

BY-LAWS  
FOR  
ORCHARD STREET TOWNHOMES AT DENVILLE

ARTICLE I  
NATURE OF BY-LAWS

Section 1/Purpose

These By-Laws are intended to govern the administration of the Orchard Street Townhomes at Denville, Inc., a nonprofit corporation organized under Title 15A of the New Jersey Statutes Annotated and proved for the management, administration, utilization and maintenance of the Common Elements described in the Master Deed of the Orchard Street Townhomes at Denville Condominium.

Section 2/Definitions

Unless the Context clearly indicates otherwise, all definitions set forth in the aforesaid Master Deed or in N.J.S.A. 46:8B-3 are incorporated herein by reference.

Section 3/Fiscal Year

The fiscal year of the corporation shall be determined by the Board of Trustees.

Section 4/Principal Office

The principal office of the corporation is located at 11 Countryside Drive, Rockaway, New Jersey 07866.

ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS

Section 1/Members

Every person, firm, association, corporation or other legal entity who is a record owner or co-owner of the fee simple title to any Unit(s) shall be a Member of the Association; provided however, that any person, firm, association, corporation, or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to

mortgagees or trustees under deeds of trust) shall not be a Member of the Association. Despite anything to the contrary in the preceding, the Sponsor has one membership in the Association for each contemplated Unit that has not been conveyed to an individual purchaser not to exceed that number of Units approval by the municipality.

#### Section 2/Member in Good Standing

A Member shall be deemed in "Good Standing" and entitled to vote in person or by proxy at any meeting of the Association or in any ballot by mail, if thirty (30) days prior to the date fixed for such event, he has paid all installments due for assessments made or levied against him and his Unit by the Board as hereinafter provided, together with all interest, late fees, costs, attorney's fees, fines and other expenses if any, properly chargeable to him and to his Unit. Any date set forth in these By-Laws for determining good standing for voting purposes, as well as any related requirement which may be established by the Board of Trustees, shall be deemed supplemental to, and not in derogation of, the record date provisions of N.J.S.A.15A:5-7.

#### Section 3/Associate Members

Every person who is entitled to possession and occupancy of a Unit as a tenant or lessee of a Unit Owner may be an Associate Member of the Association, but shall not be entitled to vote with respect to Association matters.

#### Section 4/Change of Membership

Change of Membership shall be accomplished by recordation in the Morris County Clerk's Office of a deed or other instrument establishing record title to a Unit, and delivery to the Secretary of the Association of a certified copy of instrument together with such sums of money as are required for the payment of any membership fee, contribution to capital or escrow deposit. The membership of the prior Unit Owner shall be thereby terminated.

#### Section 5/Rights of Membership

Every person who is entitled to membership in the Association, pursuant to the provisions of the Certificate of Incorporation and these By-Laws, shall be privileged to use and enjoy the general common elements, subject, however, to the right of the Association to:

- a. Promulgate rules and regulations governing such use and enjoyment;
- b. Suspend the use and enjoyment of the General Common Elements as provided in Section 6 of this Article II; and

- c. Dedicate or transfer all or part of the General Common Elements, other than any Building in which any Units are contained, as provided in Section 1 (o) of Article VI hereof.

#### Section 6/Suspension of Rights

The membership and voting rights of any Member may be suspended by the Board of any period over thirty (30) days during which any assessment against the Unit to which his membership is appurtenant remains unpaid; but upon payment of such assessments, and any interest accrued thereon, his rights and privileges shall be immediately and automatically restored. Further, if rules and regulations governing the use of the Common Elements and the conduct of person thereon have been adopted and published, as authorized in the By-Laws, the rights and privileged of any person in violation thereof may be suspended at the discretion of the Board for a period not to exceed thirty (30) days for any single violation.

#### Section 7/Constitution to Capital

The Board will impose upon each Unit Owner, upon acquisition of title to his Unit, a non-refundable and non-transferable contribution to the working capital account of the Association in an amount equal to two (2) months' monthly maintenance, payable to the ORCHARD STREET TOWNHOMES AT DENVILLE Condominium Association, Inc. Such funds may be used for operating expenses or reserves that are not funded by the annual common expense assessments collected from the Unit Owners, or for any other lawful purpose at the discretion of the Board. Such funds need not be replenished if it so utilized. Payment of such contribution shall be a condition precedent to membership in the Association upon the initial sale or subsequent transfer of title to a Unit which is not exempted by the Rules and Regulations of the Association. Any unpaid capital contribution shall be deemed a lien on the Unit in the same manner as any unpaid Common Expenses attributable to such Unit.

