaration being defined herein below).

A. "Association" shall mean and refer to Charlotte Square Townhomes Homeowners Association, Inc., its successors and assigns.

B "Common Area" shall mean the real property owned and/or maintained by the Association for the common benefit of the Owners (as defined herein below).

C. "Declarant" shall mean and refer to Charlotte Square Homes, LLC, its successors and assigns.

D. "Declaration" shall mean and refer to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens applicable to the Properties (as defined herein below) and recorded in the Monroe County Clerk's Office.

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

F. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

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

H. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers.

I. "Properties" shall mean and refer to that certain real property described in the Declaration and such additions or amendments thereto as may hereafter be brought within the jurisdiction of the Association.

### ARTICLE III BOARD OF DIRECTORS

A. Membership and Initial Selection. The Association shall be governed by a Board of Directors consisting of three (3) persons (each a "Director" and collectively "Directors") elected by the Owners. These Directors shall be Members in good standing of the Association. However, the initial Board of Directors shall be designated by Declarant who is authorized to choose the Directors until all Lots have been transferred or until five (5) years after the transfer of the first unit, whichever first occurs. The initial Board of Directors shall consist of three (3) persons appointed by Declarant. The Directors designated by the Declarant need not be Members of the Association.

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

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

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

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

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

1. To make and collect assessments, including special assessments, against Members to defray the costs of the Association. (Notwithstanding, no Special Assessments above \$1,000 per lot shall be levied without the assent of at least two-thirds (2/3) of the votes of the Members).

2. To file a lien against any Lot for which assessments are not paid within thirty-one (31) days after due date, or to bring an action at law against the Lot Owner personally obligated to pay the same.

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

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

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

6. To assure the maintenance, repair, replacement and operation of any and all Properties to be owned and/or maintained by the Association for the common benefit and enjoyment of the Lot Owners.

7. To adopt, publish, and distribute to Members rules and regulations governing the use of the Common Area, and the personal conduct of Members and their guests, and to establish penalties or fines for the infraction thereof. The initial rules are contained in the Declaration.

8. To enforce by legal means the provisions of the Declaration, By-Laws, and the rules and regulations for the use of the Properties, including the filing of liens for unpaid assessments and/or to bring legal actions against Owner(s) for the payment of same.

9. The Board may procure insurance on all Directors, Officers (as defined herein below) or employees having fiscal responsibility as it may deem appropriate.

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

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

12. To pay the cost of all maintenance and repair of the Common Area and other services rendered to the Association and not billed to Owners' individual Lots.

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

14. To declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors.

15. To enter into agreements with other homeowner associations for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds of the votes of all Members voting upon written ballot which shall be sent to the Members no fewer than thirty (30) days before the vote.

16. Levying fines against Owners for violation of the Declaration, By-Laws and Rules and Regulations established by it to govern the conduct of the Owners, provided, however, that no fine may be levied in an amount in excess of \$100.00 for any one violation (but for each day a violation continues after notice, it shall be considered a separate violation). Such fines may be collected as if they were assessments owed by the Lots against whom the fines were levied. Where an Owner is fined for an infraction of the Declaration, By-Laws or Rules and Regulations and fails to pay the fine within ten (10) days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where an Owner persists in violating the Declaration, By-Laws or Rules and Regulations, the Board may require him to post a bond to secure future compliance with the Rules and Regulations;

17. To exercise for the Association all powers not reserved to the Members by other provisions of the Declaration, the Certificate of Incorporation or these By-Laws.

G. Method of Calling Meetings.

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

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

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

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

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

1. The President shall be the chief executive officer of the Association and shall preside over the meetings of the Board of Directors and of the

Members. He shall have all the powers and duties which are usually vested in the office of the president, including but not limited to the power to appoint committees from among the Directors, Members and residents of the subdivision from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

2. The Vice President shall have all the powers of the President in the event of the President's absence or disability.

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

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

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

6. Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for Officers and employees of the Association (other than Declarant and its designees) and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors. The premium on such bonds shall be a common expense and be paid by the Board of Directors. The bond of a management company, however, shall be paid by the company.

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

J. Nomination. Nomination for election to the Board of Directors shall be made from the floor of the annual meeting of the Members. Election shall be by secret written ballot. Cumulative voting shall not be permitted.

