



A HOMEOWNERS ASSOCIATION OFFERING PLAN

PIERCE BROOK ASSOCIATION, INC.

PIERCE BROOK TRAIL, TOWN OF CANANDAIGUA, ONTARIO COUNTY, NEW YORK 14424

THIS OFFERING WILL BE MADE IN THREE PHASES. THIS OFFERING PLAN IS FOR PHASE ONE; IF ADDITIONAL PHASES TWO AND THREE ARE INCORPORATED INTO THE OFFERING, THIS OFFERING PLAN WILL BE AMENDED.

PHASE	VALUE OF COMMON AREA AND AMENITIES	NUMBER OF TOWNHOMES
ONE	\$6,300.00	29
TWO	11,000.00	34
THREE	3,650.00	29
TOTAL	\$20,950.00 This value is the total value of the fully improved common property to be owned and maintained by the Association.	92

NAME AND ADDRESS OF SPONSOR AND SELLING AGENT IS S&J MORRELL, INC., 1501 PITTSFORD CANANDAIGUA ROAD, SUITE 100, CANANDAIGUA, NY 14564 (585) 249-1330.

THE DATE OF ACCEPTANCE FOR FILING IS October 19, 2022.

THIS PLAN MAY NOT BE USED AFTER October 18, 2023, UNLESS EXTENDED OR AMENDED.

SEE PAGE ONE FOR SPECIAL RISKS TO PURCHASERS.

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

**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 TOWNHOME OWNER ARE INCLUDED IN THIS PLAN. THIS PLAN IS
PREPARED AND ISSUED BY THE SPONSOR OF THIS SUBDIVISION. THIS PLAN HAS BEEN FILED
WITH ATTORNEY GENERAL OF THE STATE OF NEW YORK, DEPARTMENT OF LAW, REAL
ESTATE FINANCE BUREAU, 28 LIBERTY ST., NEW YORK, NY 10005.**

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DEFINITIONS

The following terms used with this Offering Plan shall have the following meanings:

Assessments	Collectively, the Maintenance Assessments and Special Assessments.
Association	Pierce Brook Association, Inc.
Association Property	The common area owned by the Association.
Bank	M&T Bank, First Federal Plaza, Rochester, New York 14614, which is the institution where the Escrow Account will be opened and maintained.
Construction Timetable	Construction of Phase One commenced in the Spring of 2022 and, subject to demand and weather conditions, construction of Phase One is anticipated to be completed by December 31, 2024. Construction of Phase Two, subject to demand and weather conditions, is anticipated to be completed by December 31, 2026. Construction of Phase Three, subject to demand and weather conditions, is anticipated to be completed by December 31, 2027. The first Townhome is expected to be completed by January 31, 2023, weather conditions permitting.
Declaration	The Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens to be filed in the Ontario County Clerk's Office prior to the first Lot sale creating the Association.
Escrow Agent	Lacy Katzen LLP, as attorneys.
Escrow Account	The non- interest bearing escrow account where the deposits of Purchasers are held pending closing of the purchase contract. The account is titled the Pierce Brook Escrow Account
IOLA	An Interest-On-Lawyer's-Account authorized pursuant to Judiciary Law Section 497.
Lot	Any portion of Pierce Brook subdivision 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.
Maintenance Assessments	Annual assessments or charges for the maintenance and operation of Association Property
Marathon	Marathon Engineering, 39 Cascade Drive, Rochester, New York 14614.
Owner Repair	Any maintenance, repair or replacement necessary to preserve the appearance and value of the Association Property, which is occasioned by a negligent or willful act or omission of a Townhome Owner.
Pierce Brook	Pierce Brook Subdivision, Sections 1-3, located in Canandaigua, Ontario County, New York upon which Pierce Brook Townhomes will be built.
Pierce Brook Townhomes	The 92 townhome building lots comprising Pierce Brook Subdivision within Sections 1 -3.

Projected Schedule of Receipts and Expenses	The Schedule A Projected Schedule of Receipts and Expenses establishing the Maintenance Assessments for the first year of operation as set forth budget section of the plan.
Purchaser or Owner	The buyer who enters into an agreement with the Sponsor for the purchase and construction of a Townhome on a Lot.
Residential Construction Performance Guidelines	The performance guidelines published by the Rochester Home Builders Association establishing minimum standards of construction.
Seller/Sponsor	S&J Morrell, Inc.
Special Assessments	An assessment 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
Townhome	The residential dwelling (attached to another dwelling by at least one party wall) and the Lot upon which the dwelling is constructed.

SPECIAL RISKS

1. The Sponsor intends to improve 92 Lots within Pierce Brook Subdivision, Sections 1-3, with a Townhome dwelling. The maximum number of Lots to be improved by a Townhome in Phase One is 29 Lots. In Phase Two, the maximum number of Lots to be improved by a Townhome is 34. In Phase Three, the maximum number of Lots to be improved by a Townhome is 29. The maximum number of Lots improved by a Townhome in all Phases is 92. Construction of Phase One, commenced in the Spring of 2022 and, subject to demand and weather conditions, construction of Phase One is anticipated to be completed by December 31, 2024. Subject to demand and weather conditions, this plan will be amended and Phase Two will be incorporated by January 1, 2025. Construction of Phase Two, subject to demand and weather conditions, is anticipated to be completed by December 31, 2026. Subject to demand and weather conditions, this plan will be amended and Phase Two will be incorporated by January 1, 2027. Construction of Phase Three, subject to demand and weather conditions, is anticipated to be completed by December 31, 2027. The first Townhome is expected to be completed by January 31, 2023, weather conditions permitting. The Sponsor will complete the subdivision improvements (that is the dedicated street, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. However because of a variety of circumstances, including circumstances beyond Sponsor's control, such as the number of people willing to purchase a home in the development, the availability of financing, and the general condition of the economy, the Sponsor gives no assurance that each Lot within either Phase will be improved with a dwelling. The Sponsor reserves the right to modify the development concept of Phases Two and or Phase Three not previously incorporated into the Association from townhomes to detached homes or any other type of improvement permitted and approved by the Town of Canandaigua. Any lot not improved by a dwelling will remain subject to the Declaration and the zoning requirements of the Town of Canandaigua. If the Sponsor changes the development concept of Phase Two and or Phase Three, the phase will not be incorporated into the Association. Assessments on Lots not owned by the Sponsor will be charged the same common charge amount regardless of whether a Lot is improved by a dwelling or not. The Sponsor is not obligated to build Phase Two and or Phase Three. The budget estimate provides for assessment amounts for just Phase One and for Phases One and Two combined and for Phases One, Two and Three combined. The Sponsor anticipates the first Lot closing to occur on or about January 31, 2023. If a contract date set for the first closing is delayed 12 months or longer, the purchaser shall be offered rescission in accordance with the requirements of the Attorney General.

The Sponsor gives no assurance that all Lots will be improved by a dwelling. Because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Accordingly, the completion date projections of each Phase may be delayed as the Sponsor will not complete the development without binding contracts from third party purchasers. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control.

This plan will be amended to disclose *any* delay in completion of each Phase, the *number* of homes in each Phase, and any decision not to complete Phase One, Phase Two and/or Phase Three.

2. **IN THIS OFFERING THE SPONSOR WILL CONTROL THE ASSOCIATION UNTIL THE EARLIER OF ALL LOTS OWNED BY THE SPONSOR ARE SOLD TO PURCHASERS OR 15 YEARS AFTER THE RECORDING OF THE DECLARATION. DURING SPONSOR'S CONTROL, PURCHASERS WILL NOT HAVE VOTING CONTROL ON MATTERS INVOLVING THE ASSOCIATION. AS DEFINED IN THE DECLARATION, THE SPONSOR AND ALL TOWNHOME OWNERS SHALL AUTOMATICALLY BE MEMBERS OF THE ASSOCIATION (SEE SECTION 3.02 OF THE DECLARATION SET FORTH IN PART II OF THIS PLAN). PURSUANT TO THE NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW SECTION 601(A), A NOT FOR PROFIT MAY HAVE TWO OR MORE CLASSES OF MEMBERSHIP WITH DIFFERENT RIGHTS. THE ASSOCIATION SHALL HAVE 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 15 YEARS FOLLOWING THE RECORDING OF THE DECLARATION, WHICHEVER SHALL FIRST OCCUR, THE CLASS B MEMBERSHIP**

SHALL BE THE ONLY CLASS OF MEMBERSHIP ENTITLED TO VOTE. THEREAFTER, THE SPONSOR'S CLASS B MEMBERSHIP SHALL BE CONVERTED INTO A CLASS A MEMBERSHIP, AND ALL MEMBERS SHALL VOTE EQUALLY, I.E., ONE (1) MEMBER ONE (1) VOTE. THERE IS NO OTHER DIFFERENCE BETWEEN THE CLASS A AND CLASS B MEMBERSHIP. 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. AT THE ASSOCIATION'S NEXT ANNUAL MEETING, OR AT A SPECIAL MEETING, WITHIN 30 DAYS FOR THE LAST LOT SALE, THE MEMBERS OF THE ASSOCIATION SHALL ELECT A NEW BOARD OF DIRECTORS, AND THE SPONSOR APPOINTED MEMBERS OF THE BOARD OF DIRECTORS SHALL RESIGN. SEE THE SECTION ENTITLED CONTROL BY SPONSOR.

3. If Purchaser fails to fulfill Purchaser's duties and obligations according to the terms of the Purchase Agreement, all deposits made by the Purchaser may be retained by the Sponsor. In addition, the Purchaser shall pay Sponsor the full cost of all extras, upgrades and change orders that were commenced or ordered prior to the date of closing. Retention of any deposit shall not limit Sponsor from commencing an action for damages or seeking any other remedies allowed in law or in equity. Sponsor must make written demand for payment after a purchaser's default at least 30 days before forfeiture of any deposit may be declared. **If the Sponsor commences litigation to enforce its rights, and if the Sponsor is successful, Purchaser could forfeit all deposits and also be obligated to pay Sponsor an additional sum as awarded by the Court.** See Procedure to Purchase and Section 13 of the Purchase Agreement. If the Sponsor abandons the plan, Purchase will receive a full refund of the deposit, including upgrades and extras.

4. The Sponsor has or will be providing the Town of Canandaigua with irrevocable Letters of Credit to secure the completion of public improvements, to wit: the right of way, water mains, storm and sanitary sewers, all of which will be dedicated to the Town of Canandaigua and or Ontario County upon their completion. The Sponsor will complete that portion of the public improvements servicing any Lot prior to the conveyance of said Lot as required by the Town of Canandaigua. See the sections entitled Development and Description of Common Areas, and Obligations of Sponsor.

5. 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 Pierce Brook. The Limited Warranty is in the amount of \$100,000.00 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 latent defects that constitute defective workmanship performed by the builder, an agent of the builder or subcontractor of the builder; defective materials provided by the builder, an agent of the builder or subcontractor of the builder, or defective design, provided by an architect, landscape architect, engineer, surveyor or other design professional engaged solely by the builder. Workmanship, materials and design will be considered defective if they fail to meet the New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to the Limited Warranty. 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 latent 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 included in the Construction and Sale Contract set forth as an Exhibit to this Offering Plan. A copy of the statute governing the Limited Warranty is set forth as an Exhibit to this Offering Plan. Notwithstanding the above, per General Business Law Section 777-b(4)(e)(i), the Sponsor's is obligated to construct the homes in accordance with all applicable codes, filed plans and specifications and local accepted building practices for items which are not covered by codes.

6. Individual Townhome Owners are responsible for watering the lawn and garden surrounding their townhome. See Section entitled Introduction.

7. The Sponsor does not intend to lease Townhomes since Townhomes will be built as contracts are obtained. However, Sponsor will construct model Townhomes and complete Townhome buildings and it is possible that a Townhome will be leased prior to sale to an Owner occupant. The Sponsor agrees that any sale of a townhome unit will be made free of any rights of prior tenants, and that the prior lease of the unit will be terminated in accordance with its terms

prior to the transfer of title. The Sponsor does not intend to enter into "interim leases" or to enter into leases with options to purchase. See Section entitled Interim Leases.

8. The Association will be responsible for maintenance asphalt driveways, roofing, exterior painting/staining of trim materials (not wrapped in aluminum) and front doors, for which replacement reserves have been established. All other Townhome components are the responsibility of the Townhome Owner, including but not limited to siding, vinyl clad windows, insulated metal doors, overhead garage doors, aluminum gutters and downspouts, masonry windows, skylights, window panes, doors, garage doors, storm doors, decks, or maintain, repair or replace porches, stone pavers or stoops, patios or concrete walks. The Association shall not be responsible for the removal of snow from roofs. See Section entitled Introduction.

The useful life of siding, brick fascia accents, aluminum gutters, aluminum and vinyl trim/fascia is in excess of 30 years. Routine maintenance is covered in the operations portion of the budget. See Budget.

9. Insurance carried by the Association for fire and all risk building coverage does not insure the personal property or dwelling contents of individual Townhome Owners. Townhome Owners are advised to obtain property insurance for personal property and dwelling contents, including upgrades installed by Sponsor or any other party, as well as liability coverage for accidents occurring in and about their dwelling. See Budget.

10. The Sponsor will retain Realty Performance Group ("Realty Performance") to act as Managing Agent of the Association. There is no affiliation between Realty Performance and Sponsor. For its services, Realty Performance will receive a fee of \$22.83 per Lot per month, which amount is a reasonable market rate (subject to renewal and increases in fees). In addition, Realty Performance will receive reimbursement for all out-of-pocket expenditures. The form of Management Agreement is set forth as an exhibit to this Offering Plan. If the Sponsor opts to renew the Management Agreement, the Management Agreement may be binding on the Association for up to 15 years, which is the maximum period of Sponsor control. See Budget and Management Agreement.

The Association will indemnify and defend Realty Performance 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 Realty Performance as Managing Agent in defending against such suits. See Section entitled Management Agreement.

11. If a Townhome Owner fails to maintain his home in good repair, the Association may perform maintenance not performed by the Townhome Owner at the Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be deemed to be a common charge and lien against the Lot and collectable as such. Good repair means a condition which not only meets minimum standards of health and safety, but which results in continued structural soundness and usefulness of its intended purpose. See Introduction.

12. The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canadaigua, the walking trail system and parking area is open to the public. The Sponsor reserves the right to convey the common areas to the Association prior to the completion of those improvements which could be materially and adversely affected by the completion of the improvement of Lots or could impede the improvement of such Lots. 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 incomplete items will be completed by the Sponsor, but are not secured by any letter of credit or completion bond. The Sponsor is obligated to build and complete the improvements to the Association property in accordance with the building plans and specifications identified in the plan. Subject to consumer demand and weather conditions construction is anticipated to be completed within the Construction Timetable. See Definitions.

As set forth in Special Risk 8, the Association will be responsible for maintenance of asphalt driveways, roofing, exterior painting/staining of trim materials (not wrapped in aluminum) and front doors, for which replacement reserves have been established. All other Townhome components are the responsibility of the Townhome Owner, including

but not limited to siding, vinyl clad windows, insulated metal doors, overhead garage doors, aluminum gutters and downspouts, masonry windows, skylights, window panes, doors, garage doors, storm doors, decks, porches, stone pavers, stoops, patios or concrete walks. The Association shall not be responsible for the removal of snow from roofs.

13. 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. The obligations of a purchaser under a Purchase Agreement are not conditioned on obtaining financing. Any prospective purchaser who executes a Purchase Agreement and does not obtain financing may lose his or her deposit if he or she is unable to otherwise raise the monies for the balance of the purchase price. Prospective purchasers who require financing are advised to consult with a lending institution before execution of a Purchase Agreement. No representation is made by the Sponsor as to the availability or cost of such financing. See Procedure to Purchase.

14. No bond or other security has been posted by the Sponsor to secure the completion of construction of any building or the performance of its obligations set forth in this Offering Plan, except as set forth in special Risk 4. The Sponsor nevertheless has the financial ability to complete the project and meet its obligations as set forth in this Offering Plan. See Rights and Obligations of Sponsor.

15. Townhome Owners may NOT make any exterior modifications or improvements to their home or the Lot, including but not limited to landscaping or foundation plantings, without Architectural Committee written approval. An Architectural Standards Committee shall be appointed by the Board of Directors for the purpose of enforcing certain provisions of the Declaration and controlling any change in use or any additions, modifications or alterations to any improvement within the Pierce Brook within guidelines and/or policies established by the Board of Directors. In this offering the Sponsor will control the Association until the earlier of all lots owned by the Sponsor are sold to Purchasers or 15 years after the recording of the Declaration. During Sponsor's control, Purchasers will not have voting control on matters involving the Association. See Control by Sponsor.

With respect to decks or patio area improvements, Townhome Owners may improve their deck or patio area with the Architectural Committee's written consent, upon uniform standards consistently applied. 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 Townhome Owner's property, and the adjoining Townhome Owner and Association shall not be obstructed from performing repairs and maintenance on the adjoining Townhome. The Townhome Owner shall maintain the improvements in a good repair. Good repair means a condition which not only meets minimum standards of health and safety, but which results in continued structural soundness and usefulness of its intended purpose. Upon the Townhome 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 Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be deemed to be a common charge and lien against the Lot and collectable as such.

16. During Sponsor control (see Special Risk number 3), the Sponsor will not exercise veto power over the expenses in the Projected Schedule of Receipts and Expenses, nor over expenses required to (1) comply with applicable law or regulation; (2) remedy and notice of violation; (3) remedy any work order issued by an insurer; or (4) ensure the health and safety of the occupants of the building, provided such maintenance action is otherwise the obligation of the Association. During Sponsor control, Sponsor may exercise veto power over expenses other than those listed above in compliance with the terms and conditions of the Declaration. See Rights and Obligations of Sponsor.

17. The Sponsor will comply with the Escrow Trust Fund provisions establish by the Attorney General. Deposits will be held in trust by the Sponsor's attorney. The name of the account is PIERCE BROOK ESCROW ACCOUNT, located at Manufacturers and Traders Trust Company, First Federal Plaza Office, Rochester, New York. This bank is covered by federal bank deposit insurance. The maximum amount of insurance is \$250,000.00 per account. If deposits in the aggregate are in excess of then applicable maximum amount, such deposits will not be federally insured in excess of the then applicable maximum amount. See Procedure to Purchase.

18. On January 1, 2018, the Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changed the previously existing Internal Revenue Code, including the taxes and deductions related to homeownership. Purchasers are advised to consult with a tax expert regarding whether the new law will affect the purchaser's taxes. Purchasers should not rely on any representations in this offering plan addressing taxes without first consulting a tax expert. See Opinion of Counsel.

19. This Plan does not have a working capital fund. If capital improvements are required, a special assessment will be necessary. See Budget and Working Capital Fund.

20. The Purchase Agreement contains the following language regarding Purchaser's not working with Buyer's Brokers: Buyer represents that no broker has been contracted or engaged by Buyer in connection with the procurement of this Contract except as otherwise set forth herein. Should this representation be contrary to fact, Buyer shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the acts or inactions of the Buyer. This representation shall survive the closing and delivery of the deed to Buyer. See Purchase Agreement.

21. The offering plan discloses that operating expenses are based upon the cost of operating the project with 29 townhomes in Phase One where 29 townhomes transferred to third party purchasers where each is assessed 1/29th of the total costs of operations, and with 63 townhomes in Phases One and Two where 63 townhomes transferred to third party purchasers where each is assessed 1/63rd of the total costs of operations, and with 92 townhomes in Phases One-3 where 92 townhomes transferred to third party purchasers where each is assessed 1/92nd of the total costs of operations. However, during development and construction, income and expenses (services provided) will be based on townhomes completed, and therefore income and expenses incurred will be less than the amount as set forth in the budget until all homes are built. With respect to reserves, until a townhome is built, no common charges are collected, including the amount for reserves; and therefore the amount collected for reserves will reflect the number of homes built. Accordingly, the total amount collected for reserves until all homes are built will be less than reflected in the budget. See Reserve Fund.

22. Provision has been made for real estate taxes on the Association Property; the Bruckner, Tillett, Rossi, Cahill & Associates, a full service real estate appraisal and consulting group, by letter dated April 15, 2022, has advised the Sponsor that the assessed value of the Association Property will be nominal and reflect the limited market value of Association Property. Should there be an increased assessment of the Association Property, nominal or otherwise, the Maintenance Assessments will necessarily be increased to fund the resulting taxes. See Budget for detailed information.

23. The Sponsor will pay assessments for unsold Lots owned by the Sponsor in accordance with the Declaration. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. 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, which amount shall be included in the deficit paid by the Sponsor. By way of example, the yearly reserve contribution per Lot is \$404.10, or \$33.68 per month. Thus if the Sponsor completed a Townhome on July 1st, but did not transfer it to a third party Owner until October 31st, the Sponsor would contribute four months towards reserves in the amount of \$134.72 (\$33.68 per month x 4). 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 for unsold Lots. Income from Lot sales and ongoing operations will fund this obligation, and other sources of funding will be utilized if projected sales are not made. In adopting any revised schedule of Operating Expenses, Sponsor shall provide backup budget quotations from arms-length third party providers for any item greater than the amount set forth in the Estimate of Operating Expenses set forth on page 11 of this Plan. See Article V of the Declaration set forth in Part II of this Plan.

24. The purchaser agreement contains a representation of the purchaser that no broker has been contracted or engaged by purchaser in connection with the procurement of this Purchase Agreement, except as otherwise set forth in the Purchase Agreement. Should this representation be contrary to fact, purchaser shall pay any commission due and hold the

Seller harmless from any claim or liability therefor arising out of the acts or inactions of the purchaser. This representation shall survive the closing and delivery of the deed to purchaser.

25. This offering does not include any common structures, such as a clubhouse, gymnasium, sauna, pool filtration, or recreation spaces.

INTRODUCTION

The purpose of this Offering Plan is to set forth all the material terms of the offer of membership in the Pierce Brook 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 upon all offerees, as defined by 13 N.Y.C.R.R. Section 22.1(d) ("Offerees"). 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.

S&J Morrell, Inc., (hereinafter referred to as "Sponsor"), is a New York corporation, with an office and principal place of business at 1501 Pittsford Canandaigua Road, Canandaigua, New York. The Sponsor has acquired fee ownership of approximately 94.8± acres of land located in Canandaigua, Ontario County, New York. This land is referred to in this Offering Plan as Pierce Brook Subdivision ("Pierce Brook"). The Sponsor acquired Pierce Brook Subdivision by deed recorded in the Ontario County Clerk's Office on March 10, 2022 in Liber 1492 of Deeds, at page 64. Except as set forth in this paragraph, neither the Sponsor, nor any of its principals, owns in whole or in part, or has an option to acquire, any other adjoining areas which are not fully developed.

The property comprising Pierce Brook is bounded on the north, south, east and west by existing single family homes and vacant land which is zoned residential and agricultural. The immediate area surrounding Pierce Brook is devoted to open space, residential and agricultural uses, including single family homes, assisted living and the Town of Canandaigua Miller Park. Pierce Brook is located in the southern portion of the Town of Canandaigua, and is within 1.5± miles of Canandaigua Lake and within 2.5± miles of the commercial retail and business center of the Town of Canandaigua.