#### Section 8/Escrow Deposit

To impose, if deemed necessary, upon each Unit Owner the requirement of an escrow deposit is an amount not to exceed one-sixth (1/6) of the current estimated Annual Common Expenses Assessment for his Unit, which escrow deposit shall be held by the Association and applied in the event of a default by the Unit Owner in the payment of any type of Assessment, fine or other charge levied by the Board against his Unit. To the extent that the escrow deposit or any part thereof is so applied, the Unit Owner shall be responsible to replenish the escrow deposit. Such escrow, if imposed, shall be held in an interest-bearing account, with interest to accrue to the benefit of the Association, and shall be refundable or assignable upon the sale of the Unit without interest to the extent the deposit is not applied to defaulted Common Expenses Assessments.

#### Section 9/Votes

Each Unit Owner shall be entitled to such vote(s) for each Unit to which he holds title as is provided in Article VI of the Master Deed and Article III of these By-Laws. When more than one person hold title, the vote(s) for each Unit shall be exercised as the Co-Owners among themselves determine. When one or more Co-Owners signs a proxy or purpose to vote for his or her Co-Owners, such vote(s) shall be counted unless one or more of the Co-Owners is present and objects to such vote(s); or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote(s) are counted. If Co-Owners disagree as to the vote(s), the vote(s) shall be split equally among the Co-Owner Members.

### ARTICLE III

#### MEETING OF UNIT OWNERS

##### Section 1/Place of Meeting

All meetings of the Unit Owners of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board.

##### Section 2/Annual Meetings

All annual meetings of the Unit Owners of the Association shall be held on the day and month of the year to be established by the Board, except that the first such annual meeting shall be held not more than thirteen (13) months following the incorporation of the Association. At the first annual meeting subsequent to the Final Transition Elections, the election of Trustees shall take place. If the election of Trustees shall not be held at the annual meeting or any adjournment of such meeting, the Board shall cause the election to be held at a special meeting as soon thereafter as may be convenient. At such special meeting the Unit Owners may elect the Trustees and transact other business with the same force and effect as at an annual meeting duly called and held. All proxies validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or special meeting and now proxies may be received for any such subsequent meeting.

##### Section 3/Special Meetings

Special meetings of Unit Owners may be called by the President whenever he deems such a meeting advisable, or shall be called by the Secretary when so ordered by the Board of Trustees to or upon the written request of members entitled to not less than ten (10%) percent of all votes entitled to be cast at such meetings. Such request shall state the purpose or purposes of such a meeting and the matter(s) proposed to be acted upon. Unless Unit Owners representing at least

fifty (50%) percent of all votes entitled to be cast request such a meeting, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Unit Owners held during the preceding twelve (12) months, which determination shall be made in the sole and absolute discretion of the Board.

#### Section 4/Notice of Meeting

Except as otherwise provided by law and Section 3 of Article III, notice of each, meeting of members whether annual or special, shall be given not less than ten (10) days, nor more than sixty (60) days before the day on which the meeting is to be held, to each Unit Owner at the address of its Unit, by delivering a written or printed notice thereof to him personally or mailing such notice, postage prepaid. Every such notice shall state the time and place of the meeting and shall state briefly the purpose thereof. Notice of any meeting of the Unit Owners shall not be required to have been sent to any Unit Owners who shall attend such meeting in person or by proxy. Notice of any adjourned meeting of the members shall not be required to be given, except where expressly required by law, no publication of any notice of a meeting of the members shall be required.

#### Section 5/Quorum and Adjourned Meetings

At each meeting of the members, persons holding a majority of the authorized votes (including and held by Sponsor), present in person or represented by proxy, shall constitute a quorum for the transaction of business except where otherwise provided by law. In the absence of a quorum, a majority of the votes present in person or by proxy may adjourn the meeting from time to time, until a quorum shall be present and represented. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting originally called.

#### Section 6/Organization

At each meeting of the Association, the President or in his absence, the Vice President, or in the absence of both of them, a person chosen by a majority vote of the Unit Owners in good standing present in person or represented by proxy and entitled to vote thereat, shall act as Chairman and the Secretary or in his absence a person whom the Chairman shall appoint, shall act as Secretary at the meeting.

#### Section 7/Voting on Questions

Only Unit Owners who hold memberships in good standing at least thirty (30) days prior to any meeting at which a vote is to occur shall be entitled to vote on questions. Each Unit Owner shall be entitled to the weighed vote for each Unit to which he holds title with respect to all questions voted upon in the membership. A majority in interest of votes present in person or

by proxy at any duly constituted meeting of the membership or by mail ballot shall be sufficient on those questions submitted to a vote of the meeting. The vote on any question at a meeting need not be taken by ballot, unless (i) the chairperson of the meeting determines a ballot to be advisable, or (ii) a majority in interest of the votes present at the meeting determines that the vote on the question submitted shall be taken by ballot.

