

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
EASEMENTS AND LIENS  
THE GREENS TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION, made the 21<sup>st</sup> day of June, 2012,  
by CONCAL, LLC, hereinafter called "Declarant"

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

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

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

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

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation shall be The Greens Townhomes Homeowners Association, Inc., located at 40 Ajax Road, Rochester, New York 14624.

**ARTICLE II  
DEFINITIONS**

SECTION 1: "Association" shall mean and refer to The Greens Townhomes Homeowners Association, Inc., its successors and assigns.

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

The Common Area to be owned by the Association at the time of the conveyance

of the first Lot shall include all of the common premises as shown on the map the Properties filed in the Monroe County Clerk's Office.

**SECTION 3:** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

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

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

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

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

### ARTICLE III PROPERTY RIGHTS

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

(a) The right of the Association, pursuant to its By-Laws, to adopt rules and regulations governing the use of the Common Area and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

(b) The right of the Association to suspend the right to the use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to grant easements in, dedicate or transfer title to the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members approving such transfer. No such dedication or transfer shall be effective unless an instrument agreeing to

such a dedication or transfer has been signed by 85% of each class of members has been recorded.

(d) The right of the Association to designate certain portions of the Common Area as paths, community gardens, specific recreation areas, and parking areas for the use of Owners, their invitees and guests.

(e) The right of invitees and visitors of any Owner to ingress and egress over the Common Area.

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

## **ARTICLE IV EASEMENTS**

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

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

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

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

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

### SECTION 3: PARTY WALLS.

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

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

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

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

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

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

**SECTION 4: ENCROACHMENTS AND PROJECTIONS.** If any home encroaches or projects up to two (2) feet upon any other home or Lot or upon any portion of the Association Property, or if any patio servicing a home encroaches or projects any distance over any portion of Association Property as a result of (i) the original construction; (ii) settling or shifting or (iii) replacement after fire, condemnation or casualty, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting home or improvement shall stand.

**ARTICLE V  
MEMBERSHIP & VOTING RIGHTS**

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

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

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

*CLASS B.* The Class B Member(s) shall be the Declarant or its successors or assigns and shall be entitled to one vote for so long as one lot is owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership when title to all Lots has been transferred, or 6 years after the first Lot has been conveyed by Declarant, whichever occurs first. Class A Members shall not be entitled to vote for Members of the Board of Directors until all Lots have been transferred or 6 years after the first Lot is transferred, whichever occurs first.

**ARTICLE VI  
COVENANT FOR ASSESSMENTS**

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

The annual common maintenance assessments and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, late charges, and reasonable attorney's fees,

shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.

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

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

**SECTION 3: SPECIAL ASSESSMENTS.** In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, emergency repair, service or replacement of any improvement upon the Common Area, provided that any such assessment if more than \$1000 per lot in any one calendar year, shall have the assent of two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly called for this purpose.

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

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

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

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

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

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

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

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

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

**SECTION 8: SUBORDINATION OF THE LIEN TO FIRST MORTGAGES.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage of record. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

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

**SECTION 10:** In spite of any provision to the contrary in this Article VI, the Declarant shall not be liable for the payment of common charges for unsold Lots owned by it. The Declarant shall, however, for so long as Declarant is in control of the Association, contribute to the Association that amount equal to the difference between the cost of operating the Association and the assessments collected from Owners as set forth in the projected budget. After control has passed to the Owners, the Declarant shall pay assessments on the completed homes that it owns (as evidenced by a Certificate of Occupancy).

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

**SECTION 12: BORROWING OF MONEY.** The Board of Directors of the Association may borrow funds from any recognized lender in order to fulfill its functions, and in conjunction therewith, may mortgage Association property. However, no Sponsor appointed Director may vote for such borrowing and Sponsor's permission, if required, must be obtained. To secure repayment, the Association may assign rights to revenues to be received from annual assessments and special assessments.

## **ARTICLE VII MAINTENANCE**

Assessments levied by the Association shall be used exclusively (1) to operate, maintain, insure, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its Members, their guests, tenants and invitees, and (2) provide services to Lots such as landscape maintenance, snow removal, insurance, trash removal and any other services directed by the Association, including the setting up of a reserve for future roof and siding replacement.

## **ARTICLE VIII USE OF PROPERTY**

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

A. A Lot shall be used for single family residential purposes only. For the purpose of this section Single Family Residential shall mean the immediate family and no more than two (2) unrelated adults.



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

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

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

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

(2) Each Member's dwelling and Lot shall be maintained in good repair and overall appearance. If a Member fails to maintain his house or Lot in a reasonably well maintained and orderly manner, the Board of Directors may contract for exterior maintenance and any expenses incurred shall be considered additional common charges against the Lot in question.