Pierce Brook Subdivision will be developed in three Phases and improved by townhomes on individual Lots. The maximum number of Lots to be improved by a Townhome in Phase One is 29 Lots. In Phase Two, the maximum number of Lots to be improved by a Townhome is 34. In Phase Three, the maximum number of Lots to be improved by a Townhome is 29. The maximum number of Lots improved by a Townhome in all Phases will be 92 ("Pierce Brook Townhomes"). In Phase One, the 29 Townhomes will consist of four 2-unit buildings and seven 3-unit buildings.

The Sponsor gives no assurance that all Lots will be improved by a dwelling. Because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control.

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 Pierce Brook 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 Townhomes within Pierce Brook are purchasing the Lot and the improvement constructed on it. All areas of Pierce Brook 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.

Pierce Brook will have access to NYS Route 21 Bristol Road via the right-of-way known as Pierce Brook Trail, which will be dedicated to, owned and maintained by, the Town of Canandaigua. Construction of Pierce Brook Trail began on Spring of 2022 and is projected to be completed by the Fall of 2022, weather permitting. Pierce Brook Trail will consist of a 60-foot wide right of way. The sanitary and storm drainage sewers will be dedicated to, owned and maintained by, the Town of Canandaigua. Pierce Brook Trail and the sanitary and storm drainage sewers will be constructed in accordance with plans and specifications required by and approved by the Town of Canandaigua. Lot Owners will have access to Pierce Brook Trail directly from their individual driveways. A letter of credit, in the amount of \$1,286,743.00 has been posted with the Town of Canandaigua for the completion of Pierce Brook Trail and all work within the right-of-way. The work is anticipated to be completed by December 31, 2022.

The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canandaigua, the walking trail system and parking area is open to the public.

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

Regarding parking, in addition to the attached garage for each Townhome, each Townhome will have a driveway approximately 16 feet wide for additional parking for two cars. To service the mowed grass walking trail system open to the public, a public parking area for eight vehicles is located along NYS Route 21. Except for the parking associated with the walking trail system, no additional parking is located within the common area.

All Owners of Townhomes and the Lots upon which they are built at Pierce Brook 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 Ontario 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 Pierce Brook 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 governing the use and ownership of land within Pierce Brook Townhomes. The complete text of the Declaration is set forth in Part II of this Plan. The By-Laws of the Association are set forth in Part II of this Plan.

The purchase price of a Lot in Pierce Brook Townhomes includes the Townhome constructed on it, the exclusive right to use the improvements, walk and driveway associated with the Townhome, and the cost of the Association property. 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 Townhome Owners shall automatically be Members of the Association (see Section 3.02 of the Declaration set forth in Part II of this Plan). There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including any and all additional lots which may be brought within the scheme of the Declaration pursuant to Sponsor's right under Article II of the Declaration, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote. There is no other difference between the Class A and Class B membership. See the section entitled Pierce Brook Association, Inc., Membership and Voting Rights. 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 voting control 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 will be responsible for maintenance of asphalt driveways, roofing, exterior painting/staining of trim materials (not wrapped in aluminum) and front doors, for which replacement reserves have been established. All other Townhome components are the responsibility of the Townhome Owner, including but not limited to siding, vinyl clad windows, insulated metal doors, overhead garage doors, aluminum gutters and downspouts, masonry windows, skylights, window panes, doors, garage doors, storm doors, decks, or maintain, repair or replace porches, stone pavers or stoops, patios or concrete walks. The Association shall not be

responsible for the removal of snow from roofs. If an Owner is concerned with removal of snow from roofs, the Owner is responsible for such removal.

3. Fire and casualty insurance covering the Townhomes, Association property, if appropriate, 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 driveways, and those portions of sewer, water, and utility laterals servicing one (1) or more Townhomes and not maintained by a utility company, public authority, municipality or other entity, and landscaping as installed by Sponsor. As set forth in Operating Expenses, driveways will be plowed of snow and sealed and resurfaced.

6. Plowing of snow from the paved areas. The Townhome Owner shall be responsible for shoveling of snow from walks. The Association shall not be responsible for ice control or removal. The Townhome 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 walk over time.

7. Maintenance of landscaping and lawns within Pierce Brook originally installed by Sponsor. Townhome Owners are responsible for watering their lawns following initial planting/seeding, and thereafter as weather dictates.

See page 30 for further discussion of Maintenance by the Association.

Except as set forth above, individual Townhome Owners are responsible for the interior and exterior maintenance of their Townhomes. Townhome Owners are responsible for watering their lawns following initial planting/seeding, and thereafter as weather dictates. 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 Architectural Committee (see Section 7.08 of the Declaration set forth in Part II of this Plan). Townhome Owners may NOT make any exterior modifications or improvements to their home or the Lot, including but not limited to landscaping or foundation plantings, without Architectural Committee written approval. An Architectural Standards Committee shall be appointed by the Board of Directors for the purpose of enforcing certain provisions of the Declaration and controlling any change in use or any additions, modifications or alterations to any improvement within the Pierce Brook within guidelines and/or policies established by the Board of Directors. In this offering the Sponsor will control the Association until the earlier of all lots owned by the Sponsor are sold to Purchasers or 15 years after the recording of the Declaration. During Sponsor's control, Purchasers will not have voting control on matters involving the Association. See Control by Sponsor.

With respect to decks or patio area improvements, Townhome Owners may improve their deck or patio area with the Architectural Committee's written consent, upon uniform standards consistently applied. 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 Townhome Owner's property, and the adjoining Townhome Owner and Association shall not be obstructed from performing repairs and maintenance on the adjoining Townhome. The Townhome Owner shall maintain the improvements in a good repair. Good repair means a condition which not only meets minimum standards of health and safety, but which results in continued structural soundness and usefulness of its intended purpose. Upon the Townhome 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 Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be 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. At the time they purchase their Lot, whether from the Sponsor, or thereafter in connection with a resale, purchasers are advised to obtain a letter or statement from the Association (see Section 5.10 of Declaration set forth in Part II of this Plan) certifying to the status of payment of assessments. This statement will be provided to first time purchasers by the Sponsor at closing, and thereafter by the Association in connection with a resale. The estimated charges for the first year

that Pierce Brook 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. See Article V of the Declaration set forth in Part II of this Plan.

The Ontario County Sheriff Department will provide police protection. The Canandaigua Volunteer Fire Department will provide fire protection. The Town of Canandaigua Water Department (5440 Route 5 & 20 West, Canandaigua, NY 14424; Phone (585) 394-1120) will provide water service. The Town of Canandaigua Highway Department will provide sanitary and storm sewer service. Rochester Gas and Electric Company will provide electricity and Geneva Gas will provide gas service. The cost of police and fire protection, sewer services and maintenance of dedicated improvements will be included in the Townhome Owners real property tax. Electric, gas and water usage and pure waters service will be separately billed on the basis of consumption. Snow removal from paved areas and maintenance services are provided by the Association as discussed on the preceding page.

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 Pierce Brook 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 (see Section 3.02 of the Declaration set forth in Part II of this Plan).

In the event of the dissolution or liquidation of the Sponsor or the transfer of three or more homes or lots to a purchaser who is not purchasing for occupancy, the principals of Sponsor will provide financially responsible entities or individuals who at the time of engaging in sales activity will assume the status and all of the obligations of the Sponsor for those transferred home or lots under the offering plan, applicable laws or regulations. If the Sponsor is dissolved or liquidated, the principals of the original Sponsor will guarantee the obligations of the new sponsor.

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 property site whenever the on-site sales office is open, at the office of the Sponsor during normal business hours, and the office of the NYS Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY 10005, during normal business hours.

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.

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DEVELOPMENT AND DESCRIPTION OF PIERCE BROOK COMMON AREAS

The Sponsor plans to improve Pierce Brook Subdivision, Section One, Lots 1-16 and 80-92 with Townhomes to be known as Pierce Brook Townhomes. Pierce Brook Townhomes consists of a dedicated right of way known as Pierce Brook Trail, the townhome driveways and common areas to be owned by the Association, and the townhome dwellings to be owned by individual purchasers. The Pierce Brook Subdivision Section One consists of 28.4± acres in total, which includes 24.2± acres of Common Area to owned and maintained by the Association. The Common Area consists of driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. The landscaped areas will be hydro seeded with grass seed. See Engineer's Description of species details. Open space areas will consist of the walking trail system (including a parking area along NYS Route 21) and natural grasses, both current and newly installed site landscaping (see Engineer's Description for species details). Per agreement with the Town of Canadagua, the walking trail system and parking area is open to the public. Subject to consumer demand and weather conditions construction is anticipated to be completed within the Construction Timetable. See Definitions. 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, that is the right of way, water service, storm and sanitary sewers before the first lot sale projected to be January 31, 2023, 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. Accordingly, the completion date projections of the each Phase may be delayed as the Sponsor will not complete the development without binding contracts from third party purchasers. The Sponsor gives no assurance that all Lots will be improved by a dwelling.

Construction of Phase One commenced in the Spring of 2022 and, subject to demand and weather conditions, construction of Phase One is anticipated to be completed by December 31, 2024. Construction of Phase Two, subject to demand and weather conditions, is anticipated to be completed by December 31, 2026. Construction of Phase Three, subject to demand and weather conditions, is anticipated to be completed by December 31, 2027. The first Townhome is expected to be completed by January 31, 2023, weather conditions permitting. The Sponsor does not intend to, but may in its sole discretion, complete townhomes on speculation or without contracts of sale with purchasers. Assuming normal demand by prospective purchasers, the Sponsor anticipates being done with the development in December of 2027. However, no guarantee can be made by the Sponsor.

This plan will be amended to disclose *any* delay in completion of each Phase, the *number* of homes in each Phase, and any decision not to complete Phase One, Phase Two and/or Phase Three.

In addition to the attached garage for each Townhome, each Townhome will have a driveway approximately 16 feet wide for additional parking of two cars. Except for the parking area associated with the walking trail system, no additional parking is located within the common area. Driveways will consist of #2 Stone Crusher Run on average 7 inch thickness, followed by #1 Stone Crusher Run on average 1 inch thickness, followed by Blacktop Binder Driveway on average 2.5 inch thickness compacted to 2 inches. See Engineer's Description.

The Pierce Brook Subdivision Section One area labeled HOA-1, HOA-2 and HOA-3, consisting of 24.2± acres, are common areas ("Common Area"), and will be conveyed to the Association prior to the closing of title to the first Lot. The common area improvements will be completed prior to the transfer of the Common Area to the Association and the sale of the first Townhome, estimated to be January 31, 2023. Subject to consumer demand and weather conditions construction is anticipated to be completed within the Construction Timetable. See Definitions. The Sponsor will complete the subdivision improvements (that is the right of way, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. The Sponsor reserves the right to convey the Common Area to the Association prior to the completion of those improvements which could be materially and adversely affected by the completion of the improvement of Lots or could impede the improvement of such Lots. The improvements to the Common Area which may be incomplete at the time of conveyance of the Common Area to the Association will include such items as

the landscaping for an individual townhome and the driveway serving an individual townhome, which will be completed as construction of townhomes progresses, and as weather permits. The incomplete items *will be completed* by the Sponsor, which is estimated to be December 2024, but are not secured by any letter of credit or completion bond. No bond or letter of credit has been posted securing the completion of the driveways. The Sponsor nevertheless has the financial ability to complete the project and meet its obligations as set forth in this Offering Plan.

The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canadaigua, the walking trail system and parking area is open to the public.

The Common Area open space is subject to a Conservation Easement with the Town, which requires and limits activities as follows:

- Lands within the Conservation Easement shall remain in their natural condition and not disturbed. Seasonal mowing of grass walking trails is permitted
- No changes may be made in the topography of the land.
- No storage of materials or dumping of waste products on the land.
- Except for the grass walking trail, no improvements shall be made without the approval of the Town.
- No pesticides or herbicides may be used in the Easement area except (A) as may be required when the natural habitat and vegetation are threatened with disease or invasive species; and, (B) even in such event only in such manner as will not damage any watercourse on or downstream from the Easement Area; and, (C) only as is approved in advance by the Town.
- No clearing of brush, except for the walking trail system.
- No trimming or removal of trees, except pursuant to prudent forestry standards approved by the Town.
- No livestock on the land.
- No use of motorized vehicles on the land.

The walking trail system will be a grass trail eight feet in width with a cross slope not exceeding six percent, on average. The grass trail will be mowed weekly during the growing season. A combination of signage/trail markings will be placed along the trails and field located at the time of construction.

The Association is solely responsible for the maintenance of the Common Area and the improvements within the area, with inspections every three months on average, in accordance with the following maintenance plans:

1. Tree Planting

- During the first three years, mulching, watering and protection of young trees may be necessary
- Inspections should be performed every three months and within one week of ice storms, within one week of high wind events that reach speeds of 20 mph until trees have reached maturity.
- As a minimum, the following items should be checked regularly:
 - Assess tree health
 - Determine survival rate; replace any dead trees.
 - Inspect tree for evidence of insect and disease damage; treat as necessary
 - Inspect tree for damages or dead limbs; prune as necessary

2. Grass Swales

- Fertilize and lime as needed to maintain dense vegetation.
- Mow as required during the growing season to maintain grass heights at 4 inches to 6 inches.
- Remove any sediment or debris buildup, by hand if possible, in the bottom of the channel when the depth reaches 2 inches.
- Inspect for pools of standing water. Re-grade to restore design grade and re-vegetate.
- Repair rills in channel bottom with compacted topsoil, anchored with mesh or erosion blanket as needed. Seed and mulch.
- Use of heavy equipment for mowing and removing plants/debris should be avoided to minimize soil compaction. Disturbed areas should be stabilized with seed and mulch, or revetment, as necessary.

3. SWMF Maintenance

- Ensure plantings and grass in the SWMF areas are established at all times to limit possible erosion.
- Visual inspection of embankments, rip-rap, storm piping and outlet control structures shall be performed every 6 months. Major washout of banks, damage to structures etc. shall be repaired as necessary. Trash and debris shall be removed from the outlet control structure.
- Woody vegetation once identified shall be cut/removed from embankment areas.
- Inspect forebays and micro pools once yearly to ensure adequate volume is provided for sediment and pollutant removal. When 50% of the pool volume is filled, the pool shall be re-excavated to design grades and excavated material shall be disposed of off-site in a legal manner.

4. Bioretention & Dry Swale Maintenance

- Fertilize and maintain grasses – cut down at close of year prior to snowfall.
- Remove trash building up in stone and cobble areas.
- Remove any sediment or debris buildup by hand if possible.
- Inspect for pools of standing water. If water is standing for longer than 24 hours after a rain event the stone and fabric top layer shall be removed and the bioretention media shall be inspected and replaced as necessary.
- Once a year, replace dead plantings, as were specified on the design plans.

Meadow Open Space will be left in its natural state, and no regular maintenance will occur. Walking trails, during mowing season, will be mowed weekly mowing a grass trail mower.

Under no circumstances is the Town of Canandaigua responsible for the maintenance of the Common Area and the improvements located thereon.

The Pierce Brook will have access to NYS Route 21 Bristol Road via the right-of-way known as Pierce Brook Trail, which will be dedicated to, owned and maintained by, the Town of Canandaigua. Pierce Brook Trail will consist of a 60-foot wide right of way. The sanitary and storm drainage sewers will be dedicated to, owned and maintained by, the Canandaigua Lake County Sewer District.. Pierce Brook Trail and the sanitary and storm drainage sewers will be constructed in accordance with plans and specifications required by and approved by the Town of Canandaigua. Lot Owners will have access to Pierce Brook Trail directly from their individual driveways. A letter of credit has been posted with the Town of Canandaigua for the completion of work within the right-of-way. The water mains, hydrants, valves, and

all other appurtenances within the right-of-way or dedicated easement shall be owned and maintained by the Town of Canandaigua. Water mains will be constructed in accordance with plans and specifications required by the Town of Canandaigua.

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,
2. Easements and rights of way granted to governmental authorities for conservation, walking trail, 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 Town of Canandaigua Zoning and Building Ordinances.

The individual townhomes will have typical foundation plantings, with 16 plants per townhome, including one ornamental tree, nine shrubs and six perennials. All plantings will be new nursery stock. The foundation bed will be mulched with two inches of mulch on average.

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SCHEDULE A
ESTIMATE OF OPERATING EXPENSES AND RESERVES
FOR THE FIRST YEAR OF OPERATION COMMENCING
APPROXIMATELY JANUARY 1, 2023 AND ENDING DECEMBER 31, 2023

This estimate is prepared as of January 1, 2023, 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.

The Sponsor intends to improve Pierce Brook Section One Lots 1-16 and 80-92 with 29 Townhomes. Subject to consumer demand and weather conditions construction is anticipated to be completed within the Construction Timetable. See Definitions. The Sponsor will complete the subdivision improvements (that is the right of way, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. However, because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. The Sponsor gives no assurance that all Lots will be improved by a dwelling.

Provision has been made for real estate taxes on the Association Property; the tax assessor has advised the Sponsor that the assessed value of the Association Property will be nominal and reflect the limited market value of Association Property. See Budget Footnote 15. Should there be an increased assessment of the Association Property, nominal or otherwise, the Maintenance Assessments will necessarily be increased to fund the resulting taxes.

The estimated first year of operating expense is \$230.00. These operating expenses are based upon the cost of operating the project with 29 Townhomes transferred to third party purchasers. Each Townhome transferred by the Sponsor is assessed 1/29th of the total costs of operations, that is the Association charges do not vary between the townhomes as they are each assessed equally. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of ownership and control (see below).

As set forth above, operating expenses are based upon the cost of operating the project with 29 townhomes transferred to third party purchasers where each is assessed 1/29th of the total costs of operations. However, during development and construction, income and expenses (services provided) will be based on townhomes completed, and therefore income and expenses incurred will be less than the amount as set forth in the budget until all homes are built. With respect to reserves, until a townhome is built, no common charges are collected, including the amount for reserves; and therefore the amount collected for reserves will reflect the number of homes built. Accordingly, the total amount collected for reserves until all homes are built will be less than reflected in the budget.

Also provided is an estimate of common charges when and if the Sponsor amends this Offering Plan and incorporates Pierce Brook Phases Two and Three upon which an additional 34 and 29 Townhomes, respectively, are intended to be constructed. With Phases One and Two incorporated, the estimated first year of operating expense is \$230.00. With Phases One, Two and Three incorporated, the estimated first year of operating expense is \$230.00. Each Townhome transferred by the Sponsor is assessed its share determined by multiplying the total costs of operation by a fraction in which the numerator is one and the denominator is the total number of lots then incorporated into the Offering Plan. Accordingly, Association charges for townhomes transferred to third party purchaser do not vary between the townhomes as they are each assessed equally. Until a Townhome Lot is transferred to a third party purchaser common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of ownership and control (see below).

The maintenance assessments on Townhomes 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 Townhomes. For those Townhomes 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, which amount shall be included in the deficit paid by the Sponsor. 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 Townhome. 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 Townhome, or at such other time as the Sponsor shall determine. Assessments will be prorated and adjusted in the month of sale.

If the projected commencement date of the budget year for the projected schedule of receipts and expenses differs by six (6) months or more from the anticipated date of closing of the first home or Townhome, 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 Townhome. If the amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for a reasonable period of time not less than 15 days from the date of presentation, 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
Pierce Brook
Projected Schedule of Receipts and Expenses for First Year of Operations Commencing
January 1, 2023 and ending December 31, 2023

	Phase One (29 Units)	Phases One and Two (63 Units)	Full Project (92 Units)	Notes
PROJECTED INCOME				
MAINTENANCE CHARGES				
\$220.00/ unit / month based on 29 units	\$76,768			1
\$225.00/ unit / month based on 63 units		\$169,465		1
\$225.00/ unit / month based on 92 units			\$247,558	1
PROJECTED EXPENSES				
ADMINISTRATIVE				
Legal	250	375	510	2
Labor	1,000	1,500	2,500	2
Audit	1,000	1,200	2,000	3
Office Exp.	250	500	1,500	4
Insurance	12,000	18,500	35,000	5
Management	9,000	20,790	25,200	6
CONTRACTED SERVICES				
Landscape/Grounds	17,500	59,500	79,500	7
Snow plowing	14,000	24,208	38,000	8
Refuse	5,500	11,250	18,810	9
Lawn Fertilization and Weed Control Program	4,200	6,150	8,200	10
Stormwater & Swale Management	0	0	0	11
REPAIRS AND MAINTENANCE				
Buildings	1,100	2,650	3,850	12
Grounds	650	950	1,500	13
Supplies	346	425	850	14
TAXES				
Property taxes	175	481	581	15
Federal/State income taxes	150	150	150	16
RESERVE FUND				
Driveway Sealing	754	1,638	2,392	17
Driveways Resurfacing	1,791	3,890	5,681	17
Roofing	5,278	11,466	16,744	18
Painting/Staining	1,450	3,150	4,600	19
Stormwater & Swale Management	0	0	0	20
TOTAL	80,040	173,880	253,920	

Footnotes to Projected Budget

1. The Sponsor has made this estimate of operating income and expense, which estimate was certified by the budget expert. This estimate is based upon the first twelve-(12) months of operation of the Association commencing on or about January 1, 2023. This estimate is based on the project consisting of 29 units in Phase One, 63 units in Phases One and Two, and 92 units in Phases One, Two and Three. The estimate cannot be construed as an assurance of final expenses, and it is based on information available at the time. This estimate is prepared as of January 1, 2023, which date is a reasonable projection of when the first closing is to occur. The projected completion date for Phase One of the project is approximately December 1, 2025.
2. Routine legal expenses are for occasional advice and for the annual audit certification letter by retained 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, 1900 Bausch & Lomb Place, Rochester, New York 14604, 585-987-2800.

The Association has no employees. Independent contractors performing work for the Association will comply with applicable housing and labor laws.
3. Audit fees for annual audit as projected by Bonn, Dioguardi & Ray LLP (Michael Boychuck) 70 Linden Oaks Office Park, Rochester, NY 14625, 585-381-9660. Fee includes the full audit, published audit statements to the Board of Directors, Owners, and preparation of all tax returns.
4. Office expenses include postage, copies, printing, payment cards or coupons, envelopes, supplies, long distance phone. This estimate is provided by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.
5. Insurance is based on estimates by USI (Bonnie Gionte) with an address of 300 Meridian Centre Blvd, Suite 100, Rochester, NY 14618, 585-736-5908. Included is a blanket building limit of \$14,812,000 for the project, with a total of 92 units. A property deductible of \$1,000.00, Non-Owned/Hired Auto Liability, Broadened General Liability Endorsement, Employee Dishonesty coverage for \$250,000. This is an estimated limit and will be adjusted to actual with each unit upon closing.

The annual premium estimated for this exposure is as follows:

Estimate of Values & Premium	Full Project
Annual Estimated Premium:	\$26,000.00
Building	\$14,812,000.00
Liability per Occurrence	\$1,000,000.00
Liability Aggregate	\$2,000,000.00
Non-Owned/Hired Auto	\$1,000,000.00
Directors & Officers Liability	\$1,000,000.00
Employee Dishonesty	\$250,000.00
Property Enhancement Endorsement	Included
Broadened General Liability Endorsement	Included
PPP Estimate \$5,000,000.00 Umbrella	\$1,000.00

Coverage would be 100% Co-Insurance, Replacement Cost, Agreed Value, Special Form Perils, Ice Damming
Deductible would be \$1,000.00 per unit.