#### Section 8/Voting in Elections of Trustees

Only Unit Owners who hold memberships in good standing at least thirty (30) days prior to any meeting at which a vote is to occur shall be entitled to vote in Elections of Trustees. Each Unit Owner shall be entitled one (1) un-weighted vote for each Unit to which he holds title with respect to all elections. The election of trustees shall be conducted by written ballot. If with respect to any election more than twice the number of candidates to be elected are nominated, then there shall be two ballots cast. At the end of the tabulation of the first ballot, the field of nominees shall be reduced so that there are twice as many candidates as there are positions to be filled, with the persons receiving the fewest votes being eliminated from the ensuing ballot. A second vote shall be held and on the second vote, the persons receiving the plurality of votes will be deemed to be elected in order to fill the vacant positions. If there are not more than twice the number of nominees for the number of positions to be filled, then there shall be one vote, with the persons receiving the highest number of votes being elected in order to fill the vacancies on the Board.

#### Section 9/Ballot by Mail

The Board, in lieu of calling a membership meeting, may submit any question, or election other than a Transition Election, to a vote of the membership by a ballot by mail. No ballot by mail shall be valid or tabulated unless the signature of the Unit Owner(s) submitting the ballot has been verified on the ballot in accordance with procedures established by the Board. Only members in good standing on the record date established by the Board shall be entitled to vote. The Board shall appoint judges to tabulate the ballot whose report shall be included in the minute book. In order to conduct a ballot by mail for a question submitted to vote of the membership, the Board shall serve a notice upon all members which shall (i) state with specificity on terms of motion(s) the question(s) upon which the vote is to be taken; (ii) state the date by which ballots must be received on order to counted, which date may be extended at the discretion of the Board; (iii) provide an official ballot for the purposes of the vote; and (vi) state the date upon which the action contemplated by the motion(s) shall be effective, which date shall be not less than ten (10) days after the date ballots must be received. No actions contemplated by a question submitted to a ballot by mail shall be taken unless a majority in interest of all owners in good standing submit ballots approving such action.

In order to conduct a ballot by mail for an election of Trustees, the Board shall serve notice upon all members which shall (i) provide an official ballot for the purposes of the election; and (ii) state the date by which the ballot must be received in order to be counted.

#### Section 10/Proxies

Voting by proxy shall be permitted with respect to all elections of Trustees, and all amendments to the Certificate of Incorporation, the By-Laws, or any other matter which has come before a meeting of the Association. Proxies must be filed with the Secretary before the appointed time of each meeting. All proxies shall be in writing, signed by all individual owners or by his or their duly authorized representative(s) and delivered to the Secretary of the meeting, but not proxy shall be valid after eleven (11) months from its date unless said proxy provides for a longer period, not to exceed three (3) years from the date of execution. All proxies shall be substantially in the form prescribed by the Board, and if not such form, shall be deemed invalid which determination shall be made in the sole discretion of the Board.

#### Section 11/Inspections

If at any meeting of the members, a vote by ballot shall be taken, the Chairperson of such meeting shall appoint two (2) persons to act as inspectors with respect to the ballots. Each inspector so appointed shall first subscribe to an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of voters and shall report the number of members represented at the meeting and entitled to be cast, shall conduct and accept the votes and, when the voting is completed, shall ascertain and report the number of votes for and against the questions or candidates, respectively. Reports of inspectors shall be in writing and subscribed and delivered by them to the Secretary of the meeting. The inspectors need not be members of the Association and any Officer or Trustee of the Association may be an inspector on any question, other than a vote for any election or any other question in which he may be directly interested.

#### Section 12/Order of Business

The order of business at an annual meeting of the Unit Owners or any special meeting insofar as practicable shall be:

- a) Call of the roll and certifying the proxies.
- b) Proof of notice of meeting and waiver of notice.
- c) Reading and disposal of any unapproved minutes.
- d) Receiving reports of Officers.
- e) Receiving reports of Committees.
- f) Appointment of inspectors of election, if necessary.

- g) Election of Trustees if necessary.
- h) Old business.
- i) New Business.
- j) Adjournments.