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

A. Meetings. Meetings of the Members shall be held annually after the expiration of the control period of Declarant (as set forth in Article III, Section A above) and when called by the Board of Directors, or by the President, or upon the request of any three (3) Members. Directors shall be elected at the Annual Meeting as set forth herein above. All meetings shall be held at the principal office of the Association or at such other place in the City of Rochester, or any immediately adjacent town, as may be fixed by the President. The meeting notice shall state the time, date, place and purpose of the meeting.

B. Notice of Meeting. The Secretary shall give not less than ten (10) days' nor more than fifty (50) days' notice of any meeting of Members personally, or by mail, or email (with proof of delivery), which notice shall state the time, date, place, and purpose of the meeting. Any Member may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving and receipt of notice.

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

D. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and be filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

E. Absentee Ballots. On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and whether the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be

elected, may vote by a proxy which shall be in writing and shall be filed with the Secretary of the Association

## ARTICLE V COMMITTEES

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

B. Committees of the Association. The committees of the Association may be the Architectural Standards Committee, the Nominating Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors. All decisions of the committees of the Association shall be subject to the final approval of the Board.

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

## ARTICLE VI LIABILITY OF BOARD OF DIRECTORS

In order to limit the liability of the Owners, any contract, agreement, or commitment made by the Board of Directors shall state that it is made by the Board of Directors as agent for the Owners as a group only and that neither any individual Director nor individual Owner shall be liable for such contract, agreement, or commitment. The Board of Directors shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith, and the Owners shall severally indemnify all Directors in accordance with their duties as such Directors except for acts of willful misconduct or acts made in bad faith.

## ARTICLE VII AMENDMENTS

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



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

C. While at least one Lot is owned by Declarant, Declarant may, without Member consent, amend these By-Laws to correct errors or omissions herein, so long as no Owner is adversely affected by such change without his or her consent.

## ARTICLE VIII MORTGAGES

A. An Owner who mortgages his Home shall notify the Association by delivering to the Board of Directors the name and address of his mortgagee and by filing a conformed copy of the note and mortgage with the Association. The Association shall maintain such information in a book entitled "Mortgages of Homes."

B. The Association, whenever so requested in writing by a mortgagee of a Home, shall promptly report any then unpaid common assessments due from, or any default by, the Owner of the mortgaged Home.

C. The Association, when giving notice to an Owner of Owner's default in paying common assessments or such other default, shall send a copy of such notice to each holder of a mortgage covering such Home whose name and address has theretofore been furnished to the Association.

D. Each Owner and each mortgagee of a Home shall be permitted to examine the books of account of the Association at reasonable times on business days during business hours.

E. The Association shall give first mortgagees of Homes (a) notice of casualty loss or proposed condemnation affecting a material portion of the Properties or the Home mortgaged; (b) notice of lapse or material modification of blanket insurance, if any; and (c) notice of any amendment materially adverse to first mortgagees and therefore requiring 51% mortgagee approval. If no response is received from a mortgagee within sixty (60) days of certified mail notice of the amendment, it will be deemed approved.

This is a true copy of the By-Laws of Charlotte Square Townhomes Homeowners Association, Inc. as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Charlotte Square Townhomes Homeowners Association, Inc.

By: \_\_\_\_\_  
Nelson Leenhouts, President



## MODEL FORM OF ESCROW AGREEMENT

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and among \_\_\_\_\_ ("PURCHASER"), CHARLOTTE SQUARE HOMES, LLC, 180 Clinton Square, Rochester, New York 14604 ("SPONSOR"), as Sponsor of Charlotte Square Townhomes Homeowners Association offering plan ("Plan") and WOODS OVIATT GILMAN LLP, 2 State Street, Rochester, New York 14614 ("ESCROW AGENT").

**WHEREAS**, SPONSOR has filed the Offering Plan with the Attorney General to offer for sale membership interests in the homeowners association at the premises located at Charlotte Street, City of Rochester, New York, subject to the terms and conditions set forth in the Plan; and

**WHEREAS**, ESCROW AGENT is authorized to act as an escrow agent hereunder in accordance with New York General Business Law ("GBL") Sections 352-e(2-b), 352-(h) and the New York Department of Law's regulations promulgated thereunder; and

**WHEREAS**, SPONSOR and PURCHASER desire that ESCROW AGENT act as escrow agent for deposits, down payments, and advances (referred to herein as "Deposit") pursuant to the terms of this Agreement.