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.

Homeowners are reminded 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. As the Sponsor is not obtaining mortgage lenders for the purchasers, purchasers must comply, at their own expense any insurance requirements over and above the foregoing standards.

- 6. Management fees are based on all phases completed of \$22.83 per unit. This estimate is provided by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.

This includes all accounting services including collection of monthly fees, paying all bills, annual budget preparation, attendance at monthly meetings, site inspections, fund management and periodic reserve fund studies, site supervision of contracted work, drafting maintenance bid specifications and bid procurement, delinquent account monitoring and collections, annual management letter, rules enforcement, provide professional advice guiding and reporting to a volunteer Board of Directors. (refer to the management contract)

- 7. Landscaping services include weekly mowing of 92 units and common areas, bed maintenance, pruning & shaping, weekly clean up, spring and fall clean-up, \$23,000 including applicable tax. This is based on a quote from VanPutte Landscape, with an address of 136 North Avenue, Rochester, New York 14626.
- 8. Snow removal seasonal contract is for the driveways of the townhomes. The estimate is for plowing at 3 inches of snowfall. Estimate is provided by Ted Collins Tree & Landscape, 8000 Canandaigua-Mendon Rd, Canandaigua, New York 14564, (585) 899-9266.
- 9. Refuse is quoted by Casella waste services, 35 Deep Rock Road, Rochester, New York 14624, (585) 254-7081. Service is quoted for weekly pick-up of refuse and the recycling blue box.
- 10. Chemical applications for lawn fertilizer, lawn pest and weed control. Estimate provided by One Step, with an address of 4343 Buffalo Road, North Chili, New York 14514.
- 11. There are no swales and ponds to be maintained.
- 12. Building maintenance is a category for routine repairs that is projected by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440.
- 13. Grounds maintenance includes occasional driveway repairs; storm clean-up of tree debris, occasional plant replacement, and so on as based on the experience of Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.

There will be no lighting expense for the Association common area.

- 14. Supplies are for materials not supplied by other contractors and used by day workers in completing outside maintenance and repairs. This estimate is provided by the Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440.

15. Estimates of School, State, Town of Canandaigua, and County taxes on vacant parcels of common areas of the Association as noted on the site plans. This estimate was provided by Kevin L. Bruckner, MAI, CCIM, of Bruckner, Tillett, Rossi, Cahill & Associates, by letter dated April 15, 2022. The estimated assessed value is \$275 per acre, for 24.2 acres, for a total estimated assessed value of the HOA lands for section 1 at 95% equalization \$6,322. The combined tax rate of \$27.87/1,000.00 of assessed value results in a tax of \$175.00 a year. The estimated assessed value is \$275 per acre, for 42.3 acres, for a total estimated assessed value of the HOA lands for section 2 at 95% equalization \$11,050. The combined tax rate of \$27.87/1,000.00 of assessed value results in a tax of \$306.00 a year. The estimated assessed value is \$275 per acre, for 14.0 acres, for a total estimated assessed value of the HOA lands for section 3 at 95% equalization \$3,657. The combined tax rate of \$27.87/1,000.00 of assessed value results in a tax of \$100.00 a year.

16. Estimates of NYS Income tax to be paid by a not-for-profit corporation.

17. Driveways are private. Useful life expectancy is 20 years.

In Phase I, 29 units, topcoat of drive 18,800 sq. ft. x \$1.90 per sq. ft. is \$35,815/ 20 years = \$1,790.75 per year allocation to resurface in the future. Sealing maintenance is projected to occur more frequently at 3-year intervals. 18,800 sq. ft. at .12 cents per sq. foot for quality sealer hand brushed is \$2,262/ 3years = \$754 per year allocation.

Phase I and II consists of 63 units, topcoat of drive 40,950 sq. ft. x \$1.90 per sq. ft. is \$77,805/ 20 years = \$3,890.25 per year allocation to resurface in the future. Sealing maintenance is projected to occur more frequently at 3-year intervals. 40,950 sq. ft. at .12 cents per sq. foot for quality sealer hand brushed is \$4,914/ 3years = \$1,638 per year allocation.

With the project fully completed with 92 units, topcoat of drive 59,800 sq. ft. x \$1.90 per sq. ft. is \$113,620/ 20 years = \$5,681 per year allocation to resurface in the future. Sealing maintenance is projected to occur more frequently at 3-year intervals. 59,800 sq. ft. at .12 cents per sq. foot for quality sealer hand brushed is \$7,176/ 3years = \$2,392 per year allocation.

This estimate is provided by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.

18. Roofing materials have a projected life of 25 years. Replacement estimates are based on approximately 14 squares of roofing per townhome.

In Phase I with 29 units, for a total of 406 squares, or equivalent of 40,600 sq. feet of material x \$3.25 per sq. ft. of roof or \$131,950/25 years = \$5,278.00 per year allocation for future re-roofing.

Phase I and II consists of 63 units, for a total of 882 squares, or equivalent of 88,200 sq. feet of material x \$3.25 per sq. ft. of roof or \$286,650/25 years = \$11,466.00 per year allocation for future re-roofing.

With project fully completed with 92 units, for a total of 1,288 squares, or equivalent of 128,800 sq. feet of material x \$3.25 per sq. ft. of roof or \$418,600/25 years = \$16,744 per year allocation for future re-roofing.

This estimate is provided by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor

19. Painting trim materials not wrapped in aluminum, front doors. Projected costs for the project fully completed with 92 units, based on current bids, is \$200.00 per unit x 92 units = \$18,400.00 / 4 years = \$4,600.00. This estimate is provided by Realty Performance Group, Inc., 1800 Hudson Ave., Rochester, New York 14617, 585-225-7440. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.

20. There are no swales and ponds to be maintained.

Note regarding dedicated right of way: A Letter of Credit has been posted with the Town ensuring completion pursuant to the Town specifications for public rights of way. Upon acceptance of dedication a Maintenance Bond will also be posted with the Town. All maintenance costs prior to acceptance by the Town will be the sole responsibility of the Sponsor.

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INTERIM LEASES

A Townhome Owner may lease any Townhome upon terms and conditions they feel appropriate. The Sponsor does not intend to lease Townhomes to purchasers prior to closing title to their townhome since Townhomes will be built as contracts are obtained. The Sponsor does not intend to enter into "interim leases" or to enter into leases with options to purchase. However, Sponsor will construct model Townhomes and complete Townhome buildings and it is possible that a Townhome will be leased prior to sale to an Owner occupant. Prior to Sponsor leasing a Townhome to a purchaser under a purchase agreement, Sponsor will amend the offering plan to disclose such lease and provide a sample interim lease. The Sponsor agrees that any sale of a townhome unit will be made free of any rights of prior tenants, and that the prior lease of the unit will be terminated in accordance with its terms prior to the transfer of title.

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.

PROCEDURE TO PURCHASE AND TRUST FUND PROVISIONS

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

If Purchaser fails to fulfill Purchaser's duties and obligations according to the terms of the Purchase Agreement, all deposits made by the Purchaser may be retained by the Sponsor. In addition, the Purchaser shall pay Sponsor the full cost of all extras, upgrades and change orders that were commenced or ordered prior to the date of closing. Retention of any deposit shall not limit Sponsor from commencing an action for damages or seeking any other remedies allowed in law or in equity. Sponsor must make written demand for payment after a purchaser's default at least 30 days before forfeiture of any deposit may be declared. **If the Sponsor commences litigation to enforce its rights, and if the Sponsor is successful, Purchaser could forfeit all deposits and also be obligated to pay Sponsor an additional sum as awarded by the Court.** If the Sponsor abandons the plan, Purchase will receive a full refund of the deposit.

The Escrow Agent:

The law firm of Lacy Katzen LLP, as attorneys, with an address at 600 Bausch & Lomb Place, Rochester, New York 14604, telephone number 585-324-5714, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated Daniel S Bryson, attorney, to serve as signatory. 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, Selling Agent, 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 Office, Rochester, New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled Pierce Brook Escrow Account ("Escrow Account"). The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000. Any deposits in excess of \$250,000 will not be insured.

All Deposits received from Purchaser shall be in the form of checks, money orders, wire transfers, or other instruments, and shall be made payable to or endorsed by the Purchaser to the order of Pierce Brook Escrow Account.

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/Escrow 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 Purchase Agreement:

The Purchase Agreement is set forth in Part II of this Offering Plan. The escrow provisions are included in Paragraph 4 of the Purchase Agreement, which must be executed by the Escrow Agent.

Notification to Purchaser:

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase 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 and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance to the terms of the Purchase Agreement.

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 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, 28 Liberty Street, New York, New York 10005. 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 the terms and conditions set forth in the Purchase Agreement upon closing of title to the townhome; or
- (b) in a subsequent writing signed by both Sponsor and Purchaser; or
- (c) by a final, non-appealable order or judgment of a court.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the

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

The Deposit, including upgrades and extras, shall be released 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.

Nothing contained herein shall diminish or impair the Sponsor's statutory obligation to each purchaser pursuant to General Business Law Section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such purchaser. Consummation of the plan does not relieve Sponsor of its obligation pursuant to General Business Law Section 352-h. Funds from the escrow account remain the property of the purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the Sponsor or the escrow agent upon any bankruptcy, incapacity or death.

In addition to the above requirements of the Attorney General, under Section 71-a(3) of the New York State Lien Law YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE. Before the use of any surety bond or letter of credit in lieu of the above escrow provisions, the Sponsor must first apply to the Attorney General and disclose the terms of such alternate security in an amendment to this Offering 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, purchase 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.

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. The obligations of a purchaser under a Purchase Agreement are not conditioned on obtaining financing. Any prospective purchaser who executes a Purchase Agreement and does not obtain financing may lose his or her deposit if he or she is unable to otherwise raise the monies for the balance of the purchase price. Prospective

purchasers who require financing are advised to consult with a lending institution before execution of a Purchase Agreement. No representation is made by the Sponsor as to the availability or cost of such financing.

This Purchase Agreement may be further contingent upon purchaser securing a firm contract for the sale of purchaser's current property, within 60 days of the date of the Purchase Agreement. If Purchaser is unable to obtain a firm contract for the sale of the property by such date, then either Purchaser or Sponsor may cancel the Purchase Agreement by written notice to the other. If Sponsor receives another acceptable Purchase Offer during this time period, Sponsor may notify Purchaser in writing that Sponsor desires to accept the other offer and Purchaser will then have two (2) days to remove the sale contingency by written notice to the Sponsor. If Purchaser does not remove this contingency after receiving notice from Sponsor, Purchaser's rights under this contract shall end and Sponsor shall be free to accept the other Purchase Offer and Purchaser's deposit shall be returned. Purchaser may not evidence Purchase Ability of Purchaser's mortgage loan commitment requires, or may require, the sale and transfer of Purchaser's property, and or the completion of any other requirement (excepting only the execution of routine loan documents) as a condition of the mortgage lender disbursing the mortgage loan proceeds.

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

The Purchase Agreement provides that the Sponsor will accept the offer to purchase within ten days following submission by the purchaser. If the Sponsor does not accept the purchase offer within the time period specified by the purchaser, then no contract is formed and the purchaser's deposit will be returned.

The Purchase Agreement does not contain any clause making the agreement subject to "time of the essence" concepts. An agreement containing time of the essence language provides that the performance of obligations by the seller and buyer is materially important, and are to be performed by a date certain, and failure to do so is an automatic default under the agreement. The Purchase Agreement does not contain such time of the essence language.

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 the Sponsor agrees to an assignment, no assignment fee will be due.

If Purchaser fails to fulfill Purchaser's duties and obligations according to the terms of the Purchase Agreement, all deposits made by the Purchaser may be retained by the Sponsor. In addition to which the Purchaser shall pay Sponsor the full cost of all extras, upgrades and change orders that were commenced or ordered prior to the date of closing. Retention of any deposit shall not limit Sponsor from commencing an action for damages or seeking any other remedies allowed in law or in equity. Sponsor must make a written demand for payment after default at least 30 days before forfeiture of the deposit may be declared. See Section 13 of the Purchase Agreement.

The Sponsor anticipates the first Lot closing to occur on or about January 31, 2023. If a contract date set for the first 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. 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 Pierce Brook. The Limited Warranty is in the amount of \$100,000.00 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 latent defects that constitute defective workmanship performed by the builder, an agent of the builder or subcontractor of the builder; defective materials provided by the builder, an agent of the builder or subcontractor of the builder, or defective design, provided by an architect, landscape architect, engineer, surveyor or other design professional engaged solely by the builder. Workmanship, materials and design will be considered defective if they fail to meet the New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to the Limited Warranty. 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 latent 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 included in the Construction and Sale Contract set forth as an Exhibit to this Offering Plan. A copy of the statute governing the Limited Warranty is set forth as an Exhibit to this Offering Plan. Notwithstanding the above, per General Business Law Section 777-b(4)(e)(i), the Sponsor's is obligated to construct the homes in accordance with all applicable codes, filed plans and specifications and local accepted building practices for items which are not covered by codes.

A closing will take place only upon issuance of a temporary or permanent certificate of occupancy for the entire project, or upon issuance of a temporary or permanent certificate of occupancy for the Townhome closed, or the building in which the Townhome is located, as applicable. Buyer shall pay for recording the deed, the mortgage, the mortgage tax, the Town of Canandaigua recreation fee, the water meter and connection fees, and the sewer facilities fee. Seller shall pay for Town of Canandaigua building permit. The current taxes computed on a fiscal year basis excluding any delinquent items, interest and penalties will be prorated and adjusted between Seller and Buyer as of the date of closing. Sponsor shall pay for the cost of the required real estate transfer tax stamps.

TERMS OF SALE TO THE ASSOCIATION

The deed conveying the Common Area to the Association will be a full warranty deed with lien covenant. A copy of the deed is an exhibit to Part II of the Offering Plan submitted to the Attorney General. At the time of its conveyance to the Association, the Common Area will be free and clear of all liens, encumbrances and title exceptions other than those described in the plan and the proposed Association deed, and subject to (i) the Declaration establishing the Association, (ii) easements and rights of way granted to governmental authorities for conservation, walking trails, drainage, sewers, and other municipal purposes (including but not limited to the conservation areas/easements shown on the plans and maps of the development), (iii) public utility easements for water, gas, electric, telephone, and cable services, and (iv) sewer, drainage or utility easements which may be granted in the future.

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 Ontario County Clerk's Office.

The Sponsor is obligated to repair damage to the Common Area which occurs prior to transfer of title. The Sponsor will make periodic checks of the property conveyed to the Association and correct any defect in construction due to improper workmanship or material substantially at variance with this Offering Plan, provided the Sponsor is notified 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.

RIGHTS AND OBLIGATIONS OF THE SPONSOR

The following are obligations of the Sponsor with respect to this offering of interest 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 Townhome 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 principles for failure to perform obligations set forth in the Offering Plan are not permitted. The plan may not include any financial limitation on Sponsor's liability for failure to perform its obligations under the Offering Plan.
4. **Financing.** The Sponsor has obtained adequate financing for the construction of the Association property. The Sponsor's lender is Five Star Bank, 55 North Main Street, Warsaw, New York. The Sponsor has not obtained any bonds securing its obligations under this Offering Plan. The financing does not require Sponsor to construct a minimum number of homes. The financing will be advanced as binding contracts for homes are obtained from purchasers.
5. **Complete Construction of Common Areas and Facilities.** The Sponsor will complete construction of the Common Areas and facilities in accordance with the building plans and specifications as set forth in this Offering 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 Offering 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 Townhome Owners prior to the conveyance of the Lot, subject to the terms of this Offering Plan, including the public utilities and Pierce Brook Trail. If the Town of Canandaigua permits occupancy, and if the incomplete items are not vital to the health and safety of the Townhome Owners, such as final pavement of driveways and landscaped areas, then closing may occur. The Sponsor anticipates that construction of Phase One will be completed by December 2024.

Construction of the development commenced in the Spring of 2022 and is anticipated to be completed by December 2024, with all 29 Townhomes and Common Area completed. The first Townhome is expected to be completed by January 31, 2023, weather permitting. The Sponsor will complete the subdivision improvements (that is the right of way, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. The Sponsor reserves the right to convey the Common Areas to the Association prior to the completion of those improvements which could be materially and adversely affected by the completion of the improvement of Lots or could impede the improvement of such Lots. 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 the landscaping for an individual townhome and the driveway serving an individual townhome, which will be completed as construction of townhomes progresses, and as weather permits. The incomplete items *will be completed* by the Sponsor, which is estimated to be December 2024.

Because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. The Sponsor gives no assurance that all Lots will be improved by a dwelling.

The Sponsor may transfer title to the first Townhome upon its completion. The Sponsor does not need to sell a minimum number of Townhomes before the first transfer may occur. The Sponsor is not obligated to construct a

minimum number of Townhomes under its financing obligations or under this Offering Plan. A Townhome will be completed as the home is purchased. The projected completion date of the project, that is the completion and sale of 29 Townhomes, is December 31, 2024. The landscaping around Townhomes will be completed as construction progresses, weather permitting.

The Sponsor has the financial ability to complete the project and meet its obligations as set forth in this Offering Plan.

6. Pay Assessments. The Sponsor will pay assessments for unsold Lots owned by the Sponsor in accordance with the Declaration. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. 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, which amount shall be included in the deficit paid by the Sponsor. By way of example, the yearly reserve contribution per Lot is \$404.10, or \$33.68 per month. Thus if the Sponsor completed a Townhome on July 1st, but did not transfer it to a third party Owner until October 31st, the Sponsor would contribute four months towards reserves in the amount of \$134.72 (\$33.68 per month x 4). 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 for unsold Lots. Income from Lot sales and ongoing operations will fund this obligation, and other sources of funding will be utilized if projected sales are not made. In adopting any revised schedule of Operating Expenses, Sponsor shall provide backup budget quotations from arms-length third party providers for any item greater than the amount set forth in the Estimate of Operating Expenses set forth on page 11 of this Plan. See Article V of the Declaration set forth in Part II 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 will convey the Association Property to the Association in a particular phase or section prior to closing title to the first home or lot in that phase or section. 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 file the Declaration and convey, by warranty deed, 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 set forth on the cover page of this Offering Plan. Such policy will be furnished at Sponsor's sole cost and expense, and shall evidence marketable 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, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canandaigua, the walking trail system and parking area is open to the public. 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. The Sponsor will file a subdivision map in the office of the Ontario County Clerk and the Town of Canandaigua prior to the conveyance of the first Lot in Pierce Brook, which map shall show the Lots upon which the dwellings are or will be located.

9. Plans. The Sponsor will provide the Board of Directors and the Town of Canandaigua 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 Townhome 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 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 Offering Plan. The above mentioned agreed replacement cost fire and casualty insurance for the Townhomes will avoid co-insurance.

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 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 and submitted within three 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. Common Area Completion. Prior to conveyance of the Common Area to the Association, the Sponsor will file an amendment to this Offering Plan including a certification by an engineer or architect, licensed by the State of New York, stating that the road has been completed in accordance with specifications of the Town of Canandaigua for private rights-of-way, and that the storm and sanitary sewers and water laterals have been completed in accordance with specifications of the Town of Canandaigua, and indicating the date of completion. If the construction of the right-of-way and/or sewers and/or waterlines or anyone of them has not been completed prior to the conveyance of the Common Area to the Association, the Sponsor shall post a bond or escrow funds or provide other adequate security in an amount to be determined by a licensed engineer, which amount shall not be less than the amount required to complete such construction to the required specifications. The bond and escrow requirement set forth above will be satisfied by the existing Letter of Credit held by the Town of Canandaigua to complete such incomplete work.

NO BOND OR OTHER SECURITY HAS BEEN POSTED BY THE SPONSOR TO SECURE THE PERFORMANCE OF ITS OBLIGATIONS AS ABOVE SET FORTH, EXCEPT AS SET FORTH IN SPECIAL RISK 4. The Sponsor nevertheless has the financial ability to complete the project and meet its obligations as set forth in this Offering Plan.

17. Limited Warranty. The Sponsor is offering an express Limited Warranty in connection with the sale of Lots in Pierce Brook. The Limited Warranty is in the amount of \$100,000.00 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, which Guidelines are attached to the Limited Warranty. The complete terms of the Limited Warranty are set forth in Part II of this Plan as part of the form of Purchase Agreement for Individual Lots. The Limited Warranty complies with the requirements of the Housing Merchant Implied Warranty.

CONTROL BY SPONSOR

IN THIS OFFERING THE SPONSOR WILL CONTROL THE ASSOCIATION UNTIL THE EARLIER OF ALL LOTS OWNED BY THE SPONSOR ARE SOLD TO PURCHASERS OR 15 YEARS AFTER THE RECORDING OF THE DECLARATION. DURING SPONSOR'S CONTROL, PURCHASERS

WILL NOT HAVE VOTING CONTROL ON MATTERS INVOLVING THE ASSOCIATION. As defined in the Declaration, the Sponsor and all Townhome Owners shall automatically be deemed to have become Members of the Association (see Section 3.02 of the Declaration set forth in Part II of this Plan). PURSUANT TO THE NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW SECTION 601(A), A NOT FOR PROFIT MAY HAVE TWO OR MORE CLASSES OF MEMBERSHIP WITH DIFFERENT RIGHTS. THE ASSOCIATION SHALL HAVE TWO (2) CLASSES OF MEMBERSHIP. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including any and all additional lots which may be brought within the scheme of the Declaration pursuant to Sponsor's right under Article II of the Declaration, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. There is no other difference between the Class A and Class B membership. 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. See the section entitled Pierce Brook Association, Inc., Membership and Voting Rights. 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. At the Association's next annual meeting, or at a special meeting, within 30 days for the last lot sale, the members of the Association shall elect a new board of directors, and the Sponsor appointed members of the board of directors shall resign.

During Sponsor control, the Sponsor shall defend any suits or proceedings arising out of Sponsor's acts or omissions, and will indemnify the Association and Townhome Owners.

During Sponsor control, the Sponsor will not exercise veto power over the expenses in Schedule A, or over expenses required to (1) comply with applicable law or regulation; (2) to remedy and notice of violation; or (3) to remedy any work order issued by an insurer; or (4) ensure the health and safety of the occupants of the building, provided such maintenance action is otherwise the obligation of the Association. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control.

Sponsor may exercise veto power over expenses other than those described above, as set forth in the Declaration, for a period ending not more than five years after the closing of the first Townhome or whenever the unsold Townhomes constitute less than 25 percent of the unsold Townhomes, whichever is sooner.

While the Sponsor is in control of the Board of Directors, no mortgage liens will be placed on the Association property without the consent of at least 51% of the home or Townhome Owners, excluding the Sponsor or Sponsor's nominees.

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

The Sponsor intends to improve Pierce Brook Section One Lots 1-16 and 80-92 with 29 Townhomes. Subject to consumer demand and weather conditions, the Sponsor anticipate completing the development in compliance with the Construction Timetable. The Sponsor will complete the subdivision improvements (that is the right of way, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. However, because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. The Sponsor gives no assurance that all Lots will be improved by a dwelling.

PIERCE BROOK ASSOCIATION, INC.