#### ARTICLE IV

#### BOARD OF TRUSTEE

##### Section1/Qualifications

The following criteria shall be qualifications for nomination, appointment or election to a Trusteeship:

- a. Membership in good standing shall be a qualification of any nominee or appointee to a Trusteeship and for continued service on the Board.
- b. Representation: Partnership, corporations, limited liability companies, fiduciaries or co-owners holding memberships in good standing may designate one individual per Unit owned to be eligible for nomination, appointment, or election as Trustee in accordance with the following qualifications:
  - (i) Partnership designees shall be members, employees or agents of partnership;
  - (ii) Corporate designees shall be officers, stockholders, employees or agents of the corporation;
  - (iii) Limited liability company designees shall be members of the limited liability company;
  - (iv) Fiduciary designees shall be fiduciaries, officers, or employees of the fiduciary; and
  - (v) Co-owners holding a membership in good standing may designate any one of them but only one of them to be eligible for nomination, appointment, or election as a Trustee; however, in the case of any disagreement, the express consent of a majority in interest of such Co-owners shall be required.
- c. Disqualifications of Trustees. Any Trustee who membership in the Association is not in good standing for thirty (30) consecutive days shall automatically be disqualified as a Trustee upon the expiration of said thirty (30) day period and a replacement shall be appointed by the Board within thirty (30) days thereafter to serve the remainder of the term. Despite the aforesaid, any Trustee who conveys title to his Unit and no longer holds title to any other Unit is automatically disqualified as a Trustee effective on the date of said conveyance.

## Section 2/Number

The Board shall initially consist of three (3) Trusteeships, designated Trusteeships "A," "B," and "C," all of which shall be appointed by the Sponsor; the initial Board of Trustees need not be Unit Owners. After the Second Transition Election, as described in Section 3 below, the Unit Owner elected Board shall consist of three Trusteeships, designated "A", "B", and "C".

## Section 3/Transition Elections

Within thirty (30) days after the initial conveyance of three (3) Units, the President shall call either the first annual meeting or a special meeting of the membership of the Association for the purpose of holding the first election of Unit Owners to the Board ("the First Transition Election"). At the meeting, Unit Owners other than the Sponsor shall be entitled to vote for the elect Trustee A and B from among such Unit Owners to the Board in accordance with the provisions of Article III of these By-Laws, and the Sponsor shall be entitled to appoint the other Trustee.

Within thirty (30) days after all Units have been initially conveyed, the President shall call a meeting for the Second Transition Election at which Unit Owners other than Sponsor shall be entitled to vote for and elect Trustee C from among such Unit Owners in accordance with the provisions of Article III hereof; provided that Sponsor shall be entitled to appoint one Board Member so long as he holds at least one Unit for sale in the ordinary course of business. However, Sponsor shall be entitled in its discretion to relinquish the third Trusteeship at the time of the First Transition Election or any time thereafter prior to the conveyance of the last Unit.

Further, only Unit Owners who are Members in Good Standing shall be eligible to be nominated, elected, or to serve on the Board, except that in the case of any Unit Owner which is a partnership, corporation or limited liability company, including Sponsor, a designee shall be eligible if the Unit Owner is a Member in Good Standing.

Notice of all special meetings called pursuant to this Section for the Purpose of holding Transition Elections shall be given not less than twenty (20) nor more than thirty (30) days prior to the date of the meeting.

## Section 4/Term of Office

Sponsor appointed Trustee A and B shall serve until their successors have been qualified and elected at the First Transition Election. Trustees A and B elected at the First Transition Election shall serve terms expiring at the annual meeting of membership held in the second

calendar year following the year in which the First Transition Election is held. Thereafter, Trustees A and B shall serve for two terms.

Sponsor appointed Trustee C shall serve until his successor has been qualified and elected at the Second Transition Election held pursuant to Article IV Section 3 herein. If (i) the First and Second Transition Elections are held in the same calendar year, or (ii) the Second Transition Election is held in a calendar year in which the terms of Unit-Owner elected Trustees A and B expire, then Trustee C shall serve a term expiring at the annual meeting of the membership held in the third calendar year following the year in which the second Transition Election is held; otherwise Trustee C elected at the Second Transition meeting shall serve a term expiring at the annual meeting of membership held in the second calendar year following the year in which the Second Transition Election is held. Thereafter, Trustee C shall serve a two-year term.

It is the purpose and intent hereof that subsequent to all Transition elections, the election of Trustees A and B shall be held in alternate years to the election of Trustee C.

#### Section 5/Removal of Board Members

At any duly held regular or special meeting of the Unit Owners, any one or more Trustees may be removed with or without cause by vote of a majority of the Unit Owners present, provided that the notice of the meeting expressly includes this item. A successor may then and there be elected by a unanimous vote of the remaining Trustees to fill the vacancy thus created. Each person so appointed shall be a Trustee for the remainder of the term of the Trustee whose term he is filling and until successor is duly elected and qualified. Any Trustee whose removal has been proposed shall be given an opportunity to be heard at the meeting but the failure of any Trustee to be a Member in Good Standing for a period of thirty (30) days or more shall be grounds for automatic removal without any vote of the members.