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

(4) The Board of Directors may designate certain portions of the Common Area for use as paths, restricted common areas, community garden areas, and specific recreation areas for the use of Owners, their invitees and guests. Invitees and guests may use community garden areas only as provided in the Rules. Landscaping on the Common Areas is not to be tampered with in any way.

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

(6) No radio, television or similar towers or antennae shall be erected on any Lot or attached to the exterior of any dwelling. Satellite Dishes up to 14 inches in

diameter will be allowed only with prior permission of the Board of Directors, and shall not be placed on the front of the house.

(7) Nothing shall be stored in the Common Areas except with the prior written consent of the Board of Directors. Common area pathways must not be obstructed.

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

(9) Access to the Common Areas shall be by way of the Common Areas and not through private Lots.

(10) Mobile homes are not permitted on the Properties.

(11) No livestock or animals shall be permitted on any Lot except for two (2) domestic pets not kept for breeding. Pets cannot be kenneled outside. No pets shall be allowed to run free on the Common Areas. Owners will be required to pick up pet droppings and be responsible for any damage done by pets.

(12) No signs shall be displayed on any lot owned by an Owner, without the consent of the Board of Directors. Sponsor shall be allowed signage in connection with the development, sale or lease of homes.

(13) No noxious or offensive activities shall be carried out on any lot or common area, nor shall any activity be permitted which could create a nuisance to other lot Owners, including offensive noises, smells, lighting and vibration.

(14) No clotheslines or outdoor drying of clothing or bedding shall be permitted.

(15) No leases of Units for less than a six (6) month term shall be permitted. Tenants shall be bound by all provisions of this Declaration, the By-laws and the Rules in the same manner as Owners. No leases of a part of a Unit shall be permitted.

(16) No overnight parking shall be allowed on the private road between December 1<sup>st</sup> and April 1<sup>st</sup> of each year.

## ARTICLE IX ARCHITECTURAL & LANDSCAPE CONTROL

**SECTION 1:** Landscape care of the Common Area is the responsibility of and shall be controlled by the Association. The Association also has aesthetic control of the Properties for the benefit of all Owners.

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

**SECTION 2:** No alterations, additions, rebuilding, exterior modification of any kind, of the exterior of any building shall be made unless it shall conform in architecture, is similar in material and color to the building as originally constructed, and is approved by the Board of Directors.

**SECTION 3:** No building, fence, wall or other structure or major change in landscaping, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to, and approved in writing as to the harmony of external design and location in relation to surrounding structures by the Board of Directors of the Association.

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

## **ARTICLE X INSURANCE & CASUALTY DAMAGE**

A. The Association, for the Common Areas and the homes, will obtain and maintain in force and effect a policy of liability, casualty, and other necessary insurance, in an amount, and with such coverages as are acceptable to the Association.

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

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

## **ARTICLE XI ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION**

**SECTION 1:** Declarant, its successors or assigns, shall have the right, without the consent of the members of the Association, to subject additional Properties to this Declaration within six (6) years of the original date of this instrument, such Properties to

be developed substantially as the Properties contained herein. However, neither Declarant, nor its successors or assigns, shall be bound to make such additions.

Such additions shall be made by recording in the Monroe County Clerk's Office a supplemental Declaration with respect to the additional Properties, which shall extend the scheme of the Declaration to such Properties.

**SECTION 2:** Additions to the Properties by the Association. Annexation of additional property by other than Declarant shall require the assent of seventy-five percent (75%) of Members, at a meeting duly called for this purpose on the same notice, and in the same manner as is required for meetings and voting by the By-Laws.

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## ARTICLE XII GENERAL PROVISIONS

**SECTION 1: Duration and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, the Association, or the Owner of any land subject to this Declaration, their respective heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the Owners of sixty six and two-thirds percent (66 2/3%) of the Lots has been recorded, agreeing to change such covenants and restrictions, in whole or part.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners, and thereafter by an instrument signed by not less than sixty-six and two-thirds percent (66 2/3%) of the Owners. Any amendments must be recorded in the Monroe County Clerk's office to become effective.

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

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

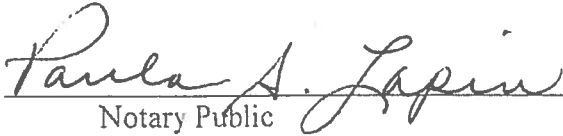
CONCAL, LLC

By:   
Carlo Callea, Sole Member

STATE OF NEW YORK )

COUNTY OF MONROE ) SS:

On the 21<sup>st</sup> day of June in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Carlo Callea, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

PAULA A. LAPIN  
Notary Public, State of New York  
No. 1234567  
Qualified to perform duties in Monroe County  
Commission expires June 30, 20 14

BY-LAWS OF  
THE GREENS TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
IDENTITY

These are the By-Laws of The Greens Townhomes Homeowners Association. Inc.