Pierce Brook Association, Inc. was formed on March 11, 2022, when its Certificate of Incorporation was filed under the Not-for-Profit Corporation Law of the State of New York. The Association is a Type "A" corporation under the

forementioned law. The Certificate of Incorporation is set forth in Part II of this Plan. The Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the Declaration), which is set forth in Part II of this Plan, provides the framework and procedures by which the Association, upon conveyance of common properties to it by the Sponsor, will maintain and administer the lands and the facilities comprising the Association property. The By-Laws which shall govern the operation of the Association are set forth in Part II of this Plan.

The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canadaigua, the walking trail system and parking area is open to the public.

Membership in the Association is mandatory for all Townhome Owners. Membership is conferred upon an individual taking title and ownership of a Lot. Only Townhome Owners, including the Sponsor, may be a Member. Membership in the Association will cease upon a Townhome Owner conveying his Lot to another purchaser.

The Sponsor intends to improve 92 Lots within Pierce Brook Subdivision, Sections 1-3, with a Townhome dwelling. The maximum number of Lots to be improved by a Townhome in Phase One is 29 Lots. In Phase Two, the maximum number of Lots to be improved by a Townhome is 34. In Phase Three, the maximum number of Lots to be improved by a Townhome is 29. Upon completion of the project, the maximum number of Townhomes in the three phases is 92. This plan will be amended to disclose *any* delay in completion of each Phase, the *number* of homes in each Phase, and any decision not to complete Phase One, Phase Two and/or Phase Three.

Owners of Lots, excluding the Sponsor, are responsible for the payment of monthly maintenance assessments to the Association. At the time they purchase their Lot, whether from the Sponsor, or thereafter in connection with a resale, purchasers are advised to obtain a letter or statement from the Association (see Section 5.10 of Declaration set forth in Part II of this Plan) certifying to the status of payment of assessments. This statement will be provided to first time purchasers by the Sponsor at closing, and thereafter by the Association in connection with a resale. The estimated charges for the first year that Pierce Brook 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. See Article V of the Declaration set forth in Part II of this Plan.

All mortgage liens on Pierce Brook, of which the Association forms a part, will be subordinate to the lien of the Declaration. The common area will be conveyed to the Association free of the lien of any land or construction mortgage. The individual Townhome Lots will be conveyed to Lot purchasers free of the lien of any land or construction mortgage.

All provisions of the Declaration and Bylaws are applicable to any mortgagee taking title to a home by foreclosure or a deed in lieu of foreclosure. Except for the obligation of the Sponsor to be the operating deficit in lieu of common charges, and the Class B Membership status, the remaining provisions of the Declaration and Bylaws are applicable to the Sponsor.

The Declaration does provide for the annexation of additional land by the Sponsor.

Summary of the Declaration.

Prior to the closing of title to any Lot in Pierce Brook, the Sponsor will file a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") in the Office of the Ontario County Clerk. The Declaration is set forth in Part II of this Plan.

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 grantee, lessee, or other person accepting such interest covenants to observe, perform 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 Declaration does not impose restrictions on occupancy density or renting.

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

Article III - The Association Structure, Membership and Voting Rights

IN THIS OFFERING THE SPONSOR WILL CONTROL THE ASSOCIATION UNTIL THE EARLIER OF ALL LOTS OWNED BY THE SPONSOR ARE SOLD TO PURCHASERS OR 15 YEARS AFTER THE RECORDING OF THE DECLARATION. DURING SPONSOR'S CONTROL, PURCHASERS WILL NOT HAVE VOTING CONTROL ON MATTERS INVOLVING THE ASSOCIATION. As defined in the Declaration, the Sponsor and all Townhome Owners shall automatically be deemed to have become Members of the Association (see Section 3.02 of the Declaration set forth in Part II of this Plan). Pursuant to the New York State Not-For-Profit Corporation Law Section 601(a), a not for profit may have two or more classes of membership with different rights. The association shall have two (2) classes of membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including any and all additional lots which may be brought within the scheme of the Declaration pursuant to Sponsor's right under Article II of the Declaration, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. There is no other difference between the Class A and Class B membership. 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. See the section entitled Pierce Brook Association, Inc., Membership and Voting Rights. 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. At the Association's next annual meeting, or at a special meeting, within 30 days for the last lot sale, the members of the Association shall elect a new board of directors, and the Sponsor appointed members of the board of directors shall resign.

Article IV - Property Rights and Easements

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 for water lawns and routine maintenance without charge. Townhome Owners are responsible for water their lawns following initial planting/seeding, and thereafter as weather dictates;
- 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.

Article V - Assessments

Each Townhome Owner, excluding the Sponsor, by becoming a Townhome 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, such as landscaped areas. (See Sections 6.01 and 6.02 of the Declaration for specific types of maintenance, repair and replacement included or excluded, as the case may be.) The Assessments shall be the personal obligation of the Townhome 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 Sponsor will pay assessments for unsold Lots owned by the Sponsor in accordance with the Declaration. Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during this start-up period. 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.

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 Townhome Owners voting in person or by proxy at a meeting duly called for this purpose is required.

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 (see Section 5.06 of the Declaration set forth in Part II of this Plan). 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.

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

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

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

Article VI - Maintenance by the Association

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 Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canandaigua, the walking trail system and parking area is open to the public.
- b) The Association will be responsible for maintenance asphalt driveways, roofing, exterior painting/staining of trim materials (not wrapped in aluminum) and front doors, for which replacement reserves have been established. All other Townhome components are the responsibility of the Townhome Owner, including but not limited to siding, vinyl clad windows, insulated metal doors, overhead garage doors, aluminum

gutters and downspouts, masonry windows, skylights, window panes, doors, garage doors, storm doors, decks, or maintain, repair or replace porches, stone pavers or stoops, patios or concrete walks. 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 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, excluding walks.
- e) Obtain and maintain (i) fire and casualty insurance on the Townhomes, (ii) fire, casualty and liability insurance on the Association property and (iii) directors' and officers' liability insurance for the officers and directors of the Association. (See Sections 9.01 and 9.03 of the Declaration for specific types of coverage obtained by the Association and coverages which are not obtained by 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, 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.
- h) Replace landscape plant material, including trees and shrubs, which lie over the easement granted to a public agency for sewers and water services, in the event these landscape materials are damaged or destroyed in the course of maintenance or repair by others.

The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canadaigua, the walking trail system and parking area is open to the public.

The Association is solely responsible for the maintenance of the Common Area and the improvements within the area, with inspections every three months on average, in accordance with the following maintenance plans:

1. Tree Planting

- During the first three years, mulching, watering and protection of young trees may be necessary
- Inspections should be performed every three months and within one week of ice storms, within one week of high wind events that reach speeds of 20 mph until trees have reached maturity.
- As a minimum, the following items should be checked regularly:
 - Assess tree health
 - Determine survival rate; replace any dead trees.
 - Inspect tree for evidence of insect and disease damage; treat as necessary
 - Inspect tree for damages or dead limbs; prune as necessary

2. Grass Swales

- Fertilize and lime as needed to maintain dense vegetation.
- Mow as required during the growing season to maintain grass heights at 4 inches to 6 inches.
- Remove any sediment or debris buildup, by hand if possible, in the bottom of the channel when the depth reaches 2 inches.
- Inspect for pools of standing water. Re-grade to restore design grade and re-vegetate.
- Repair rills in channel bottom with compacted topsoil, anchored with mesh or erosion blanket as needed. Seed and mulch.
- Use of heavy equipment for mowing and removing plants/debris should be avoided to minimize soil compaction. Disturbed areas should be stabilized with seed and mulch, or revetment, as necessary.

3. SWMF Maintenance

- Ensure plantings and grass in the SWMF areas are established at all times to limit possible erosion.
- Visual inspection of embankments, rip-rap, storm piping and outlet control structures shall be performed every 6 months. Major washout of banks, damage to structures etc. shall be repaired as necessary. Trash and debris shall be removed from the outlet control structure.
- Woody vegetation once identified shall be cut/removed from embankment areas.
- Inspect forebays and micro pools once yearly to ensure adequate volume is provided for sediment and pollutant removal. When 50% of the pool volume is filled, the pool shall be re-excavated to design grades and excavated material shall be disposed of off-site in a legal manner.

4. Bioretention & Dry Swale Maintenance

- Fertilize and maintain grasses – cut down at close of year prior to snowfall.
- Remove trash building up in stone and cobble areas.
- Remove any sediment or debris buildup by hand if possible.
- Inspect for pools of standing water. If water is standing for longer than 24 hours after a rain event the stone and fabric top layer shall be removed and the bioretention media shall be inspected and replaced as necessary.
- Once a year, replace dead plantings, as were specified on the design plans.

Meadow Open Space will be left in its natural state, and no regular maintenance will occur. Walking trails, during mowing season, will be mowed weekly mowing a grass trail mower.

Under no circumstances is the Town of Canandaigua responsible for the maintenance of the Common Area and the improvements located thereon.

Article VII - Architectural Controls

Townhome Owners may NOT make any exterior modifications or improvements to their home or the Lot, including but not limited to landscaping or foundation plantings, without Architectural Committee written approval. An Architectural Standards Committee shall be appointed by the Board of Directors for the purpose of enforcing certain provisions of the Declaration and controlling any change in use or any additions, modifications or alterations to any improvement within the Pierce Brook within guidelines and/or policies established by the Board of Directors. In this offering the Sponsor will control the Association until the earlier of all lots owned by the Sponsor are sold to Purchasers or 15 years

after the recording of the Declaration. During Sponsor's control, Purchasers will not have voting control on matters involving the Association. See Control by Sponsor.

With respect to decks or patio area improvements, Townhome Owners may improve their deck or patio area with the Architectural Committee's written consent, upon uniform standards consistently applied. 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 Townhome Owner's property, and the adjoining Townhome Owner and Association shall not be obstructed from performing repairs and maintenance on the adjoining Townhome. The Townhome Owner shall maintain the improvements in a good repair. Good repair means a condition which not only meets minimum standards of health and safety, but which results in continued structural soundness and usefulness of its intended purpose. Upon the Townhome 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 Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be deemed to be a common charge and lien against the Lot and collectable as such.

Article VIII - Party Walls and Encroachments

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 Townhome Owners who share such wall, assuming the damage was not the result of negligence or a willful act by one (1) of such Townhome Owners.

Article IX - Fire and Casualty Insurance, Reconstruction

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) fire, casualty and 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 Townhome Owner by the Association.

The individual Townhome Owner is responsible for obtaining 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 shall be 100% agreed replacement cost value of each Townhome, including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings, and all machinery servicing the Lots and common facilities, excluding the land, foundations, the personal property of Townhome Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by present or prior Townhome Owners or occupants, and Lots for which the Sponsor is not paying full Maintenance Assessments as provided in Section 5.04 of the Declaration. The above 100% agreed replacement cost policy provides for adequate insurance to replace the structure in the event of a total loss, and avoids any coinsurance in the event of a partial loss. For additional provisions, endorsements and coverages see Section 9.01 of Declaration. 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, as provided in the Declaration, 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 Townhome Owners as hereinafter set forth. 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 Townhome 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 builders risk policy maintained by the Sponsor.

Each Townhome Owner and such Townhome 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 Townhome Owners, but not the liability of Townhome 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 Townhome Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage, with an excess umbrella of \$1,000,000.00.

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 Townhome Owners, the directors' and officers' liability coverage shall be in at least the sum of \$1,000,000.00.

The fidelity bond 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 bond shall be in an amount not less than 50% of the Association's annual budget but in no event less than the amount of funds, including reserves, owned by or under the control of the Association. Until the first meeting of the Board of Directors elected by the Townhome Owners, the coverage shall be \$5,000.00 for forgery.

All policies obtained by Townhome 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 Townhome Owner.

Article X - General Covenants and Restrictions

There are general prohibitions against the following unless the consent of the Architectural Committee and/or Board of Directors, where applicable, has first been obtained (*see Article 10 of the Declaration set forth as an Exhibit to this Offering Plan for the details of these residential restrictions*):

1. Advertising and Signs.
2. Animals, Birds and Insects. The Association may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of pets and (ii) prohibit certain types of pets entirely. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. Provided an Owner obtains the prior written consent of the Association, an underground pet containment system may be installed. Assuming the Owner has installed an underground pet containment system, a pet may be let outdoors within the area of the underground pet containment system in the company of a responsible person, but need not be leashed. No above ground or visible pet containment enclosures shall be permitted. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any pet, if, in the opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners.
3. Protective Screening and Fences.
4. Garbage and Refuse Disposal.

5. Above Surface Utilities.
6. Noxious or Offensive Activities.
7. Oil and Mining Operations.
8. Dwelling in Other Than Residential Unit.
9. 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, and in compliance with Federal regulations.
10. Trees and Other Natural Features.
11. Use and Maintenance of Slope Control Areas.
12. Snowmobiles.
13. Commercial and Professional Activity on Property.
14. Outside Storage.
15. Outdoor Repair Work.
16. Oversized, Commercial and Unlicensed Vehicles.
17. Clotheslines.
18. Prohibited Structures. No shack, barn, storage shed or other out-building, accessory structure, either temporary or permanent, shall be erected on any Lot.

Article XI - Enforcement, Amendment and Duration of the Declaration

After 30 days written notice of any violation of the Declaration or the Associations Rules and Regulations, as adopted from time to time, the Townhome Owner will be subject to a violation fee of \$50 per day until the violation is cured.

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 Townhome Owner, or (ii) any family member, tenant, guest or invitee of a Townhome 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 Townhome Owner's family or (2) any family member of the tenant of such Townhome Owner, such costs shall also be a lien upon the Lot owned by such Townhome Owner.

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

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, 2035 and shall be extended, as then in force, automatically and without further notice, for successive periods of ten (10) years.

Management and Operation.

The business and affairs of the Association shall be managed by a five (5) member Board of Directors (see Article V of By-Laws set forth in Part II of this Plan), 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 Pierce Brook. 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 Pierce Brook Subdivision, or until 15 years following the recording of the Declaration, whichever shall first occur. Thereafter, directors of the Association shall be elected.

No Director 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. (See Article V of By-Laws set forth in Part II of this Plan). 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 Jeff Morrell, Scott M. Morrell and Hannah Hall. The initial officers of the Association are Jeff Morrell, President; Scott M. Morrell, Vice-president; Hannah Hall, Secretary and Treasurer. Jeff Morrell and Scott M. Morrell are principals of the Sponsor; Hannah Hall is an employee of the Sponsor. The business address of these individuals is 1501 Pittsford Canandaigua Road, Canandaigua, New York, 15464.

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, if such are provided to homeowners pursuant to the terms of this Offering Plan.

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 Townhome Owners, excluding itself.

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

Membership and Voting Rights.

As defined in the Declaration, the Sponsor and all Townhome Owners shall automatically be deemed to have become Members of the Association (see Section 3.02 of the Declaration set forth in Part II of this Plan). There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including any and all additional lots which may be brought within the scheme of the Declaration pursuant to Sponsor's right under Article II of the Declaration, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. There is no other difference between the Class A and Class B membership. 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.

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 repealed or amended by a vote of a majority of Townhome Owners or by the affirmative vote of a majority of the whole Board of Directors.

Assessments.

The costs and expenses of operating the Association and of making capital improvements, if any, will be allocated among the Townhome Owners, excluding the Sponsor, and assessed by the Board of Directors (See Article V of Declaration set forth in Part II of this Plan.) 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 Townhome 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 Townhome 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 Then current amount of annual maintenance assessments, the consent of two-thirds (2/3) of the total votes of Townhome 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.

After Association charges have been levied on one or more Owners who have closed title to their Lots, the Sponsor shall be obligated for the difference between the actual Association expenses, including reserves applicable to completed improvements as provided for in the Association budget, and the Association charges levied on Owners who have closed title to their Lots, as projected in Schedule A of the offering plan. If reserves have been established by the Association, 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 Certificates 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. In adopting any revised schedule of Operating Expenses, Sponsor shall provide backup budget quotations from arm's length third party providers for any item greater than the amount set forth in the Estimate of Operating Expenses set forth in this Plan. Sums due shall be estimated and paid monthly, with a final accounting and adjustment annually.

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 (see Section 5.06 of the Declaration set forth in Part II of this Plan). 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.

The Declaration and By-laws do not include penalties or other charges for violation of the rules and regulations. However, if the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the property owned by such Owner. The Sponsor is not obligated for attorney's fees in any action brought by the Association against the Sponsor.

At the time they purchase their Lot, purchasers are advised to obtain a certificate from the Association (see Section 5.10 of Declaration set forth in Part II of this Plan) certifying to the status of payment of assessments. This statement will be provided to first time purchasers by the Sponsor at closing.

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Rochester, New York 14604
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April 25, 2022

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

Re: Pierce Brook Association, Inc.

Gentlemen:

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

Taxation of Townhome Owners: Under the provisions of Section 164 of the Internal Revenue Code and Section 615 of the New York Tax Law, each Townhome 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 Townhome Owner to the Association are not deductible from his adjusted gross income for Federal and New York State income tax purposes.

On January 1, 2018, the Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changed the previously existing Internal Revenue Code, including the taxes and deductions related to homeownership. Purchasers are advised to consult with a tax expert regarding whether the new law will affect the purchaser's taxes. Purchasers should not rely on any representations in this offering plan addressing taxes without first consulting a tax expert

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 Townhome 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. However, we advise 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 be subject to a franchise tax imposed under Article 9-A of the New York Tax Law, and will be required to pay an annual franchise tax upon the basis of its entire net income or upon such other basis as may be applicable. 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.

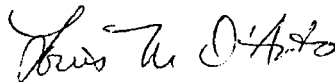
Site Plan Approval: We have received copies of the Town of Canandaigua Planning Board Resolutions, dated December 14, 2021, and based upon this information, it is our opinion that if Pierce Brook Subdivision is built in accordance with the approval requirements, it will conform to applicable zoning ordinances 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 Pierce Brook Association, Inc. Offering Plan.

Very truly yours,

WOODS OVIATT GILMAN LLP



Louis M. D'Amato

LOCAL GOVERNMENT APPROVAL

On December 14, 2021, the Town of Canandaigua Planning Board approved the Zoning, Final Subdivision and Site Plan for Pierce Brook, Section One. The Sponsor will provide the Association with a preliminary subdivision map and with a filed subdivision map when received.

WORKING CAPITAL FUND

This offering does not involve a working capital fund.

RESERVE FUND

The Association's reserve fund is part of the common charge assessment as discussed in the Budget Section of this Plan. Reserve funds will be deposited into a separate reserve fund account. Reserves will not be collected for vacant lots. See pages 7 and 30 regarding maintenance, as well as page 14 for the common charge information discussing maintenance. It is believed the reserve fund is sufficient to meet the Association's reserve fund needs occurring within five years of the first Townhome closing, based on the level of service discussed in the Budget Section of this Plan. However, if additional funds are required, the Association may consider borrowing funds from an institutional lender or assessing members a special assessment. Interior and exterior maintenance of the Townhomes is discussed in detail elsewhere in this Offering Plan.

The Sponsor intends to improve Pierce Brook Section One Lots 1-16 and 80-92 with 29 Townhomes. Construction commenced in the Spring of 2022 and is anticipated to be completed by December 2024. The first Townhome is expected to be completed by January 31, 2023, weather permitting. The Sponsor will complete the subdivision improvements (that is the right of way, water service, sanitary and storm sewers) servicing any Townhome Lot prior to the sale of such Townhome Lot. The Sponsor reserves the right to convey the Common Areas to the Association prior to the completion of those improvements which could be materially and adversely affected by the completion of the improvement of Lots or could impede the improvement of such Lots. 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 the landscaping for an individual townhome and the driveway serving an individual townhome, which will be completed as construction of townhomes progresses, and as weather permits. The incomplete items *will be completed* by the Sponsor, which is estimated to be December 2024.

Because of a variety of circumstances, including circumstances beyond the Sponsor's control, such as the number of people willing to purchase a home in 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, and the Lots may remain vacant for an extended period of time. The Sponsor will construct homes as purchasers enter into binding purchase agreements. The Sponsor gives no assurance that all Lots will be improved by a dwelling.

Until a Townhome Lot is sold, individual common charges will not be collected, however, the Sponsor is required to fund any deficit incurred by the Association during the Sponsor's period of control. 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, which amount shall be included in the deficit paid by the Sponsor.

As set forth in the Budget Section of this Plan, operating expenses are based upon the cost of operating the project with 29 townhomes transferred to third party purchasers where each is assessed 1/29th of the total costs of operations. However, during development and construction, income and expenses (services provided) will be based on townhomes completed, and therefore income and expenses incurred will be less than the amount as set forth in the budget until all homes are built. With respect to reserves, until a townhome is built, no common charges are collected, including the amount for reserves; and therefore the amount collected for reserves will reflect the number of homes built. Accordingly, the total amount collected for reserves until all homes are built will be less than reflected in the budget.

The reserve fund may only be used for capital expenditures, and will not be used to defray any Townhome 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.

MANAGEMENT AGREEMENT

The Sponsor initially will retain Realty Performance Group, Inc. ("Realty Performance") to act as Managing Agent of the Association. If the Sponsor substitutes another managing agent, it will disclose the new managing agent in an amendment to the Plan. Realty Performance has been actively engaged in the management of townhouses and condominiums for 28 years. Realty Performance provides real estate management for forty three homeowner associations and condominiums, totaling over 3,700 living units. There is no affiliation between Realty Performance Group, Inc. and the Sponsor.

For its services, Realty Performance will receive a fee of \$22.83 per Lot per month, which amount is a reasonable market rate. In addition, Realty Performance will receive reimbursement for all out-of-pocket expenditures. The form of Management Agreement is set forth as an exhibit to this Offering Plan.

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 Realty Performance 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 Townhome Owners;
- e. Maintaining payroll records and filing withholding tax statements for employees;
- f. Furnishing monthly reports of receipts and disbursements to the President and Treasurer of the Association.

Realty Performance 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 Realty Performance 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 Realty Performance 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.

IDENTITY OF PARTIES

SPONSOR

S&J Morrell, Inc., a New York corporation, with its principal office and business address of 1501 Pittsford Canandaigua Road, Canandaigua, New York 14564. S&J Morrell, Inc. was incorporated August 31, 1998. S&J Morrell, Inc. does business as Morrell Builders. Morrell Builders has been a successful residential developer for over fifty years. A family organization spanning three generations, Morrell Builders has built more than 2000 residential homes in the Rochester, Maryland, & Florida areas. Morrell's residential focus in the Rochester area has been supported by excellent customer, agent, and community feedback throughout the years. The sole principals of Sponsor are Jeff Morrell and Scott M. Morrell. Scott M. Morrell joined the business in June 1998 and is the president. Jeff Morrell joined the business in June 1998, Taking the business over from their father, the brothers have run the company for the last two decades.

The Sponsor and the principals of the Sponsor have not taken part in any other public offering of interests in realty in or from New York State which were offered during the preceding five (5) years, except for the following:

- a. Silverton Glenn HOA, File No. HO-12-0006. The offering is now complete. All obligations of the Sponsor were met and the association is now controlled by the homeowners.
- b. St. James Town Homes HOA, File No. HO-15-0010. The Offering Plan is current and the development is ongoing. All obligations of the Sponsor are current.
- c. Greenpoint Trail HOA, File No. HO-16-0006. The Offering Plan is current and the development is ongoing. All obligations of the Sponsor are current.
- d. Alpine Ridge HOA, File No. HO-19-0005. The Offering Plan is current and the development is ongoing. All obligations of the Sponsor are current.
- e. Piper Meadow HOA, File No. HO-20-0002. The Offering Plan is current and the development is ongoing. All obligations of the Sponsor are current.