Despite the foregoing, a Unit Owner-elected Trustee cannot be removed except by a majority vote (in number) of the Unit Owners present other than Sponsor, but the failure of any Trustee to be a Member in Good Standing for a period of thirty (30) days or more shall be grounds for automatic removal without any vote of the members. In the event that all of the Unit Owner-elected Trustees are removed, successors shall be elected by the Unit Owners other than the Sponsor in the manner set forth in Article IV Section 4 herein to fill the vacancies thus created.

This provision does not apply to any Trustee appointed by the Sponsor.

#### Section 6/Vacancies

Vacancies on the Board caused by any reason other than removal of a Trustee by a vote of the Unit Owners shall be filled by a unanimous vote of the remaining Trustees, including the

Sponsor's appointees, at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a Trustee for the remainder of the term of the Trustee whose term he is filling and until his successor shall have been duly elected and qualified. Despite the foregoing, until the First Transition Election, Sponsor shall have the right to fill all vacancies on the Board by appointment, Unit Owner-elected vacancies on the Board shall only be filled by Unit Owners other than the Sponsor, whether same be elected pursuant to the provisions herein, or of Section 6.

## ARTICLE V

### TRANSACTION OF BUSINESS BY THE BOARD OF TRUSTEES

#### Section 1/Sponsor's Protective Provisions

After control of the Board is vested in Trustees elected by Members other than the Sponsor, and so long as the Sponsor owns at least one (1) Unit and hold same for sale in the ordinary course of business, the following shall apply and shall not be amended.

1. Neither the Association nor the Board of Trustees shall take any action that will impair or adversely affect the rights of the Sponsor or cause the Sponsor to suffer any financial, legal, or other detriment, including, but not limited to, any direct or indirect interference with the sale Units, or the assessment of the Sponsor for capital improvements.
2. The Association and its Board of Trustees shall continue the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Association and the Board of Trustees by Unit Owners other than Sponsor.
3. In furtherance of the foregoing provisions, the Sponsor shall have the right to veto any and all actions of the Association or the Board which may have any direct or Indirect detrimental impact upon the Sponsor as may be determined in the sole reasonable discretion of the Sponsor.
4. The Sponsor shall exercise its veto right, in its sole and absolute discretion, within ten (10) days after its receipt of written notice that a resolution or other action is proposed or has been taken by the Association or its Board of Trustees. In such event, the Sponsor shall notify the Secretary of the Association of its exercise of its veto right and any such proposal or action shall be deemed null and void ab initio and of no further force and effect.

The aforementioned protective provisions shall be construed in accordance with and not in derogation of N.J.S.A. 46:8B-21.1 of the New Jersey Condominium Act and N.J.A.C. 5:26-8.4 of the regulations promulgated pursuant to the New Jersey Planned Real Estate Development

f Full Disclosure Act, N.J.S.A. 45:22A-21 et seq. and shall not be amended without the express written consent of the Sponsor.

#### Section 2/Meeting of the Board; Notice of Trustees; Waiver of Notice

The first annual meeting of the Board shall be held within ten (10) days after the first annual meeting of the Unit Owners at such time and place as shall be fixed by a majority of the Board and no notice shall be necessary. Thereafter, regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least two (2) meetings shall be held each year. Notice of regular meetings of the Board of trustees must be given to each member of the Board by telephone, mail or telegram at least three (3) days prior to the day of the meeting. Special meetings of the Board may be called by the President on three (3) notice to each member of the Board given b telephone, mail or telegram, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice at the written request of at least three (3) members of the Board. Any member of the Board may, at any time, waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving notice. Actual attendance by members of the Board at any meeting of the Board shall constitute a waiver by notice by him of the time and place thereof. If all the Trustees are present at any meeting of the Board, no notice shall be requires and any business may be transacted at such meeting.

#### Section 3/Quorum and Adjourned Meetings

At all meetings of the Board, a majority of the Trustees shall constitute a quorum for the transaction of business and the votes of a majority of the Trustees present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board shall be less than a quorum present, the majority of those present may adjourn the meeting to a new date. At any such adjourned meeting at which a quorum is present, any business which may been transacted at the original meeting may be transacted without further notice. The vote of a majority for valid action by the Board on any matter.