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

The office of the Association shall be as designated by the Board of Directors, or at the address of the Declarant, CONCAL, LLC, (herein the "Declarant"), 40 Ajax Road, Rochester, New York 14624.

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

ARTICLE II  
DEFINITIONS

A. "Association" shall mean and refer to The Greens Townhomes Homeowners Association, Inc., its successors and assigns.

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

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

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

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

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

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

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

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

### ARTICLE III BOARD OF DIRECTORS

A. Membership and Initial Selection. The Association shall be governed by a Board of Directors consisting of five (5) persons. These directors shall be members in good standing of the Association. The initial Board of Directors shall be designated by Declarant who is authorized to choose the directors until all Lots have been transferred or until six (6) years after the transfer of the first unit, whichever first occurs. The directors designated by the Declarant need not be members of the Association.

B. Term and Election. At such time as the members become empowered to elect the Board of Directors they shall elect five (5) directors, the two (2) persons receiving the greatest number of votes serving three (3) years, the two (2) persons receiving the next highest number of votes serving two (2) years, and the person receiving the next highest number of votes serving one (1) year. Thereafter, at each annual meeting the members shall elect at least one (1) director to serve for three (3) years.

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

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

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

F. Powers and Duties. The Board of Directors shall exercise all the powers and duties permitted the governing body of the Association, including those existing

under the Not-For-Profit Corporation Law of New York State. Such powers and duties shall be exercised in accordance with the provisions of the Declaration of Covenants, Restrictions, Easements and Liens applicable to the property recorded in the Monroe County Clerk's Office (herein the "Declaration") which govern the use of the land, and shall include but shall not be limited to the following powers and duties:

1. To make and collect assessments, including special assessments, against members to defray the costs of the Association. To file a lien against any property for which assessments are not paid within thirty-one (31) days after due date, or to bring an action at law against the Owner personally obligated to pay the same.
2. To establish reserve funds for such lawful purposes as it, in its sole discretion, may determine necessary or desirable for the financial security of the Association, including capital reserve accounts.
3. To use the proceeds of assessments in the exercise of its powers and duties.
4. To issue or cause to be issued upon demand of a buyer or seller or their attorney or mortgagee, a certificate setting forth whether or not an assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
5. To assure the maintenance, repair, replacement and operation of all Association property for the common use and enjoyment of the lot owners.
6. To adopt, publish, and distribute to members rules and regulations governing the use of the Common Areas, and the personal conduct thereon of members and their guests, and to establish penalties or fines for the infraction thereof. The initial rules are contained in the Declaration.
7. To enforce by legal means the provisions of the Declaration, By-Laws, and Regulations for the use of the Properties, including the filing of liens for unpaid assessments and/or to bring legal actions against owners for the payment of same.
8. To procure and maintain adequate property liability and casualty insurance on property owned or maintained by the Association. The Board of Directors shall annually review the amount of insurance coverage to assure that the Association and its members are fully protected. The Board shall also procure insurance on all directors, officers or employees having fiscal responsibility as it may deem appropriate.
9. To authorize the officers to enter into management agreements with third parties in order to facilitate the efficient operation of the facilities and services of the Association. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of the facilities, and



all improvements included therein, designated as Common Areas, and the receipt and disbursement of such funds as may be authorized by the Board of Directors. The term of these management agreements shall be as determined by the Board to be in the best interests of the Association.

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

11. To pay the cost of all lawn care of common areas and other services rendered to the Association and not billed to members' individual lots.

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

13. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

14. To enter into agreements with other homeowner associations for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds of the votes of all Members voting upon written ballot which shall be sent to the Members no fewer than thirty (30) days before the vote.

15. To exercise for the Association all powers not reserved to the Members by other provisions of the Declaration, the Certificate of Incorporation or these By-Laws.

16. To acquire, sell, lease or exchange property or any interest therein on behalf of the owners with the consent of sixty-seven percent (67%) of the Lots present in person or by proxy at a meeting duly held for such purpose, and the costs incident thereto shall constitute part of the Common Expenses of the Association.

#### G. Method of Calling Meetings.

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

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

telephone, or telegram, which notice shall state the time, place, and purpose of the meeting.