The Sponsor will be its own selling agent. Scott M. Morrell is a licensed New York broker.

Neither the Sponsor, nor any of its principals or entities, have any prior felony convictions, bankruptcies, convictions, injunctions or judgments, filed against them.

CONSULTANTS

In an effort to develop and sell Lots at Pierce Brook, the Sponsor has retained a number of professional consultants including:

Managing Agent and Budget Review

Realty Performance Group, Inc., ("Realty Performance Group"), 1800 Hudson Avenue, Suite 100, Rochester, New York 14617, 585-225-7440. Realty Performance has been actively engaged in the management of townhouses and condominiums for 28 years. Realty Performance provides real estate management for forty three homeowner associations and condominiums, totaling over 3,700 living units, including but not limited to 3000 East Ave Condominiums, Amberwood Homeowners Association, Bay Town of Canandaigua Condominiums, Hillsboro Cove Homeowners Association, and Scarborough House Condominium. See <https://realtyperformancegroup.com/properties/> for a complete listing.. There is no relationship, financial or otherwise, between the Sponsor and the Realty Performance. Neither Realty Performance, nor any of its principals or entities, have any prior felony convictions, bankruptcies, convictions, injunctions or judgments, filed against them.

Survey and Engineering

Marathon Engineering ("Marathon"), 39 Cascade Drive, Rochester, New York 14614, 585-458-7770. Marathon is Marathon Engineering is a Civil Engineering design company founded in 2008 with the guiding principle of providing quality civil engineering. Marathon's representative clients include financial institutions, commercial, retail and residential developers, including but not limited to ESL Federal Credit Union, NPV, Inc. Ferron Norris Financial, Inc., Gates Automotive, The Wegman Group, LLC, The Geneseo Central School District. There is no relationship, financial or otherwise, between the Sponsor and Marathon.

Legal Counsel

Woods Oviatt Gilman LLP, Louis M. D'Amato, of counsel, 1900 Bausch & Lomb Place, Rochester, New York, prepared the Offering Plan. There is no relationship, financial or otherwise, between the Sponsor and Woods Oviatt Gilman.

Lacy Katzen LLP, 600 Bausch & Lomb Place, Rochester, New York 14614, will represent the Sponsor in Lot Sales. There is no relationship, financial or otherwise, between the Sponsor and Lacy Katzen LLP.

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. While the Sponsor is in control of the Board of Directors of the Association, an annual certified financial statement prepared by a certified public accountant and will be delivered at the Annual Meeting.
2. Notice of the Annual Meeting, to be given not less than ten (10) days or more than 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.

The Board of Directors of the Association is obligated to provide the Members the above reports and materials.

DOCUMENTS ON FILE

Copies of this Offering Plan, all documents referred to in the plan, and all exhibits submitted to the Department Law in connection with the filing of the plan, on file and available for inspection without charge and copying at a reasonable charge, at the 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. The Sponsor will deliver to the Board of Directors a copy of all documents filed with the appropriate recording office at the time of closing the transfer of the first Lot.

GENERAL INFORMATION

Pending Litigation

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.

Non-Discrimination

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.

Right to Rescind

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.

No Offering to Minors

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

No Prior Offering

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. The property subject to this Offering Plan was not the subject of any prior cooperative, condominium or HOA offerings, and was not subject to any market test pursuant to Cooperative Policy Statement No. 1.

No Contracts Binding Association

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 contracts substantially in accordance with the description of services and charges set forth in the Estimate of Operating Expenses and Reserves set forth in this Offering Plan. The Sponsor will amend this Plan if undisclosed contracts are entered into.

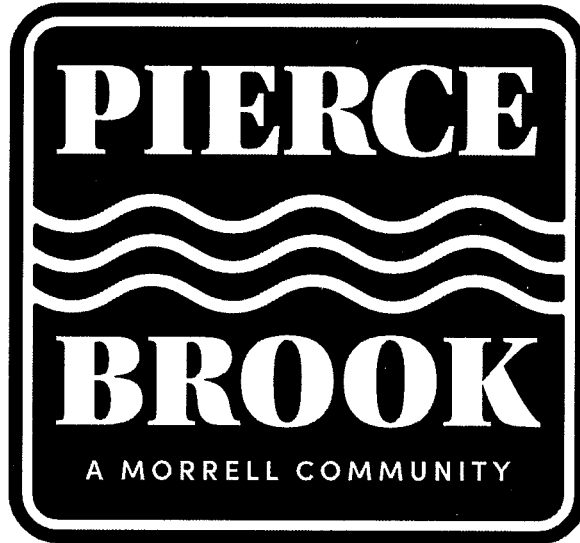
Sponsor's Statement of Specifications or Building Condition

This offering is for new construction on vacant land. Sponsor adopts the Engineer's Description and the Architect's Description set forth in Part II of the Offering Plan.

Offering Plan is Fair Summary

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.

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S & J MORRELL INC.

CONSTRUCTION AND SALE

AGREEMENT

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S&J MORRELL INC.
CONSTRUCTION AND SALES AGREEMENT

The undersigned, _____, residing at _____, (hereinafter referred to as the "Buyer") offers and agrees to purchase from S&J Morrell Inc., a New York Corporation with a principal place of business at 1501 Pittsford Victor Rd., Suite 100, Victor, NY 14564 (hereinafter referred to as the "Seller") the premises described below for the price and upon the terms and conditions herein set forth.

1. DESCRIPTION

Those certain premises situated in the Town of Canandaigua, County of Ontario and State of New York known and described at Lot No. _____ of the Pierce Brook Subdivision with the lot size being approximately .08 acres and as per deed (the "Premises").

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

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

2. CONSTRUCTION

Seller shall construct upon the Premises in accordance with the zoning and tract restrictions as a townhome consisting of five rooms together with an attached garage and having a foundation size of (per plan). The type of townhome is designated as Model _____ which shall be built in accordance with the plans and specifications which are attached hereto and made a part of hereof as approved and initialed by both Buyer and Seller. Seller shall retain the plans and specifications.

The Seller shall furnish all the materials and perform all of the work as shown on the attached plans and specifications. Any changes in the plans or specifications shall be listed on the Change Authorization form to be signed by the Buyer and Seller. The cost of the changes and alterations shall be agreed to in writing

by Buyer and Seller. The cost of the changes or any extras beyond the purchase price set forth herein shall be paid by the Buyer in advance when ordered.

Seller reserves the right to substitute terms and materials contained in the plans and specifications with items and materials of equal quality. In addition, the Seller shall determine the grading, elevation, drainage, tree removal and site plan to ensure compliance with municipal specifications. If undesirable soil or building conditions are encountered prior to or during the construction on said Premises, Buyer agrees to select an alternate lot with the approval of the Seller and to relocate to said alternate lot. The Seller shall obtain and pay for all permits, certificates and licenses necessary for the performance of the work hereunder and shall comply with all relevant statutes, ordinances, codes and regulations and shall maintain Workers' Compensation insurance in accordance with the laws of the state of New York.

Buyer agrees to make prompt selection of materials, colors or style where same is required under this Contract or attached plans and specification in order that work may progress without delay. If Buyer fails to make timely selection, then Seller is empowered to do so and continue with completion of construction.

3. CONTRACT PRICE

Buyer shall pay to Seller for the Premises and the townhome to be constructed thereon the sum of _____ Dollars (\$) plus any additional sums for change orders or extras as provided for herein, which extras shall be paid for in advance and when ordered. The purchase price includes membership in The Pierce Brook Homeowners Association. **Final base pricing shall be confirmed 60 days prior to construction commencement and shall not exceed a 2% increase. Should the base price confirmation exceed 2%, Customer may elect to terminate without cause for a full refund of all deposits paid.** The purchase price shall be paid by the Buyer to the Seller as follows:

- A. Lot Reservation: _____ Dollars (\$)
Prior to contract, Buyer has given a deposit to reserve the lot for construction.
- B. Contract Deposit: _____ Dollars (\$)
Upon signing of this Contract a deposit is due.
- C. Final Deposit: _____ Dollars (\$)
Upon Buyer's removal of all contingencies and prior to construction commencement, the final deposit is due. At this time all deposits are non-refundable.

Total Deposit Amount: _____ Dollars (\$)

- D. Upon delivery of the deed, the balance of the purchase price in cash or certified check.

4. DEPOSITS

The law firm of Lacy Katzen LLP, as attorneys, with an address at 130 E. Main Street, Rochester, New York 14614, telephone number 585-324-5714, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories: Daniel S. Bryson and Robert M. Vigdor. 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, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

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 the Purchase Agreement or otherwise concerning the maintenance of release of the Deposit from escrow.

The Escrow Agent has established the escrow account at M&T Bank, located at First Federal Plaza Office, Rochester, New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled Pierce Brook Escrow Account ("Escrow Account"). The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000. Any deposits in excess of \$250,000 will not be insured.

All Deposits received from Purchaser shall be in the form of checks, money orders, wire transfers, or other instruments, and shall be made payable to or endorsed by the Purchaser to the order of Pierce Brook Escrow Account.

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/Escrow 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.

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the [Purchase Agreement/Escrow Agreement] and place the Deposit into the Escrow Account. Within ten (10) business days of the placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance to the terms of the [Purchase Agreement/Escrow Agreement].

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within fifteen (15) days after tender of the Purchase Agreement and Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty St., New York, N.Y. 10005. Rescission shall not be afforded, where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely

placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

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

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

The Escrow Agent shall release the Deposit if so directed:

- (a) pursuant to terms and conditions set forth in the Purchase Agreement in paragraph 4 upon closing of title to the townhome; or
- (b) in a subsequent writing signed by both Sponsor and Purchaser; or
- (c) by a final, non-appealable order or judgment of a court.

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

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

- (a) 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.

Any provision of 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.

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

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

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

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

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

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

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

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

5. CONTINGENCIES

This Contract is contingent upon Buyer obtaining a _____ mortgage loan in the amount of _____ (\$ _____) for a term of _____ years. Buyer shall immediately apply for this loan and shall have 2 weeks from contract signature to obtain a written mortgage commitment. If Buyer cannot obtain a written mortgage commitment due to financial non-qualification, either party may cancel this Contract in writing without any further liability to the other and the deposit shall be returned to the Buyer. The conditions of any such mortgage commitment shall not be deemed contingencies of this Contract.

This Contract is further contingent upon Buyer securing a firm Contract for the sale of Buyer's Property located at _____, within 60 days of the date of this Contract. If Buyer is unable to obtain a firm Contract for the sale of the property by such date, then either Buyer or Seller may cancel this Contract by written notice to the other. If Seller receives another acceptable Purchase Offer during this time period, Seller may notify Buyer in writing that Seller desires to accept the other offer and Buyer will then have two (2) days to remove this sale contingency by written notice to the Seller. If Buyer does not remove this contingency after receiving notice from Seller, Buyer's rights under this Contract shall end and Seller shall be free to accept the other Purchase Offer and Buyer's deposit shall be returned. Buyer may not evidence Purchase Ability of Buyer's mortgage loan commitment requires, or may require, the sale and transfer of Buyer's property, and or the completion of any other requirement (excepting only the execution of routine loan documents) as a condition of the mortgage lender disbursing the mortgage loan proceeds. To ensure a coordinated execution of this Contract, the Buyer agrees to list for sale within five (5) days of the date of this Contract Buyer's property located at _____, with _____.

6. ADDITIONAL ITEMS

The approved contract, standard features, general specification, plus any change orders supersede all renderings or blueprints. Items outside the above mentioned documents are considered optional or extra. All items listed on the Contract Price Breakdown noted as "Allowance" are subject to final revision by the Seller.

7. DESIGN SERVICES FEES

Builder to provide architectural services that include full blueprints at 1/4 " scale representative of the contract rendering along with requested design changes noted on the contract on a one time basis only. Requested architectural changes after representative blueprints are produced are charged on a per hour basis at a rate of \$75 per hour. Builder to also provide 25 hours of Inde design services for the interior selections. Design time beyond the allotted 25 hours would be charged on a per hour basis at a rate of \$75 per hour. Please note that Inde design meetings are by appointment only.

8. TITLE DOCUMENTS

At the time of closing Seller shall tender to Buyer a Warranty Deed with Lien Covenant conveying good and marketable title in fee simple to said Premises, free and clear of all liens and encumbrances except as otherwise provided herein. Notwithstanding, the Premises shall be subject to covenants, easements and restrictions of record common to the tract or subdivision provided the same has not been violated and further provided that none of the easements encroach on the improvements.

Seller shall also furnish and pay for the cost and delivery to the attorney for the Buyer at least ten (10) days prior to the date of closing and fully guaranteed tax, title and United States District Court searches dated or redated subsequent hereto and for the continuation of said tax, title and United State District Court searches to and including the date of closing and for an Instrument Survey map dated or redated subsequent hereto.

9. RECORDING COSTS, MORTGAGE TAX, TRANSFER TAX AND CLOSING ADJUSTMENTS

Buyer shall pay for recording the deed, the mortgage, the mortgage tax, the town recreation fee, the water meter and connection fees, and the sewer facilities fee. Seller shall pay for town building permit. The current taxes computed on a fiscal year basis excluding any delinquent items, interest and penalties will be prorated and adjusted between Seller and Buyer as of the date of closing. Seller shall pay for the cost of the required real estate transfer tax stamps.

10. RISK OF LOSS

Risk of loss or damage to the Premises by fire or other casualty until closing is assumed by the Seller. If any damage occurs prior to transfer of title and Seller determines that it cannot repair or restore such loss or damage, this Contract shall terminate without any further liability of parties and the Buyer shall have any deposit returned.

11. CLOSING

After removal of all contingencies, Seller shall notify Buyer of the appropriate time to meet with the Seller's representative and begin making selections pursuant to the Seller's selection sheets and schedule. Failure to complete all selections by _____ will cause a delay in the completion date contained in this paragraph 11, and/or at Seller's option, Seller may complete selections on behalf of Buyer and this Agreement shall continue in full force and effect.

The Seller estimates that construction to begin on or about _____, 20____. The Seller shall have no obligation to commence construction until all contingencies are satisfied and removed in writing signed by the Buyer and delivered to the Seller, and Buyer has paid all required deposits. Seller shall not be obligated to commence construction until Seller has received non-contingent contracts for two units within a four unit building or one unit within a two or three unit building. If construction does not commence within 45 days of the estimated construction start date, provided all contingencies have been removed from this

Agreement in writing and Buyer has paid all required deposits, Buyer shall have the option of selecting another townhome unit.

The dwelling shall be completed and ready (the "Certificate of Occupancy Date") on or about 170 days from the "Commencement Date" (defined below). The Commencement date shall be the last date on which each of the following shall have been accomplished: the commencement of construction, the removal of all contingencies, the payment of all required deposits, and the completion of all selections. Seller, in its sole discretion, may begin construction prior to the Commencement Date. In the event the framing of the building of which this dwelling forms a part is completed on the date this Agreement is accepted by Seller, the Certificate of Occupancy Date shall be 90 days from the last date on which the Buyer removed all contingencies, paid all required deposits, and completed all selections (the "Interior Build Date").

The Certificate of Occupancy Date may be delayed due to circumstances beyond the Seller's control, including, but not limited to adverse weather, material shortages, strikes, labor troubles, damage by fire or other casualty, theft, governmental restrictions, or delay in receipt of materials special ordered for Buyer, in which event the closing date shall be extended accordingly without liability to Seller. Under no circumstances shall Seller be responsible or liable for any changes in mortgage provisions or interest rates sustained by Buyer from any proposed lending institution resulting from delays caused for whatever reasons.

Buyer agrees to accept transfer of title and make all payments provided for herein within fourteen (14) days of receiving the Certificate of Occupancy. **The parties agree that the residence shall be deemed complete for closing when a Certificate of Occupancy is issued.** Transfer of title shall be completed at the office of Lacy Katzen LLP or at the office of the mortgagee's attorney after the Certificate of Occupancy has been obtained. The length of time between Certificate of Occupancy date and the closing date is determined by the closing attorneys and/or Buyer's lender requirements and is outside the control of the Seller. **Under no circumstances shall Seller be liable for any Buyer costs associated with closing delays. Possession shall be given upon transfer of title and not before.**

Buyer Initial _____

12. POSSESSION

Buyer shall have possession and occupancy of the Premises as of the closing and transfer of title. Acceptance of transfer of title or occupancy By the Buyer shall be deemed to constitute an acknowledgment of the satisfactory performance of Seller under this Contract except for punchlist items to be completed post - closing as set forth in Paragraph "14". **No pre-possession or storage is allowed under any circumstances.**

Buyer Initial _____

13. BUYER'S DEFAULT

If Buyer fails to fulfill Buyer's duties and obligations according to the terms of this Contract, all deposits made by the Buyer may be retained by the Seller. In addition to which the Buyer shall pay Seller the full cost of all extras, upgrades and change orders that were commenced or ordered prior to the date of closing. Retention of any deposit shall not limit Seller from commencing an action for damages or seeking any other remedies allowed in law or in equity. Seller must make a written demand for payment after default at least 30 days before forfeiture of the deposit may be declared.

14. INSPECTION

After the improvement is built and before the transfer of title to or occupancy by Buyer, the Buyer shall arrange for a pre - closing inspection of the improvement with the Seller to determine the extent, if any, of repairs, corrections or further installations required to be made. Seller shall be responsible to make those repairs, corrections or further installations within a reasonable time after transfer and to honor the warranties contained in this Contract. No escrow shall be established or held to secure Seller's obligation to make such repairs, corrections or further installations.

15. CERTIFICATE OF OCCUPANCY

Seller agrees to deliver to Buyer at the time of closing a Certificate of Occupancy issued by the Town of Canandaigua, subject to weather related items.

16. MARKETABILITY OF TITLE

The deed and other documents delivered by Seller shall be sufficient to convey good and marketable title in fee simple to the property free and clear of all liens and encumbrances except as otherwise provided herein. If Buyer raises written objection to Seller's title to the Premises which, if valid, would make the title of the Premises unmarketable, Seller shall have the right to cancel this Contract by giving written notice of the cancellation to the Buyer and by returning the Buyer's deposit. However, if Seller is able to correct the problem which Buyer objects to prior to closing or if Seller is able to obtain at its cost commitment for title insurance to insure Buyer's interest and the interest of any lender granting a mortgage to Buyer for the purchase of the Premises, then the Contract shall continue in force.

17. MISCELLANEOUS

It is understood and agreed that Seller does not guarantee the health or continued life of any tree or shrubs on the Premises.

18. REPRESENTATIONS

This contract constitutes the entire agreement between the Seller and the Buyer and supersedes all prior or other agreements and representations in connection with this sale and purchase. This Contract cannot be modified except in a writing signed by both parties. All of the terms, covenants, provisions, conditions and agreements in this Contract shall be binding upon and inure to the benefit of the parties and their assigns. This Contract shall be construed in accordance with the laws of the State of New York.

19. RESPONSIBILITIES OF PERSONS UNDER THIS CONTRACT

If more than one (1) person signs this Contract as Buyer, each person and any person who takes over that person's legal position will be responsible for keeping the promises made by Buyer in this Contract.

20. ATTORNEY'S APPROVAL

This Contract is subject to the written approval of Buyer's Attorney, as to form only, within five (5) business days from the date of acceptance by Seller (the "Approval Period"). If Buyer's Attorney does not provide written approval or disapproval within the Approval Period, then Seller's Attorney shall notify Buyer (with copy to Buyer's Attorney) in writing that no approval or disapproval has been received. Buyer shall then have five (5) *calendar days*, inclusive of Sundays and Public Holidays from receipt of the notice (the "Grace Period") to provide written attorney approval or disapproval of the contract. If written attorney approval or disapproval is not provided within the Grace Period then this Attorney Approval contingency shall be deemed waived.

21. NOTICES

All notices given pursuant to any provision of this Contract shall be in writing and shall be effective only if delivered personally or sent by registered or certified mail, postage prepaid, to the parties at their respective addresses set forth above.

22. COMMISSIONS

Buyer represents that no broker has been contracted or engaged by Buyer in connection with the procurement of this Contract except as otherwise set forth herein. Should this representation be contrary to fact, Buyer shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the acts or inactions of the Buyer. This representation shall survive the closing and delivery of the deed to Buyer.

23. ACCESS TO BUILDING SITE BY BUYER

Buyer agrees not to enter upon the building site (lot) during the time of construction without a representative of the Builder being present. Reasonable inspections shall be allowed, by the Builder, upon notice and at mutually agreed upon times. Buyer agrees to hold harmless the Builder from any liability whatsoever to Buyer or Buyers invitees and/or licensees arising out of any entry upon the building site (lot) which is unaccompanied by a representative of the Builder.

24. WARRANTY

There shall be delivered to Buyer at the time of closing all manufacturers' warranties pertaining to the appliances installed in the townhome.

NEW YORK STATE HOUSING MERCHANT IMPLIED WARRANTY AS SET FORTH AND DEFINED IN ARTICLE 36 (B) OF THE NEW YORK STATE GENERAL BUSINESS LAW, SECTION 777-a SHALL APPLY TO THIS CONTRACT. THE SELLER MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, NO HOUSING MERCHANT IMPLIED WARRANTY, NO IMPLIED WARRANTY OF FITNESS, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN

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

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

25. ADJOINING PROPERTY DISCLOSURE

Seller discloses that any adjoining property is subject to the applicable zoning laws of the Town of Canandaigua and may be subject to future property development. This includes, but is not limited to, town controlled easements, right of ways, inter-community connectivity, as well as, emergency vehicle access to ensure the general health safety, and welfare of town residents.

26. LIFE OF OFFER

This offer is good until _____, 20____, at ____:_____.M. Buyer agrees not to withdraw this offer during that period of time.

ACCEPTANCE

DATED: _____ BUYER _____

DATED: _____ BUYER _____

DATED: _____ WITNESS _____

We hereby accept the above offer and agree to build and sell on the terms and conditions set forth herein.

S & J MORRELL INC.

DATED: _____ SELLER _____

DATED: _____ WITNESS _____

ESCROW AGENT ACCEPTANCE

The Escrow Agent agrees to the terms and conditions above set forth with respect to the Deposit and Escrow Account.

LACY KATZEN LLP, as attorneys

DATED: _____ By: _____

ADMINISTRATIVE INFORMATION

CONTRACT OF SALE

Property address: _____

Date: _____

Buyer: _____

Seller: S&J Morrell, Inc.

Address: _____

GRAR MLS #: _____

_____, Zip: _____

Address: 1501 Pittsford Victor Rd., Suite 100

Phone: (H) _____ (B) _____

Victor, NY Zip: 14564

Email: _____

Phone: (H) _____ (B) (585) 249-1330

Attorney: _____

Attorney: Daniel Bryson, Esq. – Lacy Katzen LLP

Address: _____

Address: 600 Bausch & Lomb Place.