#### Section 4/Non-Waiver

All the rights, duties and privileges of the Board of Trustees shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

#### Section 5/Consent in Lieu of Meeting and Vote

Despite anything to the contrary in these By-Laws, the Certificate of Incorporation or the Master Deed and subject to the open meeting requirements set forth in N.J.S. 46:8B-13a, and Section 6 hereof, the entire Board of Trustees shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote, if the entire Board, or all the Trustees empowered to act, whichever the case may be, shall consent in writing to such action.

#### Section 6/Meetings Open to Unit Owners

Notice. All Board meetings, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all Unit Owners subject to those exceptions set forth in N.J.S.A. 46:8B-13a, and N.J.A.C.5:20-1.1, as now or hereafter amended. The Board may exclude or restrict attendance at those meetings, or portions of meetings, at which any of the following matters are to be discussed:

1. Any matter the disclosure of which constitute an unwarranted invasion of individual privacy;
2. Any pending or anticipated litigation or contract negotiations;
3. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or
4. Any matter involving the employment, promotion, discipline or dismissal of a specific employee of the Association.

Adequate written notice of the time, place and the agenda, to the extent known, of all such open meetings shall be given by the Board to all Unit Owners at least forty-eight (48) hours in advance of such meeting in the manner required by N.J.A.C.5:20-1.2(b).

Moreover, the Board of such also within seven (7) days following the Annual meeting of the Association. Post, mail to newspapers and file with the administrator of the business office of the Association a schedule of the regular Board Meetings to be held in the succeeding year, as prescribed by N.J.A.C.5:20-1.2 (c) and make appropriate revisions thereto, all as required by N.J.A.C.5:20-1.2.

## ARTICLE VI

### GENERAL POWERS AND PRIVILEGES

#### Section 1/Powers

Subject to the Master Deed or other instruments of creation, the Association may do all it is legally entitled to do under the laws applicable to its form of organization. The Association may do all it is legally entitled to so under the laws applicable to its form of organization. The Association shall discharge its powers in a manner that protects and furthers the health, safety, and general welfare of the residents of the community. The Association shall provide a fair and efficient procedure for the resolution of disputes between individual Unit Owners and the Association, and between different Unit Owners, that shall be readily available as an alternative to litigation.

The property, affairs and business of the Association shall be managed by the Board of Trustees, which shall have all those powers granted to it by the Certificate of Incorporation, the Master Deed, these By-Laws, and by the law. In addition, it shall have those powers, which include, but which are not necessarily limited to, the following, together with such other powers as may be provided herein or in the Master Deed, or which may be necessarily implied.

- a. To employ, by contract or otherwise, a manager, managing agent or an independent contractor to oversee, supervise and carry out the responsibilities of the Board. Said Manager or said independent contractor shall be compensated upon such terms as the Board deems necessary and proper; and
- b. To employ any person, firm or corporation to repair, maintain or renovate the Common Elements of the Condominium; to lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and traffic and safety controls of various sorts on said Property; and
- c. To employ professional counsel and to obtain advice from persons, firms or corporations such as, but not limited to, landscape architects, architect, engineers, lawyers, and accountant; and
- d. To employ or contract for water and sewer, electricity and gas or other forms of utilities, cable or master antenna television; and
- e. To employ all managerial personnel necessary, or enter into a managerial contract for the efficient discharge of the duties of the Board hereunder; and
- f. To adopt, amend and publish Rules and Regulations covering the details of the operation and use of the Common Elements including, but not limited to, pet controls; and
- g. To secure full performance by Unit Owners or occupants of all items of maintenance for which they are responsible; and
- h. To set minimum standards for floor coverings installed by all Unit Owners in Buildings, with the exception of sponsor; and

- i. To coordinate the plans of Unit Owners and occupants of Units for moving their personal effects or property into the Unit or out of it with a view towards scheduling such movements so that there shall be a minimum of inconvenience to others; and
- j. To arrange for security protection as necessary; and
- k. To enforce obligations of the Unit Owners and do anything necessary and proper for the sound management of the Condominium, including the right to bring, defend or settle lawsuits to enforce the terms, conditions and restrictions.
- l. To borrow and repay monies, giving notes, mortgages or other security upon such term or terms as it deems necessary; and
- m. To invest and reinvest monies; sue and be sued; collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto; and
- n. To transfer, grant or obtain easements, licenses, and other property rights with respect to the general Common Elements in a manner not inconsistent with the rights of Unit Owners; and
- o. To purchase or lease or otherwise acquire in the name of the Association or its designees, corporate or otherwise, on behalf of all Unit Owners within the Condominium, Units offered for sale or lease surrendered by their owners to the Board provided that the foregoing shall not be construed to constitute a right of first refusal; and
- p. To purchase Units within the Condominium at foreclosure or other judicial sales in the name of the Association or its designees, corporate or otherwise, on behalf of all Unit Owners; and
- q. To sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise deal with Units acquired by the Association, and sublease and such Units leased by the Association or its designees, on behalf of all Unit owners; and
- r. To bring and defend actions by or against more than one Unit Owner which are pertinent to the operation of the Condominium, the health, safety or general welfare of the nit Owners, or any other legal action to which the Unit Owners may consent in accordance with these By-Laws; and
- s. To appoint an Insurance Trustee, who shall not be a Member of the Association, an employee of the Sponsor, or the manager, who shall discharge his duties in accordance with these By-Laws. In the absence of such an appointment, the Board shall be responsible for the disposition of all insurance proceeds; and
- t. To create, appoint members to, and disband such committee as shall from time to time be deemed appropriate or necessary to aid the Board in the discharge of its duties, function, and powers; and
- u. To impose, if deemed necessary, upon each Unit Owner the requirement of an escrow deposit as set forth in Article II, Section 8.