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

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

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

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

2. The Vice President shall have all the powers of the President in the event of the President's absence or disability.

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

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

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

6. Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for officers and employees of the Association (other than Declarant and its designees) and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors. The premium on such bonds shall be a common expense and be paid by the Board of Directors.

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

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

A. Meetings. Meetings of the members shall be held annually after the expiration of the control period of Declarant and when called by the Board of Directors, or by the President, or by any three (3) members. Board members shall be elected at the Annual Meeting. Special assessments above \$1000 per lot shall have the assent of two-thirds (2/3) of the votes of the Members. All meetings shall be held at the principal office of the Association or at such other place in the Town of Henrietta, or any immediately adjacent town, as may be fixed by the President. The meeting notice shall state the time, date, place and purpose of the meeting.

B. Notice of Meeting. The Secretary shall give not less than seven (7) days notice of any meeting of members personally, or by mail, or telegram, which notice shall state the time, date, place, and purpose of the meeting. Any member may waive notice of

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

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

#### ARTICLE V LIABILITY OF BOARD OF DIRECTORS

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

#### ARTICLE VI AMENDMENTS

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

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

C. While at least one Lot is owned by Declarant, Declarant may amend these By-Laws without member consent to correct errors or omissions herein, so long as no Lot Owner is adversely affected by such change without his or her consent.

#### ARTICLE VII MORTGAGES

**Section 1. Notice to Board Managers.** An Owner who mortgages his home shall notify the Association of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Association, and the Association shall maintain such information in a book entitled "Mortgages of Homes."

**Section 2. Notice of Unpaid Common Assessments.** The Association, whenever so requested in writing by a mortgagee of a home, shall promptly report any then unpaid common assessments due from, or any default by, the Owner of the mortgaged home.

**Section 3. Notice of Default.** The Association, when giving notice to an Owner of a default in paying common assessments or other default, shall send a copy of such notice to each holder of a mortgage covering such home whose name and address has theretofore been furnished to the Association.

**Section 4. Examination of Books.** Each Owner and each Mortgagee of a home shall be permitted to examine the books of account of the Association at reasonable times on business days during business hours.

**Section 5. Other Notices to Mortgagees.** The Association shall give first mortgagees of homes (a) notice of casualty loss or proposed condemnation affecting a material portion of the Property or the home mortgaged; (b) notice of lapse or material modification of blanket insurance; and (c) notice of any amendment requiring mortgagee approval.

This is a true copy of the By-Laws of The Greens Townhomes Homeowners Association, Inc. as of this 9<sup>th</sup> day of June, 2012.

THE GREENS TOWNHOMES  
HOMEOWNERS ASSOCIATION, INC.

By:   
Carlo Callea, President



TOWN OF HENRIETTA

County of Monroe • State of New York  
475 Calkins Road, P.O. Box 999, Henrietta, N.Y. 14467  
(585) 334-7700 • www.henrietta.org

MICHAEL B. YUDELSON  
Supervisor

WILLIAM J. MULLIGAN, JR.  
JANET B. ZINCK  
JACK W. MOORE  
M. RICK PAGE  
Council Members

April 18, 2011

Mr. Leonard Preston  
217 Lake Avenue  
Rochester, New York 14608

Re: Application No. PB-288 – Locust/Edgewood Townhomes – For final subdivision approval of a proposed 40 unit townhomes-for-sale Project with maintenance building to be developed under Town Law § 278 (Cluster) on a 19.939 acre parcel of land located between Edgewood Avenue and Locust Hill Drive on the north side of Jefferson Road to be known as 1850 Jefferson Road, in Residential R-1-20 Zoned District. Tax Account No. 163.05-1-18.111.

Dear Mr. Preston:

At a Regular scheduled Planning Board Meeting held on April 12, 2011, the Henrietta Planning Board motioned to grant final subdivision approval, subject to the Applicant addressing all comments received from the Town of Henrietta and other concerned agencies to the satisfaction of the Director of Engineering/Planning, and more specifically:

**ADDITIONAL PLANNING BOARD REQUIREMENTS:**

- 1.) The Applicant agrees to address all comments presented by the Director of Engineering/Planning, consultants, and staff.
- 2.) The Henrietta Planning Board is requesting that the Applicant identify, stake-out, and mark with tape the tree line that needs to be maintained on the west/east and north side, prior to any clearing.
- 3.) Please note that this Application is for forty-one (41) units not forty (40).

Should you have any questions, please contact me at (585) 359-2410 during normal business hours.

Respectfully,

*Peter Minotti*  
Peter Minotti  
Chairman

*DISCO NUMBER*

*↓  
NEW NUMBER  
(585) 424-4160*