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

### 1. ESTABLISHMENT OF THE ESCROW ACCOUNT.

1.1. ESCROW AGENT shall establish an escrow account for the purpose of holding the Deposit made by PURCHASER pursuant to that certain purchase agreement for the purchase and sale of unit \_\_\_\_ (the "Purchase Agreement") at M&T BANK located at 255 East Avenue, Rochester, New York 14604, in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled WOODS OVIATT GILMAN LLP AS ESCROW AGENT FOR Charlotte Square Townhomes Homeowners Association ("Escrow Account"). The account number is 9865333422.

1.2. ESCROW AGENT has designated the following attorneys to serve as signatories: Paula A. Lapin, Esq., James Bonsignore, Esq., Kelley Ross Brown, Esq., and Jerry Goldman, Esq. All designated signatories are admitted to practice law in the State of New York.

All of the signatories on the Escrow Account have an address of 2 State Street, Rochester, New York 14614, and a telephone number of (585) 987-2800.

1.3. ESCROW AGENT and all authorized signatories hereby submit to the jurisdiction of the State of New York and its Courts for any cause of action arising out of this Agreement or otherwise concerning the maintenance of or release of the Deposit from escrow.

1.4 Neither ESCROW AGENT nor any authorized signatories on the Escrow Account are the Sponsor, Selling Agent, Managing Agent (as those terms are defined in the Plan), or any principal thereof, or have any beneficial interest in any of the foregoing.

1.5 The Escrow Account is an IOLA account established pursuant to Judiciary Law Section 497.

## **2. DEPOSITS INTO THE ESCROW ACCOUNT.**

2.1 All Deposits received from PURCHASER prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be placed into the Escrow Account. All instruments to be placed into the Escrow Account shall be made payable directly to the order of WOODS OVIATT GILMAN LLP, as ESCROW AGENT, pursuant to the terms set forth in the Plan. Any instrument payable to, or endorsed other than as required hereby, and which cannot be deposited into such Escrow Account, shall be returned to PURCHASER promptly, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of the Deposit, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 ESCROW AGENT is hereby obligated to send a notice of all Deposits received by ESCROW AGENT to PURCHASER within ten (10) business days of receipt of same. Such notice shall set forth the Bank, the account number, and the initial interest rate earned thereon. If the PURCHASER does not receive notice within fifteen (15) business days after tender of the Deposit, the PURCHASER may cancel the Purchase Agreement within ninety (90) days after tender of the Deposit. 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, New York 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 the Deposit and requisite notice was timely mailed to the Purchaser.

## **3. RELEASE OF FUNDS**

3.1 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.

3.2 Under no circumstances shall SPONSOR seek or accept release of the Deposit of a defaulting PURCHASER until after consummation of the Plan. Consummation of the Plan shall not relieve SPONSOR or ESCROW AGENT of any obligation to PURCHASER as set forth in GBL §§ 352-3(2-b) and 352-h.

3.3 ESCROW AGENT shall release the Deposit to PURCHASER or SPONSOR as directed:

3.3.1 pursuant to terms and conditions set forth in the Purchase Agreement and this Agreement, upon closing of title to the home;

3.3.2 in a subsequent writing signed by both SPONSOR and PURCHASER; or

3.3.3 by a final, non-appealable order or judgment of a court.

3.4 If Escrow Agent is not directed to release the Deposit pursuant to paragraph 3.3 above, and Escrow Agent receives a request by either SPONSOR or PURCHASER to release the Deposit, then Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If 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 Escrow Agent shall provide further written notice to both PURCHASER and SPONSOR informing them of said release. If Escrow Agent receives a written notice from either PURCHASER or SPONSOR objecting to the release of the Deposit within said thirty (30) day period, Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraph 3.3 above. Notwithstanding the foregoing, 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 home is located and shall give written notice to both SPONSOR and PURCHASER of such deposit.