_____, Zip: _____

Rochester, NY Zip: 14604

Phone: (B) _____, (FAX) _____

Phone: (B) (585) 324-5714 (FAX) 269-3010

Email: _____

Email: dbryson@lacykatzen.com

Selling Broker: _____

Listing Broker: Morrell Realty

Address: _____

Address: 1501 Pittsford Victor Rd., Suite 100

_____, Zip: _____

Victor, NY Zip: 14564

Phone: _____ Broker Code: _____

Phone: (585) 249-1330 Broker Code: SJMO

Selling Agent: _____

Listing Agent: _____

Selling Agent I.D.#: _____

Listing Agent I.D.#: _____ Phone: 742-2110

Phone: _____; FAX: _____

Listing Agent FAX: _____

Email: _____

Email: _____

LIMITED WARRANTY

NAME OF BUYER(S):

**ADDRESS OF
BUYER(S):**

**ADDRESS OF HOME
WARRANTED:**

Lot ____, Pierce Brook Subdivision, Canandaigua, New York

NAME OF BUILDER:

S&J Morrell, Inc.

ADDRESS OF BUILDER:

1501 Pittsford Canandaigua Road, Suite 100
Canandaigua, New York 14564

WARRANTY DATE:

Transfer of Title

**BUILDER'S LIMIT OF
TOTAL LIABILITY:**

\$100,000.00

**ACKNOWLEDGEMENT OF
RECEIPT:**

SIGNATURE

SIGNATURE

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

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

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

3. **By Whom Made.** This Limited Warranty is made exclusively by Builder.

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

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

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

(a) completion of items shown on the Final Inspection Sheet, in the manner provided on the Final Inspection Sheet, and

(b) performance of warranty obligations under the provisions of this Limited Warranty, as listed below.

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

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

(a) defective workmanship performed by the Builder, an agent of the Builder or subcontractor of the Builder;

(b) defective materials provided by the Builder, an agent of the Builder or subcontractor of the Builder; or

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

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

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

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

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

The heating, cooling and ventilation system means: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

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

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

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

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

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

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

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

- (a) Loss or damage caused by workmanship performed by any person other than the Builder, an agent of the Builder, or a subcontractor of the Builder.
- (b) Loss or damage caused by defective materials supplied by any person other than the Builder, an agent of the Builder, or a subcontractor of the Builder.
- (c) Loss or damage caused by defective design provided by any person other than a design professional retained exclusively by the Builder.
- (d) Patent defects including defects shown on the Final Inspection Sheet and defects which an examination of the Home prior to the transfer of the deed or occupancy of the Home would have revealed.

(e) Defects in outbuildings including but not limited to detached garages and detached carports (excluding outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the Home); site located swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including but not limited to sodding, seeding, shrubs, trees and plantings); off-site improvements or any other improvements not a part of the Home itself.

(f) After the first year Basic Coverage, concrete floors of the basements and concrete floor of attached garages that are built separately from foundation walls or other structural elements of the Home.

(g) Damage to real property which is not part of the Home covered by this Limited Warranty and which is not included in the purchase price of the Home.

(h) Any damage to the extent that it is caused or made worse by:

(i) Negligence, improper maintenance, or improper operation by anyone other than the Builder, its employees, agents or subcontractors; or

(ii) failure of the Buyer or anyone other than the Builder, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment; or

(iii) failure of the Buyer to give notice to the Builder of any defects or damage within a reasonable time; or

(iv) changes in the grading of the ground by anyone other than the Builder, its employees, agents or subcontractors; or

(v) changes, alterations or additions made to the Home by anyone after the Warranty Date shown on Page One; or

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

(i) Any condition which does not result in actual physical damage to the Home.

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

(k) Loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect.

(l) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.

(m) Any damage which the Buyer or occupant has not taken timely action to minimize.

(n) Normal wear and tear and normal deterioration.

(o) Insect damage.

(p) Bodily injury or damage to personal property.

(q) Failure of the Builder to complete construction of the Home.

- (r) Loss or damage which arises while the Home is being used primarily for nonresidential purposes.
- (s) Loss or damage due to abnormal loading on floors by the Buyer or occupant which exceeds design loads as mandated by the New York State Uniform Fire Prevention and Building Code.
- (t) Costs of shelter, transportation, food, moving, storage or other incidental expenses related to relocation during repair.
- (u) Consequential damages (except where required by New York State law).
- (v) Any claim not filed in a manner set forth below in paragraph 8 entitled, "Step By Step Claims Procedures".

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

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

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

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

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

8. Step By Step Claims Procedures.

(a) Written notice of any warranty claim must be made on the attached "Notice of Warranty Claim Form" and must be received by the Builder no later than the first business day after the warranty coverage on that item expires. If this Notice of Warranty Claim Form is not properly completed and received by the Builder by the first business day after the warranty coverage on that item expires, the Builder will have no duty to respond to any complaint or demand, and any or all claims may be rejected. NOTICE OF WARRANTY CLAIM IS NECESSARY TO PROTECT RIGHTS TO WARRANTY PERFORMANCE UNDER THIS LIMITED WARRANTY.

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

(c) In response to a Notice of Warranty Claim Form, or any other complaint or request of the Buyer, the Builder and the Builder's agents will have the right to inspect and test the portion of the Home to which the claim, complaint or request relates. The Buyer and occupant of the Home must provide reasonable access to the Builder and the Builder's agents during normal business hours to complete inspection, testing and repair or replacement.

(d) The Builder will complete inspection and testing within a reasonable time under the circumstances, not to exceed thirty (30) days after receipt of a timely and properly completed Notice of Warranty Claim Form. Upon completion of inspection and testing, the Builder will determine whether to accept or reject the claim. If the Builder rejects the claim, the Builder will give written notice of that decision to the claimant at the address shown on the Notice of Warranty Claim Form. If the Builder accepts the claim, the Builder will take corrective action within a reasonable time under the circumstances and, upon completion, will give written notice of completion to the claimant at the address shown on the Notice of Warranty Claim Form. The Builder will use good faith efforts to process and handle claims in a timely manner, but all time periods for repair or replacement of defects are subject to weather conditions, Acts of God, availability of materials and other events beyond the Builder's control.

9. Legal Actions.

(a) No claim or cause of action under this Limited Warranty may be commenced or asserted in any suit, action, or other legal proceeding against the Builder in any Court or forum unless notice of the claim or cause of action has been received by the Builder in a timely and properly completed Notice of Warranty Claim Form as provided above in paragraph 8.

(b) No suit, action and proceeding against the Builder under this Limited Warranty may be commenced in any Court or forum after the later of: (i) the date of expiration of the applicable warranty coverage under paragraph 5 of this Limited Warranty, or (ii) sixty (60) calendar days after the Builder has given written notice of rejection of claim or completion of corrective action as provided above in paragraph 8(d).

10. General Provisions.

(a) This Limited Warranty may not be changed or amended in any way.

(b) This Limited Warranty is binding upon the Builder and the Buyer, their heirs, executives, administrators, successors and assigns.

(c) Should any provision of the Limited Warranty be deemed unenforceable by a court of competent jurisdiction, the determination will not affect the enforceability of the remaining provisions.

(d) Use of one gender in this Limited Warranty includes all other genders, and use of the plural includes the singular, as may be appropriate.

(e) This Limited Warranty is to be governed in accordance with the law of New York State.

*ACCEPTED STANDARDS OF PERFORMANCE
PUBLISHED FROM TIME TO TIME BY THE ROCHESTER HOME BUILDERS MAY BE REVIEWED AT THE OFFICE
OF THE ROCHESTER HOME BUILDERS ASSOCIATION
20 Wildbriar Road, Rochester, NY 14623 Telephone (585) 272-8222*

OR THE OFFICE OF THE SELLER

NOTICE OF WARRANTY CLAIM FORM

Dear Home Owner:

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

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

Name:

Address of Home
Warranted:

Home Phone:

Work or Day Phone:

Warranty Date:

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

Signature: _____

Date: _____

Signature: _____

Date: _____

FORM OF DEED TO THE ASSOCIATION

WARRANTY DEED

This indenture, made this _____, between

S&J Morrell, Inc., a corporation organized under the laws of the State of New York, with an office and place of business located at 1501 Pittsford Canandaigua Road, Canandaigua, New York 14564, party of the first part, and

Pierce Brook Association, Inc., a corporation organized under the laws of the State of New York, with an office and place of business located at 1501 Pittsford Canandaigua Road, Canandaigua, New York 14564, party of the second part.

WITNESSETH, that the party of the first part, in consideration of ONE AND NO/100 DOLLAR (\$1.00) lawful money of the United States, and other good and valuable consideration, paid by the party of the second part, do hereby grant and release unto the party of the second part, his successors and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, described in Schedule A attached hereto and made a part hereof.

This conveyance is made and accepted subject to all public utility easements, easements, covenants and restrictions of record affecting said premises, if any.

Being and hereby intending to convey a portion of the same premises conveyed to the party of the first part by deed recorded in the Ontario County Clerk's Office on _____, in Liber ____ of Deeds, page ____.

Tax Account No.:

Tax Mailing Address:

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his successors and assigns forever.

And said party of the first part covenant as follows:

FIRST. That the party of the second part shall quietly enjoy the said premises.

SECOND. That said party of the first part will forever warrant the title to said premises.

THIRD. That, in compliance with Sec. 13 of the Lien Law, the grantors 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 the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part have hereunto set their hands and seals the day and year first above written.

S&J MORRELL, INC.

By: _____
Jeff Morrell, Vice President

STATE OF NEW YORK)

) ss.:

COUNTY OF MONROE)

On _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeff Morrell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Engineer's Description
for
Pierce Brook Association, Inc.,

Located in:

Town of Canandaigua
Ontario County, New York

Prepared for:

Morrell Builders
1501 Pittsford-Victor Road
Suite 100
Victor, NY 14564

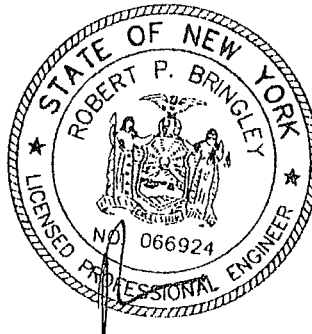
Prepared by:

Marathon Engineering
39 Cascade Drive
Rochester, NY 14614

Project No.

1022-19

September 28, 2022



Section 22.7(a) Location of Property

The proposed Pierce Brook Association, Inc., a residential community including ninety-two (92) "for sale" townhomes located off NYS Route 21—Bristol Road, in the Town of Canandaigua, Ontario County, New York. The Pierce Brook development is located in the southern portion of the Town of Canandaigua, and is within 1.5± miles of Canandaigua Lake and within 2.5± miles of the commercial retail and business center of the Town of Canandaigua

The Pierce Brook property is vacant land. Construction of Section 1 commenced in the Spring of 2022 and, subject to demand and weather conditions, construction of Section 1 is anticipated to be completed by December 31, 2024. Construction of Section 2, subject to demand and weather conditions, is anticipated to be completed by December 31, 2026. Construction of Section 3, subject to demand and weather conditions, is anticipated to be completed by December 31, 2027.

Building permits for the individual townhomes will be obtained prior to commencement of construction.

The Association will be responsible for the routine maintenance of the common area owned by the Association. The common area is not improved by any building, clubhouse, gymnasium, sauna, pool filtration, recreational spaces and the like. The bulk of the common area will be open space, subject to a Conservation Easement with the Town. Conservation Easement with the Town, which requires and limits activities as follows:

- Lands within the Conservation Easement shall remain in their natural condition and not disturbed. Seasonal mowing of grass walking trails is permitted
- No changes may be made in the topography of the land.
- No storage of materials or dumping of waste products on the land.
- Except for the grass walking trail, no improvements shall be made without the approval of the Town.
- No pesticides or herbicides may be used in the Easement area except (A) as may be required when the natural habitat and vegetation are threatened with disease or invasive species; and, (B) even in such event only in such manner as will not damage any watercourse on or downstream from the Easement Area; and, (C) only as is approved in advance by the Town.
- No clearing of brush, except for the walking trail system.
- No trimming or removal of trees, except pursuant to prudent forestry standards approved by the Town.
- No livestock on the land.
- No use of motorized vehicles on the land.

Section 22.7(b) Site

Section 1 of the Pierce Brook Subdivision comprises a total of ±28.3 acres, includes twenty-nine (29) single-family townhouse lots and Homeowners' Association parcels 'HOA-A1' and 'HOA-B1' totaling ±24.202 acres, which will be owned by Pierce Brook Association, Inc.

The future sections 2 and 3 comprises a total of ±66.5 acres, of the total ±94.8-acre site, and includes sixty-three (63) single-family townhouse lots. These future sections will include ±56.3 acres of Homeowners' Association lands, which will be owned and maintained by Pierce Brook Association, Inc.

The following approval and subdivision work permits have been issued:

- September 14th 2021 SEQR Resolution & Preliminary Overall Subdivision Approval
- December 14th 2021 Final Section 1 Approval

- March 24th 2022 Coverage Under SPDES General Permit for Storm Water Discharges from Construction Activity (General Permit No. GP-0-20-001)
- June 2022 NYSDOT Utility Permit for watermain connection in the State Right-of-Way
- June 2022 NYSDOT Temporary Work Permit for Roadway connection to State Route 21.
- July 2022 NYSDOT Driveway Entrance Permit for Roadway connection to State Route 21.

The property is currently vacant land.

The Section 1 site features and proposed construction improvements are shown on Marathon Engineering drawings 1022-19 C0.0 through C11.1. The Town of Canandaigua Planning Board approved the final subdivision and site plans for the Pierce Brook Subdivision on December 14, 2021.

The Association will neither maintain nor own any right of way. Access to the site will be from Bristol Road (NYS Route 21), Cheshire-McJannets Hill Road (NYS Route 21), and Parrish Street Extension. The townhouse lots will be served by the 60-foot-wide right-of-way, Pierce Brook Trail, built in accord with Town standards, will be dedicated to the Town.

Common area lands include parcels 'HOA-A1' and 'HOA-B1' totaling ±24.202 acres. The Pierce Brook Association, Inc., will be responsible for the maintenance of all common and landscaped areas, including features located within these common areas.

Pavements

A. Individual townhouse driveways:

The Pierce Brook Association, Inc., will maintain the individual driveways for all lots, which are to be 16 feet in width. The Homeowners' Association shall be responsible for maintenance of such items as snow removal, pavement repairs, and periodic sealing and resurfacing.

1. Paving (materials, base):

Driveway Materials: Total Driveway Width, 16 feet; Base Material: # 2 Stone Crusher Run 7" thickness followed by Number #1 Stone Crusher Run 1" thickness followed by 2.5" Blacktop Binder Driveway compacted to 2".

B. Sidewalks:

1. Sidewalks long Pierce Brook Trail and Individual Homeowner sidewalks from driveway to front entry are poured concrete @ 5' wide with concrete thickness of 5" on a 6" base of #1 crusher run stone. All sidewalks will be free of tripping or ponding hazards. ADA access to the townhomes is provided via internal garage no-step entry
2. Sidewalk along the roadway within the Right-of-Way will be owned by the Town of Canandaigua and the Town will be responsible for long-term maintenance of the sidewalks along the roadway.
3. Sidewalk from the driveway to the front entry will be owned by the Pierce Brook Association, Inc. and the HOA will be responsible for long-term maintenance of the sidewalks from the driveway to the front entry.

4. All sidewalks have been designed for positive drainage and to be flush with adjoining grades with the intent to be free of tripping or ponding hazards.

C. Other pavements within the townhouse portion of the development:

The Town of Canandaigua will own and maintain, by dedication, Pierce Brook Trail. This road will be built to conform to the latest specifications of the Town of Canandaigua, With an approved pavement width of 22 feet. The Town of Canandaigua shall be responsible for the maintenance of this road, including such items as sweeping, snow removal, pavement repairs, periodic resurfacing, stormwater capture and conveyance features.

1. Gutters (material): Poured concrete to the latest Town of Canandaigua specifications.
2. Road drainage, catch basin locations: 100% Dedicated to the Town—Not maintained or owned by the Association.

Section 22.7 (c) Sub-soil Conditions

Several test pits were completed on the site and soils observed were primarily loams. The area appears to be suitable for the proposed development, and no conditions are expected that cannot be handled through normal construction practices, drainage improvements, erosion control, and de-siltation measures. The load-bearing capacity and porosity is sufficient to support the townhome buildings.

The proposed final grades of the building lots consist of varying depths of soil removal (cut) and soil placement (fill). Fill within building areas is made with suitable onsite soils, placed in approximate one foot lifts and each lift was compacted. Generally, fill placement depth is less than the basement depth and is suitable for foundation placement on undisturbed soil. Lots with fill placement that is greater in depth than the foundation will have the foundation excavation taken to undisturbed soil for placement of the foundation with additional block courses added to the foundation wall. Upon completion of construction, moisture or seepage is not anticipated.

The property is not in a flood zone, and is not in danger from flooding, either due to water table in the area or overflow from other bodies of water. Mudslides or erosion is not anticipated.

No land subsidence, expansive soils, hazardous materials and/or environmental restrictions are present on the property. Portions of the land subject to the Conservation Easement discussed above are designated Federal Emergent Marsh Wetlands.

Section 27 (d) Landscaping

The maintenance of the lawn and landscaped areas shall be the responsibility of the Pierce Brook Association, Inc. The lands to be transferred to the Pierce Brook Association, Inc. are indicated on subdivision drawing 1022-19 C2.0 & C2.1, as prepared by Marathon Engineers and as described in Section II (1) above. Additionally, front yards of the townhomes within the dedicated Right-of-Way shall be maintained by the Pierce Brook Association, Inc.

1. Grass cover (type, location): Lawn Seed is to be installed on all the townhouse lots. The HOA area (outside of the lots) is to be seeded with a combination of a lawn seed mix and a steep slope seed mix. These shall be applied to all areas of disturbed or exposed soil.

Lawn Seed Mixture shall be provided as follows:

	% By Weight	% By Purity	% Germ
'REPEL', 'CITATION' & 'MORNING STAR' PERENNIAL RYEGRASS	35	85	85
'JAMESTOWN II', 'FORTRESS', 'ENSYLVA' RED FESCUE	35	97	80
'BARON' & 'MIDNIGHT' KENTUCKY BLUEGRASS	30	85	80

SEEDING RATE: 6.0 LBS PER 1,000 SF.

NATIVE STEEP SLOPE MIX WITH ANNUAL RYE GRASS – ERNMX-181

- 20% LOLIUM MULTI FLORUM (*annual ryegrass*)
- 20% SCHIZACHYRIUM ('camper' *little bluestem*)
- 16% ELYMUS CANADENSIS (*Canada wild rye*)
- 10% PANICUM VIRGATUM 'SHELTER' ('shelter' *switchgrass*)
- 8% AGROSTIS PERENNANS (*autumn bentgrass*)
- 8% TRIDENS FLAVUS (*purpletop*)
- 5% COREOPSIS LANCEOLATA (*lance leave coreopsis*)
- 4% AGROSTIS SCABRA (*ticklegrass*)
- 4% ELYMUS VIRGINICUS (*Virginia wild rye*)
- 3% PENSTEMON DIGITALIS (*tall white beard tongue*)
- 2% MONORADA FISTULOSA (*wild bergamot*)

SEEDING RATE: 30 LBS PER ACRE OR 1 LB PER 1,000 SF.

2. Plants (type, location): Townhome foundation plantings will generally consist of, but are not limited or restricted to the following:

- Buxus Microphylla 'Winter Gem'
- Spiraea X. 'Neon Flash'
- Chamaecyparis Pisifera 'Filifera Aurea'
- Ilex Meserveae 'Blueprincess'
- Juniperus Scopulorum 'Wichita Blue'
- Pinus Mugo 'Mugo'
- Spirea Japonica 'Little Princess'
- Weigela Florida
- Pyrus Calleryana 'Cleveland Select'

Seller/Builder has the right to substitute both the type and/or quantity of foundation plantings based on availability.

3. Trees (locations, species, number, caliper/size; specify tree pit treatment): See Response #2 for foundation plantings. See the tree planting detail per attached

drawings.

4. Fencing (specify material, location, length and height): Not applicable – none being installed.
5. Gates (specify material, location, dimensions): Not applicable – none being installed.
6. Garden walls (specify material, location, length and height): Not applicable – none being installed.
7. Retaining walls (specify material, coping & anchor, location, dimensions, structural integrity, drainage): Not applicable – none being installed.
8. Display pools and fountains (material and location): Not applicable – none being installed

Sections 22.7(e) Utilities and 22.7(f) Sewers

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

A. Water Distribution System:

The water distribution system will be constructed in accordance with the most recent standards of the Town of Canandaigua Water Department. The system shall provide services for both domestic and firefighting purposes. The watermains, hydrants, valves, and all other appurtenances within the dedicated Right-of-Way easement shall be owned and maintained by the Town of Canandaigua. Each unit will be provided with an individual service and usage will be metered on an individual unit basis by the Town of Canandaigua. Individual homeowners shall be responsible for the maintenance of their own individual water service from the service valve to their home.

B. Sanitary Sewer System:

The sanitary sewer system will be constructed in accordance with the most recent standards of the County of Ontario and Town of Canandaigua. A sanitary sewer district exists for the community, with all lots participating in the annual maintenance and administration of the District. Each unit will be served by a four (4) inch PVC sanitary lateral that ties into a PVC sanitary sewer main with a diameter of eight (8) inches. The sanitary sewer system within the dedicated easement or Right-of-Way shall be owned and maintained by the Ontario County Department of Public Works, which includes the 8" mains and manholes. Individual homeowners shall be responsible for the maintenance of their own individual sanitary lateral from the easement line to their home.

C. Storm Drainage System:

The storm drainage system will be constructed in accordance with the most recent standards of the Town of Canandaigua. The storm drainage system shall be owned and maintained by the Town of Canandaigua.

Each unit will be served with a six (6) inch storm lateral for the sump pump connection and roof drainage. Units 80 & 81 discharge the rear roof drainage to the backyard splash blocks. Individual homeowners shall be responsible for the maintenance of their own individual storm laterals and, if necessary, installation and maintenance of sump pumps to drain the sump to the storm lateral. The roadways and lawn areas shall be graded to direct surface runoff to various storm inlets and swales. The storm drainage system (inclusive of swales and dry swales) will convey drainage to the on-site stormwater detention facilities. Maintenance of all on-site storm drainage facilities including related structures, piping and swales for drainage purposes shall be the responsibility of the Homeowners' Association, with the exception the structures, piping and swales for the purpose of draining located within the dedicated Right-of-Ways, which shall be maintained by the Town of Canandaigua.

D. Gas and Electric Service:

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

E. Telecommunication Service:

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

F. Television Cable Service:

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

G. Lighting:

No street lighting or post lighting is being provided. Individual outdoor building mounted lights will be on each townhome and electric service, bulb replacement and maintenance will be the responsibility of the individual homeowner.

Manufacturer, model, lamping requirements; Not applicable

H. Site Plan Detail:

The legible and full-size Site Plan is on file with the Town of Canandaigua with specific reference to Marathon Engineering final Project #1022-19 documenting site elements. Any curb, gutter, curb cut, ramp, areaways, steps, fencing, drains within HOA lands are to be owned and maintained by the Town. Watermains and associated valves and hydrants will be owned and maintained by the Town. Storm sewer including any manholes and inlets will be owned and maintained by the Town. None are to be owned or maintained by the Association.