## Section 2/Duties and Responsibilities

It shall be the affirmative and perpetual obligation and duty of the Board to perform the following:

- a. To cause the General and Limited Common Elements to be maintained according to accepted standards and as set forth in the Master Deed, including, but not limited to, such maintenance, painting, replacement and repair work as may be necessary, lawn maintenance and clearing of snow from roadways as the Board may deem appropriate. All repairs and replacement shall be of first class quality; and
- b. To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, in order to properly maintain and operate the Common Elements. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association; and
- c. To cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof of the Members at the annual meeting or at any special meeting when requested in writing at least twenty-one (21) days in advance by Members entitled to cast at least twenty-five (25%) percent of the total votes of the Association; and
- d. To allocate common surplus or make repairs, additions, improvements to, or restoration of the Common Elements in accordance with the provisions of these By-Laws and the Master Deed after damage or destruction by fire or other casualty, or as result of condemnation or eminent domain proceedings; and
- e. To such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises maintained by the Association placed thereon by any federal, state, county, or municipal authority having jurisdiction there over, and order of the Board of Fire Underwriters or other similar bodies; and
- f. To manage the fiscal affairs of the Association as hereinafter provided in Article VII, and
- g. To place and keep in force all insurance coverages required to be maintained by the Association, applicable to its property and Members including, but not limited to:

(i) Physical Damage Insurance. Broad form insurance against loss by fire and against loss by lightning, windstorm, and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all Common Elements and Unit betterments existing at the time of initial conveyance, together with all service machinery contained therein as well as common personality belonging to the Association, and covering the interest of the Association, the Board, the Sponsor, and all Unit Owners and any Mortgage Holder who has requested the Association in writing to

be named as loss payee, as their respective interest may appear, in an amount equal to full replacement value of the Common elements (exclusive of foundations and footings), and Unit betterments existing at the time of initial conveyance, without deduction for depreciation. Each policy shall contain a standard mortgage clause in favor of each applicable Mortgage Holder which shall provide that the loss, if any, thereunder, shall be payable to each applicable Mortgage Holder, its successors and assigns, as their interest may appear, subject to the loss payment provisions set forth in the Master Deed. The aforesaid mortgage clause shall name as mortgagee either the Federal National Mortgage Association (FNMA) or its services in the event FNMA holds mortgages on any Units. When a servicer is named as mortgagee, its name must be followed by the phrase "its successors and assigns." When a majority of the Board is elected by the Unit Owners other than sponsor, prior to obtaining any renewal of a policy of fire insurance, the Board shall obtain an appraisal or other written evaluation of an insurance broker licensed to conduct business in New Jersey or other qualified expert as to the full replacement value of the Common Elements (exclusive of foundation and footings) and the Unit betterments existing at the time of the initial conveyance of the Unit without deduction for depreciation, for the purpose of determining the amount of fire insurance to be obtained pursuant to this subparagraph. The amount of any deductible and the responsibility for payment of same be determined by the Board, in its sole discretion.

(ii) Public Liability Insurance. To the extent obtainable, public liability insurance for personal injury and death from accidents occurring within the Common Elements, (and any other areas the Board may deem admissible) and the defense of any action brought by injury or death of a person or damage to property, occurring within such Common Elements, and not arising by reasons of any act of negligence of any individual Unit Owner. Said insurance shall be in such limits as the Board may, from time to time, determine, covering each member of the Board, the managing agent and the manager, if applicable, and each Member, and shall also cover cross liability claims of one insured against another. Unit the first meeting of the Board following the first annual meeting, such public liability insurance shall be in a single limit of \$1,000,000.00 covering all claims for personal injury or property damage arising out of any one occupancy. The Board shall review such limits once a year.