3.5 Sponsor shall not object to the release of the Deposit to:

3.5.1 Purchaser, if Purchaser timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

3.5.2 Purchaser after an Amendment abandoning the Plan is accepted for filing by the New York State Department of Law.

#### **4. RECORDKEEPING.**

4.1 ESCROW AGENT shall maintain all records concerning the Escrow Account for seven years after release of the Deposit.

4.2 Upon the dissolution of the law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the New York State Department of Law of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

## **5. GENERAL OBLIGATIONS OF ESCROW AGENT.**

5.1 ESCROW AGENT shall maintain the Escrow Account under its direct supervision and control.

5.2 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).

5.3 ESCROW AGENT may rely upon any paper or document which may be submitted to it in connection with its duties under this 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.

## **6. RESPONSIBILITIES OF SPONSOR.**

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall deliver the Deposit received by them prior to closing of the home to a designated attorney who is a member of or employed by ESCROW AGENT, within two (2) business days of tender of the Deposit by PURCHASER, using such transmittal forms as required by ESCROW AGENT.

6.2 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.

6.3 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 Purchase Agreement.

## **7. TERMINATION OF AGREEMENT.**

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

7.1.1 Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment to the Plan with the Department of Law providing for a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law. PURCHASER shall be deemed to have consented to such cancellation;

7.1.2 The resignation of ESCROW AGENT, which shall not take effect until ESCROW AGENT is replaced by a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, and notice is given to PURCHASER of the identity of the successor escrow agent, the Bank in the State of New York where the Deposit is being held, and the account number therefor.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1.1 or 7.1.2 above, ESCROW AGENT shall deliver the Deposit held by ESCROW AGENT and the Purchase Agreement and any other documents maintained by ESCROW AGENT relating to the Deposit to the successor escrow agent.

**8. SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon SPONSOR, PURCHASER, and ESCROW AGENT and their respective successors and assigns.

**9. GOVERNING LAW.**

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

**10. ESCROW AGENT'S COMPENSATION.**

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.

**11. SEVERABILITY.**

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

**12. INDEMNIFICATION.**

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 this Agreement or the performance or non-performance of ESCROW AGENT'S duties under this Agreement, except with respect to actions or omissions taken or suffered by ESCROW AGENT in bad faith or in willful disregard of this 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.

**13. WAIVER VOID.**

Any provisions in the Purchase Agreement or separate agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligations 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.

**14. ENTIRE AGREEMENT.**

This Agreement, read together with GBL §§ 352-e(2-b) and 352-(h) and the New York State Department of Law's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

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

ESCROW AGENT:

WOODS OVIATT GILMAN LLP

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

Name: Paula A. Lapin

Title: Of Counsel

SPONSOR

Charlotte Square Homes. LLC

BY: Home Leasing, LLC its sole member

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

Name: Nelson Leenhouts

Title: Manager

Purchasers:

\_\_\_\_\_

\_\_\_\_\_

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

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



## CERTIFICATION OF SPONSOR AND ITS PRINCIPALS

**Re: Charlotte Square Townhomes Homeowners Association, Inc. ("HOA")  
City of Rochester, Monroe County, New York**

We are the Sponsor and the principals of the Sponsor of the homeowners association offering plan for the captioned property. We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the New York General Business Law, the regulations promulgated by the Attorney General in Part 22, and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts.

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

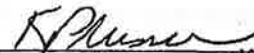
- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;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

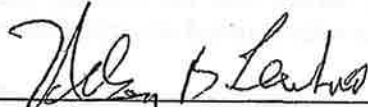
This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the New York General Business Law and Penal Law.

**CHARLOTTE SQUARE HOMES, LLC**  
**BY: Home Leasing, LLC, its sole member**

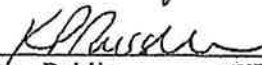
By:   
Nelson Leenhouts, Manager

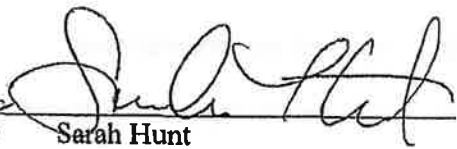
Sworn to before me this 16<sup>th</sup>  
day of January, 2017.

  
Notary Public  
KIMBERLY P. RUSSELL  
Notary Public, State of New York  
Monroe County  
Commission Expires March 2, 2018


  
Nelson Leenhouts

Sworn to before me this 16<sup>th</sup>  
day of January 2017.