I. Open Space Lands:

The Pierce Brook Subdivision includes open space lands dedicated to the Town totaling ±24.2 acres. The Pierce Brook Association, Inc. will be responsible for the maintenance of all areas within the Open Space, including the stormwater facilities and features located within these areas.

Section 22.7 (g) Refuse Disposal

As set forth in the offering plan, the Pierce Brook Association, Inc. will contract for removal or disposal of all refuse materials for the townhomes. The expense of refuse removal will be included in monthly common charges billed by the Association. Necessary permits for disposal of potentially toxic materials must be secured by the individual homeowner to ensure proper transportation of all waste materials to protect the health, safety, and wellbeing of the public. Existing laws will strictly regulate any toxic waste products.

Section 22.7 (h) Garages and Parking Areas

The Association neither owns nor maintains any garages or parking areas, except for the gravel eight car area located off NYS Route 21 with access to the walking trail.

Section 22.7 (i) Buildings

The Association property is not, and will not upon completion of construction, be improved by any building, clubhouse, gymnasium, sauna, pool, recreation play area, and the like.

The Association will maintain the exterior of the townhomes, which description is set forth in the Architect's Description.

Architect's Description:

Pierce Brook Association, Inc.

**Town of Canandaigua
Ontario County, New York**

Prepared for:

S&J Morrell, Inc.
1501 Pittsford Victor Rd., Suite 100
Victor, NY 14564

Prepared by:

James Fahy Design Associates
Architecture & Engineering PC
2024 W. Henrietta Road, Suite 3k
Rochester, NY 14623

September 28, 2022



The Association neither owns, nor maintains, any common area improvements such as a clubhouse, gymnasium, sauna, pool filtration, recreational spaces and the like. Accordingly, Sections 22.7 (i) through (q) are not applicable, except as below set forth.

Section 22.7(j) Status of Construction

Year built: Construction will commence in the spring of 2022 and, subject to demand and weather conditions, is anticipated to be completed by December 31, 2024. The construction that will commence in the spring of 2020 consists of site work only. The first Townhome is expected to be completed by January 01, 2023, weather conditions permitting.

Class of construction: Townhouse buildings type 5-A will comply with all NYS building codes, local building codes, and 2015 IRC.

Certificate of Occupancy: None available at this time

Townhome Construction Permit number and description of work done: None available at this time

The following approval and subdivision work permits have been issued:

- September 14th 2021 SEQR Resolution & Preliminary Overall Subdivision Approval
- December 14th 2021 Final Section 1 Approval
- March 24th 2022 Coverage Under SPDES General Permit for Storm Water Discharges from Construction Activity (General Permit No. GP-0-20-001)
- June 2022 NYSDOT Utility Permit for watermain connection in the State Right-of-Way
- June 2022 NYSDOT Temporary Work Permit for Roadway connection to State Route 21.
- July 2022 NYSDOT Driveway Entrance Permit for Roadway connection to State Route 21.

Section 22.7(l) Exterior of Buildings

Walls:

Exterior wall construction is 2x4 framing lumber with 7/16" OSB exterior sheathing, Continental Materials, Inc. Secure Wrap Supreme Weather Barrier, Alside Coventry D4 vinyl siding, Owens Corning R15 wall insulation and ½" drywall interior side. HOA will be responsible for painting of exterior trim and doors not covered by aluminum cladding.

Roof and Roof Structure:

Roof – IKO Cambridge Architectural with IKO Marathon Hip & Ridge

- Limited lifetime warranty
- 15-year Iron Clad Protection Period warranty (100% material and reasonable allowance for cost of applying the new shingles)
- 10-year Algae-Resistant warranty period (warranty against streaking and discoloration caused by airborne blue-green algae)
- 177-months, 110 mph wind-resistance warranty
- (Full warranty attached to this document)

Drainage System- Will be seamless 5" aluminum gutters with aluminum downspouts.

HOA will be responsible for repair and replacement of the roofing systems.

Section 22.7(n) Plumbing and Drainage

Water Supply:

Main supply system with 1" polyethylene pipe service from water curb stop to house.

Onsite irrigation is not provided by the Sponsor.

Section 22.7(q) Electrical

Electrical system: Service entrances – 1 phase, 200A, 120/240v, 4/0awg aluminum, no main. Individual units – 1 phase, 200A, 120/240v, 4/0awg aluminum, 200A main breakers

Section 22.7(r) TV Reception

Each individual Townhome owner is responsible for obtaining its own cable TV service. None is provided by the Association.

Section 22.7(s) Recreation Facilities

This offering does not include any common structures, such as a clubhouse, gymnasium, sauna, pool filtration, or recreation spaces. No recreation facilities are provided by the Association, or are located within the Common Area.

Section 22.7 (t) Fire Safety

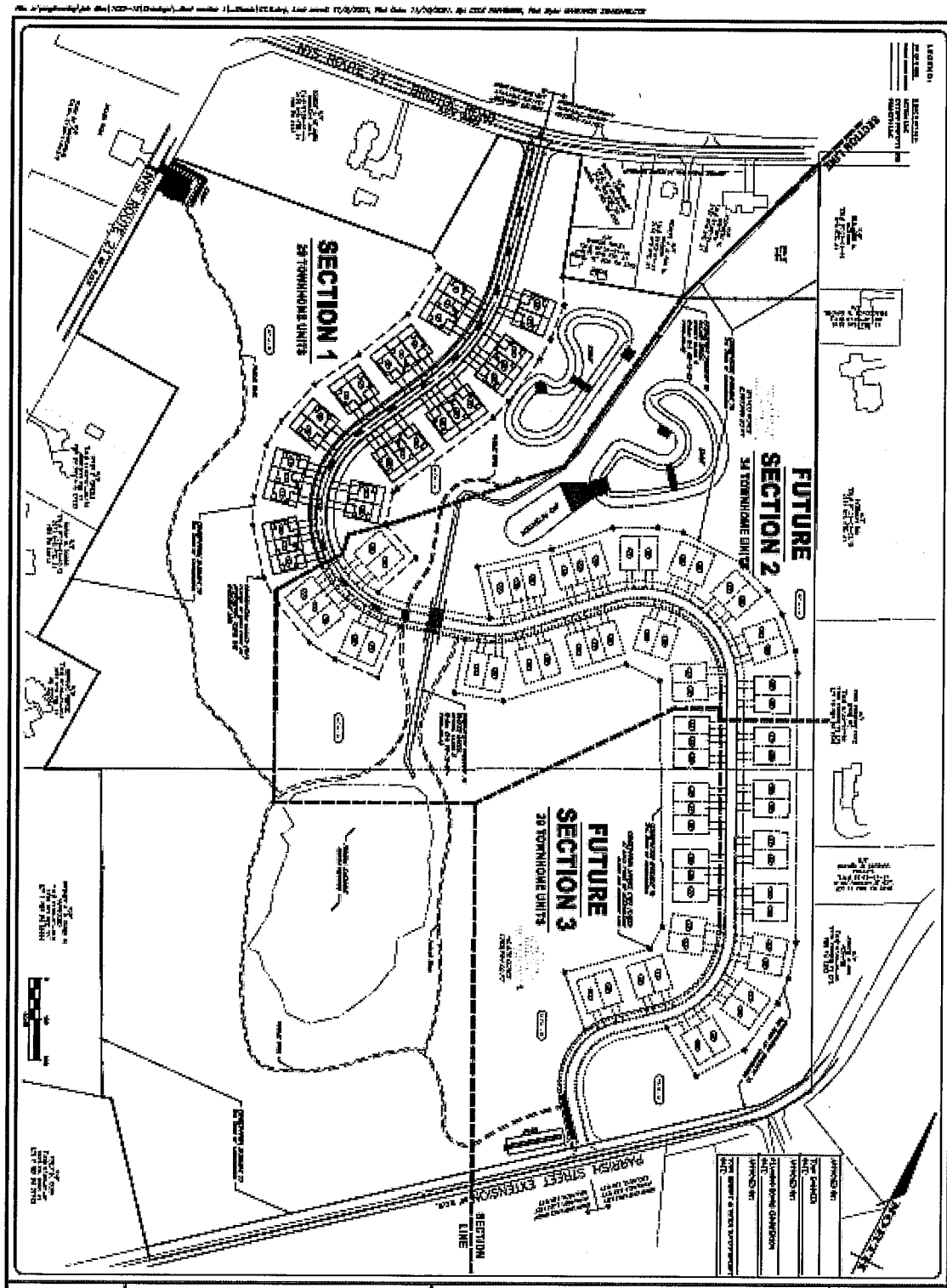
Kidde smoke, carbon monoxide, & heat detectors have been installed per NYS Building Code

Additional: Final dimensions of townhomes are undetermined. Building envelope shown on the subdivision plan is illustrative only. Floor plans are not available

Exterior Townhouse Building Materials Warranties

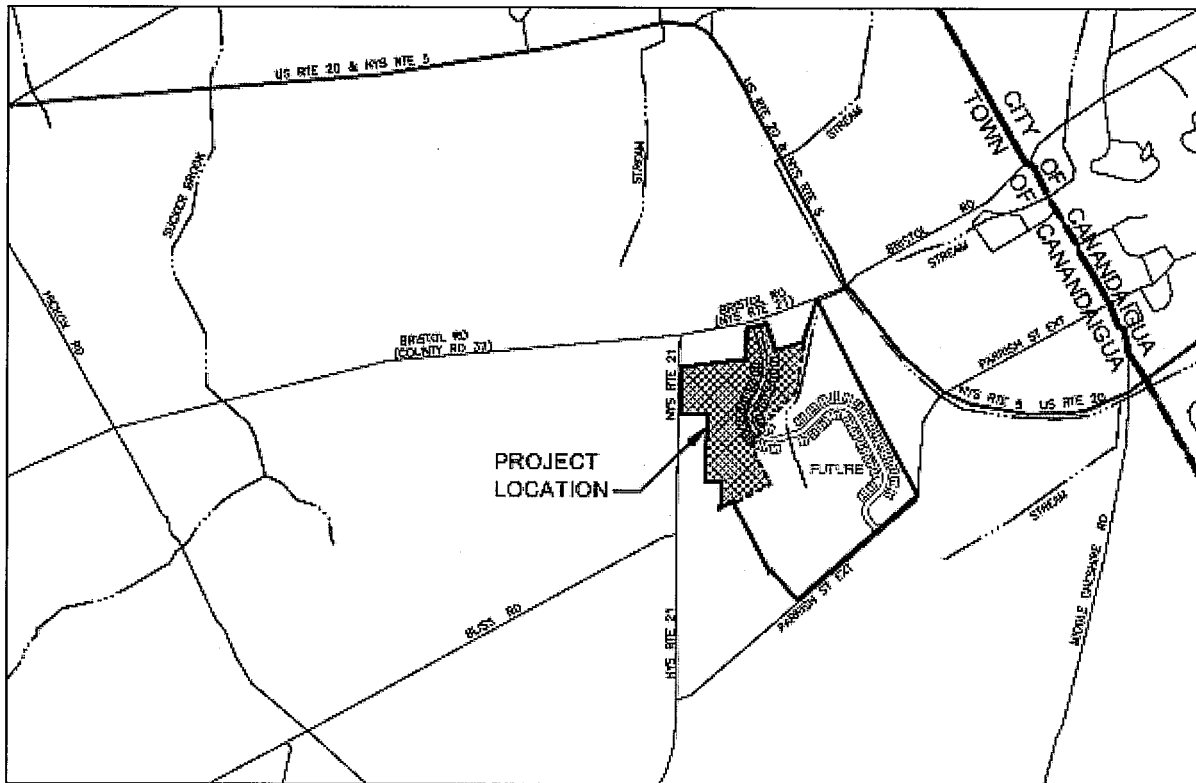
Exterior Townhouse Building Materials Warranties		
Building Material	Product Description	Warranty
Roofing	IKO Cambridge Architectural Shingles	Limited Lifetime Warranty Full Warranty attached to this document
Vinyl Siding, Soffit, Trim, and Accessories	Alside Conquest/Board & Batten	Limited Lifetime Warranty Full Warranty attached to this document
Vinyl Shake Siding	Alside Pelican Bay One 7" Shakes	Limited Lifetime Warranty Full Warranty attached to this document
Headers, Posts, & Garage Door Trim	Miracle Trim	50 year Limited Warranty Full Warranty attached to this document
Louvers	Fypun	Limited Lifetime Warranty Full Warranty attached to this document
Shutters	Mid America Siding Components	Limited Lifetime Warranty Full Warranty attached to this document
Decking	Timber Tech Earthwood Evolutions Terrain Decking	25 year Limited Warranty Full Warranty attached to this document
Deck Railing	RDI Endurance Vinyl Rail	Limited Lifetime Warranty Full Warranty attached to this document
Exterior Doors	MMI Steel and Fiberglass Doors	2 year Limited Warranty Full Warranty attached to this document
Windows and Patio Doors	Vinyl Window Designs Ltd	Limited Lifetime Warranty Full Warranty attached to this document
Exterior Stone	Plygem Stone	50 year Limited Warranty Full Warranty attached to this document
Garage Overhead Door	C.H.I. Garage Doors	Limited Lifetime Warranty Full Warranty attached to this document

Site Plan -- Overall Plan



Section One Townhome Lots Detail

Location Map



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*** THIS SECTION IS CURRENT THROUGH CH. 45, 04/28/2003 ***
*** WITH THE EXCEPTION OF CHS. 1-3 ***

GENERAL BUSINESS LAW
ARTICLE 36-B. WARRANTIES ON SALES OF NEW HOMES
NY CLS Gen Bus § 777 (2003)

§ 777. Definitions

As used in this article, the following terms shall have the following meanings:

1. "Builder" means any person, corporation, partnership or other entity contracting with an owner for the construction or sale of a new home.

2. "Building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law, local building code standards approved by the uniform fire prevention and building code council under section three hundred seventy-nine of the executive law, and the building code of the city of New York, as defined in title twenty-seven of the administrative code of the city of New York.

3. "Constructed in a skillful manner" means that workmanship and materials meet or exceed the specific standards of the applicable building code. When the applicable building code does not provide a relevant specific standard, such term means that workmanship and materials meet or exceed the standards of locally accepted building practices.

4. "Material defect" means actual physical damage to the following load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

5. "New home" or "home" means any single family house or for-sale unit in a multi-unit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative regime. Such terms do not include dwellings constructed solely for lease, mobile homes as defined in section seven hundred twenty-one of this chapter, or any house or unit in which the builder has resided or leased continuously for three years or more following the date of completion of construction, as evidenced by a certificate of occupancy.

6. "Owner" means the first person to whom the home is sold and, during the unexpired portion of the warranty period, each successor in title to the home and any mortgagee in possession. Owner does not include the builder of the home or any firm under common control of the builder.

7. "Plumbing, electrical, heating, cooling and ventilation systems" shall mean:

a. in the case of plumbing systems: 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;

b. in the case of electrical systems: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection; and

c. in the case of heating, cooling and ventilation systems: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

8. "Warranty date" means the date of the passing of title to the first owner for occupancy by such owner or such owner's family as a residence, or the date of first occupancy of the home as a residence, whichever first occurs.

§ 777-a. Housing merchant implied warranty

1. Notwithstanding the provisions of section two hundred fifty-one of the real property law, a housing merchant implied warranty is implied in the contract or agreement for the sale of a new home and shall survive the passing of title. A housing merchant implied warranty shall mean that:

a. one year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

b. two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

c. six years from and after the warranty date the home will be free from material defects.

2. Unless the contract or agreement by its terms clearly evidences a different intention of the seller, a housing merchant implied warranty does not extend to:

a. any defect that does not constitute (i) defective workmanship by the builder or by an agent, employee or subcontractor of the builder, (ii) defective materials supplied by the builder or by an agent, employee or subcontractor of the builder, or (iii) defective design provided by a design professional retained exclusively by the builder; or

b. any patent defect which an examination ought in the circumstances to have revealed, when the buyer before taking title or accepting construction as complete has examined the home as fully as the buyer desired, or has refused to examine the home.

3. In the case of goods sold incidentally with or included in the sale of the new home, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers and dryers, a housing merchant implied warranty shall mean that such goods shall be free from defects due to failure by the builder or any agent, employee or subcontractor of the builder to have installed such systems in a skillful manner. Merchantability, fitness and all other implied warranties with respect to goods shall be governed by part three of article two of the uniform commercial code and other applicable statutes.

4. a. Written notice of a warranty claim for breach of a housing merchant implied warranty must be received by the builder prior to the commencement of any action under paragraph b of this subdivision and no later than thirty days

after the expiration of the applicable warranty period, as described in subdivision one of this section. The owner and occupant of the home shall afford the builder reasonable opportunity to inspect, test and repair the portion of the home to which the warranty claim relates.

b. An action for damages or other relief caused by the breach of a housing merchant implied warranty may be commenced prior to the expiration of one year after the applicable warranty period, as described in subdivision one of this section, or within four years after the warranty date, whichever is later. In addition to the foregoing, if the builder makes repairs in response to a warranty claim under paragraph a of this subdivision, an action with respect to such claim may be commenced within one year after the last date on which such repairs are performed. The measure of damages shall be the reasonable cost of repair or replacement and property damage to the home proximately caused by the breach of warranty, not to exceed the replacement cost of the home exclusive of the value of the land, unless the court finds that, under the circumstances, the diminution in value of the home caused by the defect is a more equitable measure of damages.

c. In addition to any other period for the commencement of an action permitted by law, an action for contribution or indemnification may be commenced at any time prior to the expiration of one year after the entry of judgment in an action for damages under paragraph b of this subdivision.

5. Except as otherwise provided in section seven hundred seventy-seven-b of this article, any provision of a contract or agreement for the sale of a new home which excludes or modifies a housing merchant implied warranty shall be void as contrary to public policy.

6. Except as otherwise provided in section seven hundred seventy-seven-b of this article, other implied warranties may arise from the terms of the contract or agreement or from course of dealing or usage of trade.

§ 777-b. Exclusion or modification of warranties

1. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify all warranties by any clear and conspicuous terms contained in the written contract or agreement of sale which call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

2. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify warranties with respect to particular defects by any clear and conspicuous terms contained in the written contract or agreement of sale which identify such defects, call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

3. A housing merchant implied warranty may be excluded or modified by the builder or seller of a new home only if the buyer is offered a limited warranty in accordance with the provisions of this subdivision.

a. A copy of the express terms of the limited warranty shall be provided in writing to the buyer for examination prior to the time of the buyer's execution of the contract or agreement to purchase the home.

b. A copy of the express terms of the limited warranty shall be included in, or annexed to and incorporated in, the contract or agreement.

c. The language of the contract or agreement for sale of the home must conspicuously mention the housing merchant implied warranty and provide that the limited warranty excludes or modifies the implied warranty. Language to exclude all implied warranties is sufficient if it states, for example, that "There are no warranties which extend beyond the face hereof."

d. The limited warranty shall meet or exceed the standards provided in subdivisions four and five of this section.

4. A limited warranty sufficient to exclude or modify a housing merchant implied warranty must be written in plain English and must clearly disclose:

a. that the warranty is a limited warranty which limits implied warranties on the sale of the home; the words "limited warranty" must be clearly and conspicuously captioned at the beginning of the warranty document;

b. the identification of the names and addresses of all warrantors;

c. the identification of the party or parties to whom the warranty is extended and whether it is extended to subsequent owners; the limited warranty must be extended to the first owner of the home and survive the passing of title but may exclude any or all subsequent owners;

d. a statement of the products or parts covered by the limited warranty;

e. the clear and conspicuous identification of any parts or portions of the home or premises that are excepted or excluded from warranty coverage, and the standards that will be used to determine whether a defect has occurred; provided, however, that:

i. any exception, exclusion or standard which does not meet or exceed a relevant specific standard of the applicable building code, or in the absence of such relevant specific standard a locally accepted building practice, shall be void as contrary to public policy and shall be deemed to establish the applicable building code standard or locally accepted building practice as the warranty standard; and

ii. any exception, exclusion or standard that fails to ensure that the home is habitable, by permitting conditions to exist which render the home unsafe, shall be void as contrary to public policy.

f. what the builder and any other warrantor will do when a defect covered by the warranty does arise, and the time within which the builder and any other warrantor will act;

g. the term of the warranty coverage and when the term begins, provided, however, that such term shall be equal to or exceed the warranty periods of a housing merchant implied warranty, as defined in subdivision one of section seven hundred seventy-seven-a of this article;

h. step-by-step claims procedures required to be undertaken by the owner, if any, including directions for notification of the builder and any other warrantor; an owner shall not be required to submit to binding arbitration or to pay any fee or charge for participation in nonbinding arbitration or any mediation process;

i. any limitations on or exclusions of consequential or incidental damages, and any limitations on the builder's and other warrantor's total liability,

conspicuously expressed on the first page of the warranty. Notwithstanding the foregoing, a limited warranty shall not be construed to permit any limitation on or exclusion of property damage to the home proximately caused by a breach of the limited warranty, where the court finds that such limitation or exclusion would cause the limited warranty to fail of its essential purpose, except that such property damage may be limited by an express limitation on the builder's or other warrantor's total liability in accordance with the provisions of this paragraph.

5. a. This article shall not be construed to authorize or validate any covenant, promise, agreement or understanding which is void and unenforceable under section 5-322.1 of the general obligations law.

b. This article shall preempt any local law inconsistent with the provisions of this article. This article shall not preempt any builder subject to its provisions from complying with any local law with respect to the regulation of home builders except as expressly provided herein.

c. Nothing in this article shall be construed to repeal, invalidate, supersede or restrict any right, liability or remedy provided by any other statute of the state, except where such construction would, as a matter of law, be unreasonable.

DECLARATION

establishing

PIERCE BROOK ASSOCIATION, INC.

S&J MORRELL, INC.

1501 Pittsford Canandaigua Road
Canandaigua, New York 15464

SPONSOR

_____, 202__

DATED

WOODS OVIATT GILMAN LLP

1900 Bausch & Lomb Place
Rochester, New York 14604

ATTORNEYS FOR THE SPONSOR

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

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

THIS DECLARATION, made this ____ day of _____, 2022, by S&J Morrell, Inc., a New York corporation, which has offices at 1501 Pittsford Canandaigua Road, Canandaigua, New York, being hereinafter referred to as the "Sponsor".

WHEREAS, the Sponsor is the owner of the real property described in Article II of this Declaration, being Pierce Brook Subdivision, Section 1, as the same is shown on a map of said subdivision recorded in the Ontario County Clerk's Office in Liber ____ of Maps, at page ____, which the Sponsor desires to develop as a residential community with open spaces and other common facilities for the benefit of said community, and

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

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

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

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

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

ARTICLE I DEFINITIONS

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

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

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

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

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon

any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

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

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

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

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

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until all Lots owned by Sponsor, including Lots which may be incorporated by amendment hereto, are transferred, or until 15 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned. There is no other difference between the Class A and Class B membership.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Sponsor and all Owners and their guests, licensees and invitees shall have an easement of ingress and egress by foot and vehicle for the use and enjoyment of the paved common access drives, provided however, an individual driveway exclusively serving a single townhome shall be a limited common element for the exclusive use of the pertinent townhome.

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

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

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

ARTICLE V ASSESSMENTS

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

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

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

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

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

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

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

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

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

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

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

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

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association, under no circumstances, shall entitle any Townhome 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 Townhome 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 Townhome 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 Townhome Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

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

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

ARTICLE VI MAINTENANCE BY THE ASSOCIATION

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

a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace the following improvements within Lots and Association Property: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. The Association also shall be responsible for snow removal from paved areas, excluding walks. Individual Townhome Owners are responsible for snow removal from the walks and entryways abutting their dwellings.

The Common Area, owned and maintained by the Association, will include the following improvements: driveways serving the individual townhomes, storm water drainage facilities, open space subject to conservation easements and improved by a mowed grass walking trail system (including a parking area along NYS Route 21), and landscaped areas. Per agreement with the Town of Canadaigua, the walking trail system and parking area is open to the public.

The Association is solely responsible for the maintenance of the Common Area and the improvements within the area, with inspections every three months on average, in accordance with the following maintenance plans:

1. Tree Planting

- During the first three years, mulching, watering and protection of young trees may be necessary
- Inspections should be performed every three months and within one week of ice storms, within one week of high wind events that reach speeds of 20 mph until trees have reached maturity.
- As a minimum, the following items should be checked regularly:
 - Assess tree health
 - Determine survival rate; replace any dead trees.
 - Inspect tree for evidence of insect and disease damage; treat as necessary
 - Inspect tree for damages or dead limbs; prune as necessary

2. Grass Swales

- Fertilize and lime as needed to maintain dense vegetation.
- Mow as required during the growing season to maintain grass heights at 4 inches to 6 inches.
- Remove any sediment or debris buildup, by hand if possible, in the bottom of the channel when the depth reaches 2 inches.
- Inspect for pools of standing water. Re-grade to restore design grade and re-vegetate.
- Repair rills in channel bottom with compacted topsoil, anchored with mesh or erosion blanket as needed. Seed and mulch.

- Use of heavy equipment for mowing and removing plants/debris should be avoided to minimize soil compaction. Disturbed areas should be stabilized with seed and mulch, or revetment, as necessary.

3. **SWMF Maintenance**

- Ensure plantings and grass in the SWMF areas are established at all times to limit possible erosion.
- Visual inspection of embankments, rip-rap, storm piping and outlet control structures shall be performed every 6 months. Major washout of banks, damage to structures etc. shall be repaired as necessary. Trash and debris shall be removed from the outlet control structure.
- Woody vegetation once identified shall be cut/removed from embankment areas.
- Inspect forebays and micro pools once yearly to ensure adequate volume is provided for sediment and pollutant removal. When 50% of the pool volume is filled, the pool shall be re-excavated to design grades and excavated material shall be disposed of off-site in a legal manner.

4. **Bioretention & Dry Swale Maintenance**

- Fertilize and maintain grasses – cut down at close of year prior to snowfall.
- Remove trash building up in stone and cobble areas.
- Remove any sediment or debris buildup by hand if possible.
- Inspect for pools of standing water. If water is standing for longer than 24 hours after a rain event the stone and fabric top layer shall be removed and the bioretention media shall be inspected and replaced as necessary.
- Once a year, replace dead plantings, as were specified on the design plans.

Meadow Open Space will be left in its natural state, and no regular maintenance will occur. Walking trails, during mowing season, will be mowed weekly mowing a grass trail mower.

Under no circumstances is the Town of Canandaigua responsible for the maintenance of the Common Area and the improvements located thereon.

b. Maintenance of Townhomes. The Association will be responsible for maintenance of the asphalt driveways, roofing, exterior painting/staining of trim materials (not wrapped in aluminum) and front doors, for which replacement reserves have been established. All other Townhome components are the responsibility of the Townhome Owner, including but not limited to siding, vinyl clad windows, insulated metal doors, overhead garage doors, aluminum gutters and downspouts, masonry windows, skylights, window panes, doors, garage doors, storm doors, decks, or maintain, repair or replace porches, stone pavers or stoops, patios or concrete walks. The Association shall not be responsible for the removal of snow from roofs.

Those portions of sewer, water, and utility laterals servicing one (1) or more Townhomes and not maintained by a utility company, public authority, municipality or other entity, will be maintained by the Association, limited however to repair necessitated by leakage or structural failure only. A lateral shall be deemed to terminate at the outer surface of the foundation wall.

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

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

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

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

The Townhome 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 Townhome 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 Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be a lien against the Lot and collectable as such.

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

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

ARTICLE VII ARCHITECTURAL CONTROLS

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

With respect to decks or patio area improvements, Townhome Owners may improve their deck or patio area with the Architectural Committee's written consent, upon uniform standards consistently applied. 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 Townhome Owner's property, and the adjoining Townhome Owner and Association shall not be obstructed from performing repairs and maintenance on the adjoining Townhome. The Townhome Owner shall maintain the improvements in a good repair. Good repair means a condition which not only meets minimum standards of health and safety, but which results in continued structural soundness

and usefulness of its intended purpose. Upon the Townhome 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 Townhome Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Townhome Owner and shall be deemed to be a common charge and lien against the Lot and collectable as such.

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

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

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

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

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record, together with such qualifications, or provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot

or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

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

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

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;
- b. Seventy (70) days after the date the plans were originally submitted.

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

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

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

Section 7.11. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable

charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Architectural Committee Certificate was issued.

ARTICLE VIII PARTY WALLS AND ENCROACHMENTS

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

Section 8.02. Maintenance of Party Walls. Each Townhome Owner whose Townhome contains a party wall shall have an easement to enter upon the Townhome with which the party wall is shared to effect necessary repairs or maintenance of said party wall. Each Townhome Owner shall be responsible for the ordinary maintenance and repair of such Townhome Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two (2) Townhome Owners which share such wall.

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

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

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

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

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

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

upon any other Townhome or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

ARTICLE IX INSURANCE AND RECONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense for those claims relating to Association maintenance responsibility. The Board of Directors of the Association shall assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner, as well as any deductible amount necessitated by a fire within the Townhome Owners dwelling and not caused by the Association's negligence or activities. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall

be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

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

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

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

ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

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

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

opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XI ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

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

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

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

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

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

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

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

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

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

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

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Ontario 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, 2035, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

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

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

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

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

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

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

ARTICLE XII GENERAL

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

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

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

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

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

S&J MORRELL, INC.

By: _____
Jeff Morrell, Vice President

PIERCE BROOK ASSOCIATION, INC.

By: _____
Jeff Morrell, President

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

On the ____ day of _____ in the year 202__ before me, the undersigned, a Notary Public in and for said State, personally appeared Jeff Morrell personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Schedule A

Legal Description of Townhome Lots and Common Areas within Section One



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
**DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE**
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF INCORPORATION OF

Pierce Brook Association, Inc.

(Corporation Name)

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

FIRST: The name of the corporation is:

Pierce Brook Association, Inc.

SECOND: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: *(Select all that apply)*

The purpose(s) for which the corporation is formed is:

- ☐ any purpose for which corporations may be organized under the Not-for-Profit Corporation Law as a charitable corporation.
- ☒ any purpose for which corporations may be organized under the Not-for-Profit Corporation Law as a non-charitable corporation.
- ☐ any purpose for which corporations may be organized under the Not-for-Profit Corporation Law as a charitable corporation or as a non-charitable corporation. *(Note: Checking this box results in the corporation being categorized as a charitable corporation in paragraph FIFTH.)*
- ☒ the following specific purpose(s):

The Corporation is a homeowners association formed to promote and provide for the maintenance, preservation, and architectural control of the townhomes and common area of Pierce Brook Subdivision, Town of Canadagua, Ontario County, New York (the "Property"), and to promote the health, safety, and welfare of the residents of the community.

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.

FOURTH: *(Check the appropriate statement)*

☒ 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 consent or approval is required.

☐ The corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.

FIFTH: The corporation is a: ☐ charitable corporation ☒ non-charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The office of the corporation is to be located in the County of Ontario
State of New York.

SEVENTH: The names and addresses of the initial directors of the corporation are:
(A minimum of three is required)

Name: Jeffrey D. Morrell

Address: 1501 Pittsford Victor Road, Suite 200, Victor NY 14564

Name: Scott M. Morrell

Address: 1501 Pittsford Victor Road, Suite 200, Victor NY 14564

Name: Hannah Hall

Address: 1501 Pittsford Victor Road, Suite 200, Victor NY 14564

EIGHTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served.

The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is: 1501 Pittsford Victor Road, Suite 200, Victor NY 14564

NINTH: *(Optional – Corporations seeking tax exempt status may include language required by the Internal Revenue Service in this paragraph. See Not-for-Profit Incorporation Instructions.)*

The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraph **THIRD**.

NAME, SIGNATURE & ADDRESS OF INCORPORATOR:

Louis M. D'Amato

(Print or Type Name of Incorporator)

X

/s/ Louis M. D'Amato

(Signature of Incorporator)

1900 Bausch & Lomb Place

(Address of Incorporator)

Rochester NY 14604

(City, State, Zip Code)

CERTIFICATE OF INCORPORATION
OF

Pierce Brook Association, Inc.

(Corporation Name)

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

Filer's Name and Mailing Address:

Louis M. D'Amato

Name:

Woods Oviatt Gilman LLP

Company, if Applicable:

1900 Bausch & Lomb Place

Mailing Address:

Rochester NY 14604

City, State and Zip Code:

NOTES:

1. § 301 of the Not-for-Profit Corporation Law requires that the name contain "Incorporated" or "Inc." or one of the other words or abbreviations indicative of corporate character unless the corporation qualifies for one of the exceptions in § 301.
2. This sample form is provided by the New York State Department of State for filing a certificate of incorporation.
3. This form is designed to satisfy the minimum filing requirements pursuant to the Not-for-Profit Corporation Law. The Department of State will accept any other form which complies with the applicable statutory provisions.
4. The Department of State recommends that this legal document be prepared under the guidance of an attorney.
5. The Department of State does not provide legal, accounting or tax advice.
6. This certificate must be submitted with a \$75 filing fee made payable to the Department of State.

For DOS use only

By-Laws

establishing

Pierce Brook Association, Inc.

S&J Morrell, Inc.

1501 Pittsford Canandaigua Road
Canandaigua, New York 14564

Sponsor

Woods Oviatt Gilman LLP

1900 Bausch & Lomb Place
Rochester, New York 14604

Attorneys for the Sponsor

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**BY-LAWS
OF
PIERCE BROOK ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

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

**ARTICLE II
DEFINITIONS**

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

SECTION 2.01 Association. PIERCE BROOK ASSOCIATION, INC., a New York not-for-profit corporation.

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

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

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

SECTION 2.05 Property. All Townhome Lots and Common Area within Pierce Brook Subdivision Section One and Four.

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

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

ARTICLE III MEMBERS

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

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

ARTICLE IV MEETINGS OF MEMBERS; VOTING

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

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

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

SECTION 4.04 Voting Rights. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until all Lots owned by Sponsor are transferred by the Sponsor, or until 15 years following the recording of the Declaration, whichever shall first occur. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights, and each Member shall have one vote, regardless of the number of Lots owned.

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

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

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

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

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

SECTION 4.10 Waiver and Consent. Wherever the vote of the membership is required by law or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action being taken.

ARTICLE V BOARD OF DIRECTORS

SECTION 5.01 Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be five (5), except that an initial Board of three (3) Directors shall be designated by the Sponsor. The initial Board of Directors shall hold its first meeting within 30 days of transferring title to the first Lot. The initial Board of Directors shall serve until the first annual meeting after the Sponsor no longer has an interest in a Lot then subject to the terms of the Declaration. Directors need not be Members.

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

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

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

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

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

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

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

SECTION 5.07 Regular Meetings. Regular Meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

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

SECTION 5.09 Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, except as otherwise required by law, by the

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

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

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

- a. To determine, levy and collect the assessments and common charges as provided for in the Declaration.
- b. To collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association as permitted by the Declaration.
- c. To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Townhomes as it deems appropriate.
- d. To repair, restore or alter the properties of the Association or such other improvements for which the Association may now or hereafter have such responsibility under the Declaration, as amended, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- e. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce penalties for infractions thereof.
- f. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- g. To pay all expenses incurred by the Association and all taxes owing by the Association.
- h. To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.
- i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.
- j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.
- k. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.

l. To dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall, however, require the consent of two-thirds (2/3) of the total votes of all Members at any meeting duly called and held or who shall vote upon written ballot which shall be sent to every Member not less than 30 days nor more than 60 days in advance of the canvass thereof. In addition, no such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance.

m. To enter into agreements, reciprocal or otherwise, with other homeowners and residents associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than 10 days nor more than 60 days in advance of the vote on the proposed agreement.

n. To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.

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

a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.

b. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:

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

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

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

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

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

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

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

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

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

ARTICLE VI OFFICERS

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

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

SECTION 6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold offices until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

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

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

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

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

SECTION 6.08 Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition

of the Association, and shall perform all other duties that are assigned to him or her by the President, the Board or these By-Laws.

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

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

ARTICLE VII COMMITTEES

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

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

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

ARTICLE VIII FINANCE

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

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

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

ARTICLE IX BOOKS AND RECORDS

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

ARTICLE X

CORPORATE SEAL

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

ARTICLE XI AMENDMENTS

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

SECTION 11.02 Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XII INDEMNIFICATION

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

SPONSOR'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

Re: Pierce Brook Association, Inc. ("HOA")

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

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

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

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

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

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

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

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

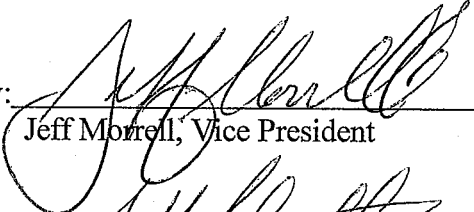
We certify that the rights of way, sewers and water lines, when constructed, will be in accordance with local government specifications. If the construction of the above public improvements has not been completed prior to conveyance to the Town of Canandaigua or the Association, a bond or letter of credit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

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

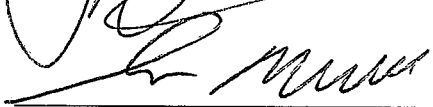
We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 4/22, 2022

S&J Morrell, Inc.

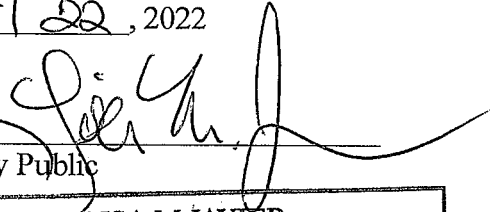
By: 
Jeff Morrell, Vice President

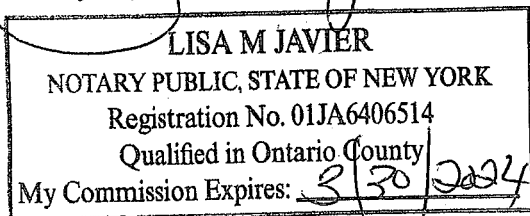

Jeff Morrell


Scott M. Morrell

Sworn to before me this

April 22, 2022


Notary Public



ENGINEER'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF ONTARIO) SS:

Re: Pierce Brook Association, Inc. ("HOA")

The Sponsor of the offering plan to convert the captioned property to HOA ownership retained our firm to prepare a report describing the construction of the property (the "Report"). We prepared the subdivision plans and specifications dated March 10, 2022 and prepared the Report dated September 28, 2022, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

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

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

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

We certify that the Report:

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

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

(iii) does not omit any material fact;

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

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

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

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

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

Dated: 9/29 2022

Marathon Engineering

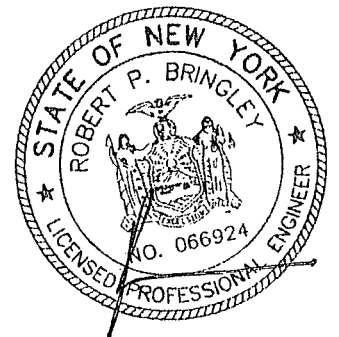
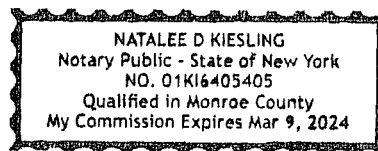
By: _____

Robert P. Bringley, Registered Engineer, Lic # 66924

Affirmed to before me this

29 day of September, 2022


Notary Public





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

ARCHITECT'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

Re: Pierce Brook Association, Inc. ("HOA")

The Sponsor of the offering plan to convert the captioned property to HOA ownership retained our firm to prepare a report describing the construction of the property (the "Report"). We examined the townhome building plans and specifications that were prepared by James Fahy Design Associates Architecture & Engineering, P. C. dated May 4, 2022 and prepared the Report dated September 28, 2022, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

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

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

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

We certify that the Report:

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

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

(iii) does not omit any material fact;

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

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

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

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

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

Dated: October 3, 2022

James Fahy Design Associates
Architecture & Engineering, P. C.

By: _____

James Fahy, P.E.
License No. 063585

Affirmed to before me this
3 day of October, 2022

Notary Public

JANE M. VALENT

Notary Public, State of New York 2024 w. henrietta rd. | suite 3k | rochester, ny 14623
Qualified in Monroe County office: (585) 272.1650
Reg. No. 01WA6249620 info@jamesfahy.com | www.jamesfahy.com
My Commission Expires 10/11/2023

April 22, 2022

Real Estate Financing Bureau
New York State Department of Law
120 Broadway
New York, NY 10271

Re: Certification on Continuing Adequacy of Budget
Pierce Brook Association, Inc. ("HOA")

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

Gentlemen:

The undersigned, being duly sworn, deposes and says as follows:

The sponsor of the HOA Offering Plan retained me to review the current budget containing projections of income and expenses for the year of HOA operations, January 1, 2023 – December 31, 2023.

My experience in this field includes:

Over twenty (20) years experience in the management of homeowners associations and condominiums. I have earned the RPA (Real Property Administrator) and FMA (Facilities Management Administrator) designations from BOMI International. I am also a licensed New York State real estate broker.

Realty Performance Group currently is the managing agent for seventy-eight homeowners associations and condominiums, totaling over 5,200 living units.

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 it is applicable to the budget.

I have reviewed the budget contained in the Offering Plan and investigated the facts set forth in the budget and related schedules and the facts underlying it with due diligence in order to form a basis for this certification. I also have relied on my experience in managing residential properties.

I certify that the projections in the current budget appear reasonable and adequate under existing circumstances, and the projected income and expenses for the 2023 year of operations is complete and accurate.

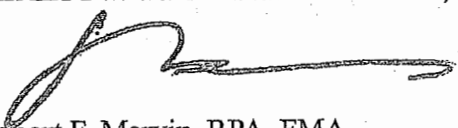
I certify that the Schedules:

- (i) Sets forth in detail the projected income and expense for the 2023 year of HOA operation;
- (ii) Affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the 2023 year of HOA operation;
- (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 expectations 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 representations or statement made.

I further certify that we are not owned or controlled by the sponsor. I understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the 2023 year of HOA operation.

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

REALTY PERFORMANCE GROUP, INC.


Robert F. Marvin, RPA, FMA
President

Sworn to before me this
22 day of April, 2022.

Julie M. McDonald

JULIE M. McDONALD
Notary Public, State of New York
No. 01MC8076701
Qualified in Ontario County 22
Commission Expires July 1, 2022

MANAGEMENT AGREEMENT

This Agreement, made this 25th day of February, 2020 between **PIPER MEADOWS HOMEOWNERS ASSOCIATION, INC.**, having its principal office at c/o Jeff Morrell, Attention: Hanna Hall, Morrell Builders, 1501 Pittsford-Victor Rd., Victor, New York 14564, herein called Association, and **REALTY PERFORMANCE GROUP, INC.**, having its principal office at 1800 Hudson Ave., Suite 100, Rochester, New York 14617 herein called Agent.

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

ARTICLE ONE

Association hereby appoints Agent, and Agent hereby accepts appointment on the terms and conditions hereinafter provided, as exclusive managing agent for the property known as Piper Meadows, consisting of 20 homes (when completed), located at 860 and 870 High Street in Victor, New York, which is hereinafter referred to as the Property.

Except as provided in Article Ten herein, this Agreement shall be for a term of two years, commencing March 1, 2020 and terminating April 30, 2022.

ARTICLE TWO

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

ARTICLE THREE

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

ARTICLE FOUR

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

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

b) Maintain businesslike relations with homeowners whose service requests shall be received, considered, and recorded in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to Association with appropriate recommendations. Agent shall assist Association in the enforcement of the provisions of Association's Declaration, By-Laws, rules and regulations, and any other governing documents. Agent shall maintain regular office hours of 8:30 AM to 5:00 PM weekdays, except holidays, and shall provide a 24-hour emergency answering service during non-business hours.

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

d) Investigate, hire, pay, supervise, and discharge the maintenance personnel necessary to be employed in order to be able to provide minor repair and maintenance services to the Property. Such personnel shall in every instance be in Agent's employ, and compensation for the services of such employees, as evidenced by payrolls certified by Agent, shall be considered part of the expenses of Association. Agent shall not be responsible for the acts, defaults, or negligence of such maintenance employees if reasonable care has been exercised in their appointment and retention. The charge rate for such maintenance employees of Agent shall be \$55.00 per hour, portal to portal, plus mileage at \$0.575 per mile. Such charge rates are subject to reasonable change by Agent periodically as may be necessary due to compensation changes or travel expense increases. Agent shall prepare for execution, filing and payment all employment forms, reports, and returns required by law in connection with unemployment insurance, worker's compensation insurance, disability benefits, social security, and other similar taxes now in effect or hereafter imposed.

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

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

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

h) Obtain and submit to Association for approval, quotes for insurance needed to protect the Association (or as required by law), including, when appropriate, public liability insurance, directors and officers liability

insurance, boiler insurance, fire and extended coverage insurance, and burglary and theft insurance. Agent shall be a named insured on all such insurance policies during the term of this Agreement.

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

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

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

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

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

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

ARTICLE FIVE

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

ARTICLE SIX

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

ARTICLE SEVEN

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

ARTICLE EIGHT

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

- 1-10 units: Management fee of \$325.00 per month.**
11-20 units: Management fee of \$550.00 per month.

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

b) If Association requests the presence of a representative of Agent at a special Board meeting of Association (other than the annual meeting and 3 monthly Board meetings) or a subcommittee meeting of Association, so long as Agent is given sufficient notice, Agent shall attend. Agent shall be paid an additional fee of \$75.00 per hour of attendance at any such meetings.

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

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

e) For any services provided by Agent to Association that are not specified herein, Agent shall be paid an hourly fee of \$75.00 per hour for manager time, and \$50.00 for support staff time, unless otherwise agreed by the parties hereto.

ARTICLE NINE

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

ARTICLE TEN

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

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

c) In the event a petition in bankruptcy is filed by or against either Association or Agent, or in the event that either shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party hereto may terminate this Agreement without notice to the other, but prompt written advice of such action shall be given to the consenting parties.

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

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

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

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

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

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

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

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

ARTICLE ELEVEN

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

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

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

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

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

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

Agent:

REALTY PERFORMANCE GROUP, INC.

By: Robert F. Marvin, President

Association:

PIPER MEADOWS HOMEOWNERS ASSOCIATION, INC.



By: Jeff Morrell, Owner
Morrell Builders