  
Notary Public  
KIMBERLY P. RUSSELL  
Notary Public, State of New York  
Monroe County  
Commission Expires March 2, 2018


  
Sarah Hunt

Sworn to before me this 18<sup>th</sup>  
day of JAN 2017.

  
Notary Public  
KIMBERLY P. RUSSELL  
Notary Public, State of New York  
Monroe County  
Commission Expires March 2, 2018

  
Megan Houppert

Sworn to before me this 18<sup>th</sup>  
day of January, 2017

  
Notary Public  
KIMBERLY P. RUSSELL  
Notary Public, State of New York  
Monroe County  
Commission Expires March 2, 2018

**PA**  
**PASSERO ASSOCIATES**  
engineering architecture

January 20, 2017

State of New York  
Department of Law  
Real Estate Financing Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271

**Re: Charlotte Square Townhomes Homeowners Association, Inc.  
City of Rochester, Monroe County, New York**

Gentlemen and Ladies:

The sponsor of the offering plan to convert the captioned property to HOA ownership retained me/our firm to prepare a report describing the construction and/or renovation of the property (the "Report"). I visually inspected existing portions of the renovated property, if any, on June 15, 2016, and I examined the building plans and specifications that this office prepared dated June 2016 and prepared the Report dated January 20, 2017. I am submitting this Report, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

I am a registered architect/licensed engineer in the state where the property is located.

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

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

I certify that the Report:

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

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



(iii) does not omit any material fact;

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

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

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

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

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

Very truly yours,

PASSERO ASSOCIATES

By: Jess Sudol  
Jess D. Sudol, PE, CPESC, CPSWQ  
Professional Engineer  
NYS License No. 092235

Sworn to before me this 20<sup>th</sup>  
day of January, 2017.

Pamela A. Freeman  
Notary Public





**CROFTON**  
Associates, Inc.  
111 Marsh Road, Suite 1  
Pittsford, New York 14534

January 27, 2017

State of New York  
Department of Law  
Real Estate Financing Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271

**Re: Charlotte Square Townhomes Homeowners Association, Inc.  
City of Rochester, Monroe County, New York**

Gentlemen and Ladies:

The Sponsor of the Homeowners Association Offering Plan for the captioned property retained our firm to review Schedule A containing projections of income and expenses for the first year of operation as a homeowners association. Our experience in this field includes management of over 30 homeowners associations and condominium associations in the Rochester, New York area.

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

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

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

We certify that the Schedule:

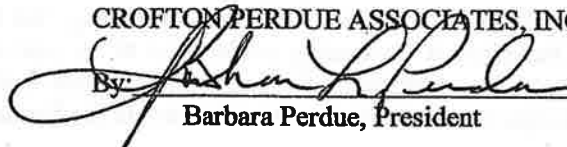
- (i) sets forth in detail the projected income and expenses for the first year of HOA operation;
- (ii) affords to potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;
- (iii) does not omit any material fact;

- (iv) does not contain any untrue statement of a material fact;
- (vi) does not contain any fraud, deception, concealment, or suppression;
- (vii) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (viii) does not contain any representation or statement which is false, where we (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

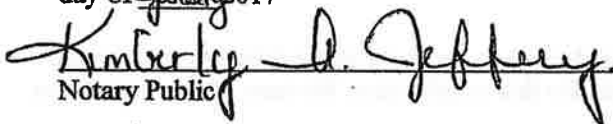
We further certify that we are not owned or controlled by the Sponsor. We understand that a copy of this certification is intended to be incorporated into the Offering Plan. This statement is not intended as a guaranty or warranty of the income or expenses for the first year of operation as a homeowners association.

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

CROFTON PERDUE ASSOCIATES, INC.

By:   
Barbara Perdue, President

Sworn to before me this 27<sup>th</sup>  
day of January 2017

  
Notary Public

KIMBERLY A JEFFERY  
Notary Public, State of New York  
No. 01JE6292871  
Qualified in Monroe County  
Commission Expires November 12, 2017

**Property Management** Condominiums Townhouses Office Parks  
Phone: (585) 248-3840 Fax: (585) 248-3666 E-Mail: [Info@CroftonInc.com](mailto:Info@CroftonInc.com)  
[www.CroftonInc.com](http://www.CroftonInc.com)

**POSSESSION AGREEMENT**  
**(Buyer Pre-Closing Possession)**

THIS POSSESSION AGREEMENT is made by and between,  
\* \_\_\_\_\_ ("Seller") and  
\* \_\_\_\_\_, who reside at  
\* \_\_\_\_\_ ("Buyer").

WHEREAS, Seller and Buyer have entered into a Purchase and Sale Contract for Residential Property dated \* \_\_\_\_\_ (the "Contract"), whereby Seller has agreed to sell and Buyer has agreed to buy certain real property and improvements located at \* \_\_\_\_\_ (the "Property"); and

WHEREAS, pursuant to the terms of the Contract, the closing thereunder is to occur on or about \* \_\_\_\_\_; and

WHEREAS, circumstances have now arisen whereby Buyer wishes to enter into possession of the Property prior to the date of title transfer; and

WHEREAS, Seller has agreed to permit Buyer to have possession of the Property upon the terms and conditions hereinafter described; and

WHEREAS, except as expressly modified by the terms hereof, the parties intend to transfer title to the Property pursuant to the terms of the Contract.

NOW, THEREFORE, for a good and valuable consideration, Seller and Buyer covenant and agree as follows:

1. Buyer shall be permitted to enter into possession of the Property on \* \_\_\_\_\_, 20\_\_ at \* \_\_\_ o'clock \*[a.m.] [p.m.]. Seller grants Buyer the right to early possession solely as a convenience to Buyer and no tenancy shall be created thereby. As consideration for such temporary possession, Buyer shall pay Seller rental \*[upon execution hereof] [on the first day of each month during the term hereof] [at closing] in the amount of \$\* \_\_\_\_\_ per \*[day] [month], which amount includes compensation for \*[real property taxes] [ \_\_\_\_\_ ] for the Property, plus such additional charges relating to the occupancy of the Property as hereinafter described. If this Agreement is effective on a day other than the first of the month, Buyer shall pay Seller upon execution pro-rata rental for the remaining number of days for the first partial month of possession.

2. The closing of title to the Property shall occur on or about \* \_\_\_\_\_, 20\_\_, at which time it is anticipated this Possession Agreement shall terminate. Closing adjustments (including real property tax adjustments unless specifically included as rental in paragraph 1 above) pursuant to the Contract will be adjusted as of the date of closing. If the closing shall fail to occur, for whatever reason, Buyer shall remain obligated to pay rent accruing during Buyer's period of occupancy of the Property.





3. While Buyer is in possession of the Property, Buyer shall be responsible for and pay all utility charges and service contracts, including but not limited to all refuse collection, gas, electricity, telephone, water and pure waters, cable and security system charges which are payable with respect to Buyer's use of the Property.

4. Buyer shall comply with the requirements of all laws, orders, ordinances, and regulations of any competent authority that shall impose any duty on Buyer with respect to Buyer's use or occupancy of the Property.

5. Buyer acknowledges that prior to Buyer taking possession that Buyer has had the opportunity to fully inspect the Property and Buyer hereby waives any objections to closing based upon the condition thereof. This shall not be a waiver of any other rights or obligations under the terms of the Contract.

6. Buyer shall maintain the Property in good repair during Buyer's period of occupancy. Buyer shall promptly inform Seller as to any structural repairs or other repairs the cost of which exceeds \$\*\_\_\_\_\_. Unless an emergency situation exists, Buyer shall not have any repairs made unless Seller agrees to them; in any event repairs shall be made at Buyer's cost. In the event that the Contract is terminated, through no fault of Buyer, Seller shall reimburse Buyer for any structural repairs or repairs the cost of which exceeded \$\*\_\_\_\_\_ and which were either emergency repairs or approved by Seller. Notwithstanding, Buyer shall be responsible for the cost of all repairs during the term of this Possession Agreement.

7. Buyer shall not make any changes to the appearance of the Property during the term hereof without the prior written consent of Seller. This prohibition includes, without limitation, the agreement by Buyer not to remove any carpeting, paint all or any portion of the interior or exterior of any structures, redecorate or remodel any portion of the property, remove any trees or landscaping or install any fencing. If Buyer does not comply with the terms of this paragraph, Buyer shall be fully responsible to Seller for any resultant damages.

8. During the term of this Possession Agreement, Seller shall insure the Property against fire with extended coverage endorsement in the amount of \$\*\_\_\_\_\_. Buyer shall be responsible for insuring Buyer's personal property and shall also carry public liability coverage.

9. Seller shall have the right to inspect the Property at any time upon reasonable notice.

10. The rent obligations of Buyer hereunder shall continue until Buyer vacates the Property, the Contract is terminated or until closing, whichever first occurs. Upon the transfer of title pursuant to the terms of the Contract, the obligations of Buyer under this Possession Agreement shall terminate.



11. Upon termination of the Contract, Buyer shall immediately vacate the Property. Notwithstanding the status of the Contract, nothing contained herein, however, shall impose any duty on Seller, whether express or implied, to permit Buyer to remain in possession after \* \_\_\_ o'clock \*[a.m.] [p.m.] on \* \_\_\_\_\_, 20 \_\_, at which time the possessory interest created hereunder shall terminate.

12. Buyer shall pay all costs, including reasonable attorneys fees, incurred by Seller in evicting Buyer from the Property upon default hereof. Buyer agrees that Seller may use summary legal proceedings to evict Buyer from the Property in the event it becomes necessary for Seller to institute a legal action to evict Buyer.

13. Buyer shall deposit the amount of \$\* \_\_\_\_\_ with Seller's attorneys to be held as a security deposit to secure Buyer's obligations hereunder. The security deposit shall be placed in an "IOLA" attorney trust account. No interest shall be paid on such funds to Seller or Buyer. If Buyer fully complies with the terms hereof, the security deposit shall be returned or credited against the purchase price at closing. If Buyer does not fully comply with the terms hereof, the security deposit may be used by Seller to pay amounts owed hereunder by Buyer and the balance returned.

14. Buyer shall be in default hereunder should they fail to comply with any of the terms hereof. Upon Buyer's default, Seller shall have the authority to commence a legal action to evict Buyer.

15. The rights of possession hereunder are personal to Buyer and may not be assigned, nor may the Property be sublet.

16. Any notices given pursuant to this Possession Agreement shall be made in writing, mailed first class registered, postage prepaid, or delivered, as follows:

(1) If to Seller, to

(2) If to Buyer, to

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

The parties agree that notices hereunder may be given and/or received by their respective attorneys. Copies of any notices sent to a party hereunder shall likewise be forwarded to that party's attorneys.



17. If any of the terms and provisions of the Contract conflict with any of the terms and provisions of this Possession Agreement, the terms and conditions of this Possession Agreement shall prevail. Notwithstanding, the parties expressly reserve all rights and remedies available under the Contract unless otherwise modified by this Possession Agreement.

18. Buyer agrees to indemnify and hold Seller harmless from any liability incurred as a result of Buyer's possession of the Property.

19. The parties mutually waive trial by jury in any action or proceeding commenced by them concerning the terms of this Possession Agreement. In any proceeding by Seller to obtain possession of the Property, Buyer shall have no right to assert any counterclaims or set-offs.

20. This Possession Agreement represents the complete agreement of the parties concerning the granting of possession to the Property. No verbal agreements or promises will be binding on either party unless such agreements are in writing and signed by both parties.

21. This Possession Agreement shall inure to the benefit of and bind the heirs, successors and representatives of the parties hereto, except as herein otherwise provided.

22. This Possession Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

23. The singular shall be read in the plural if this Agreement is executed by more than one buyer and/or one seller, and the masculine shall be read in the feminine if appropriate.

24. No rental protection laws are applicable to this interim lease.

25. An uncured default under the purchase agreement shall be deemed a default under the lease and vice versa. However, Seller will obtain an order of eviction against the lessee (unless the lessee has vacated the property) before utilizing the lease default to declare a default under the purchase agreement. After a default under the purchase agreement, or rescission of the purchase agreement by the lessee, the interim lessee will have seven (7) days to vacate the property.

26. The risk of loss is on the lessee for the losses not covered by the Association's insurance (i.e. personal property). Seller assumes the risk of loss to the Unit. A Purchaser taking possession prior to closing is advised to obtain insurance for items not covered by the Association's insurance.



IN WITNESS WHEREOF, the parties have hereunder set their hands as of the \* \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

Witness:

\_\_\_\_\_

Seller:

BY: \_\_\_\_\_

Witness:

\_\_\_\_\_

Buyer:

\_\_\_\_\_

\_\_\_\_\_