(iii) Trustees and Officers Liability Insurance. To the extent obtainable in the normal marketplace, liability insurance indemnifying the Trustees and officers of the Association against the liability for errors and omissions occurring in connection with the performance of their duties, in an amount of at least \$1,000,000.00 with any deductible amount to be in the sole discretion of the Board.

(iv) Workers Compensation Insurance. Workers compensation and new Jersey disability benefits insurance as required by law.

(v) Vehicular Liability Insurance. To cover all motor vehicles owned or operated by the Association, if applicable.

(vi) Flood Insurance. Flood hazard insurance in the event any of the insurable Common Elements are located within a federally designated zone of greater than minimal flood hazard.

(vii) Water Damage. Water Damage legal liability insurance.

(viii) Elevator Insurance. To the extent obtainable in the normal commercial marketplace, boiler explosion liability insurance.

(ix) Boiler Insurance. To the extent obtainable in the normal commercial marketplace, boiler explosion liability insurance.

(x) Other Insurance. Such other insurance as the Board may determine is appropriate.

All policies shall: (i) provide that adjustment of loss be made by the Board of Trustees with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, if less than \$200,000.00 be payable to the Board, and if more than \$200,000.00 shall be payable to the Insurance Trustee, if any, (ii) require that the proceeds of physical damage insurance be applied to the restoration of such Common Elements and structural portions and service machinery as is required by the Master Deed and these By-Laws; (iii) to the extent obtainable contain agreed amount and inflation guard endorsements; construction code endorsement; demolition cost endorsement; contingent liability from operation of building laws endorsement and increased cost of construction endorsement; (iv) provide that the insurance will not be prejudiced by any act or omissions of individual Members that are not under the control of the Association; (v) provide that the policy will be primary, even if insurance covering the same loss is held by any Member(s); (vi) to the extent obtainable contain waivers of subrogation and waivers of any defense based on co-insurance or if invalidity arising from any acts of the insured; and (vii) provide that such policies may not be cancelled without at least thirty (30) days prior written notice to all of the named insured, including all Unit Owners and Eligible Mortgage Holders.

All policies shall show the named insured as "ORCHARD STREET TOWNHOMES AT DENVILLE, INC. for the use and benefit of the individual Owners" or the Association's insured Trustee, if any. The "loss payable" clause must show the Association or the Insurance Trustee, as a trustee for each Unit Owner, mortgage holder or other loss payee. Also, the policies must require the insurer to notify in writing the Association, its Insurance Trustee and each Eligible Mortgage Holder or other entity named in the mortgage clause at least thirty (30) days before it substantially changes the Association coverage.

Any insurance maintained by the Board may provide for such deductible amount as the Board may determine. Despite any other provisions of this subsection, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal commercial marketplace.

The premiums for any and all insurance coverage maintained by the Association shall be a Common Expense and shall be borne by the Unit Owners in direct proportion to their respective percentage interests.

Unit Owners shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such addition insurance carried by any Unit Owner.

## ARTICLE VII

### FISCAL MANAGEMENT

#### Section 1/Budget; Common Expenses Assessment

The Board shall prepare an annual Common Expense Budget which reflects the anticipated operating expenditures and repair and replacement reserve accumulation requirements for the next ensuing fiscal year of the Association. Common Expenses shall include, but not be limited to, the estimated costs for the operation, repair and maintenance of the Common Elements, the estimated costs for the operation of the Association, and any reserves for deferred maintenance, replacement or capital improvements of the Common Elements.

The Board shall have the duty to collect from each Unit Owner his, her, or their heirs, administrators, successors and assigns, as "Annual Common Expense Assessment", the proportionate part of the Annual Common Expenses assessed against such Unit Owner as provided in the Master Deed, the Certified of Incorporation, these By-Laws, and in accordance with applicable law.

#### Section 2/Determination of Annual Common Expenses

The amount of monies for Annual Common Expenses deemed necessary by the Board and the manner of expenditure thereof, including but not limited to, the allocation thereof, shall be matter for the sole discretion of the Board.

### Section 3/Disbursements

The Board shall take and hold the funds as collected and shall disburse the same for the purpose and in the manner set forth herein and as required by the Master Deed, Certificate of Incorporation, and applicable law.

### Section 4/Depositories

The depository of the Association shall be such a bank or banks within the State of New Jersey as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board, provided that a management agreement may include among its provisions authority for the manager to sign checks on behalf of the Association for payment of the obligation of the Association, if the proper fidelity bond is furnished to the Association.

### Section 5/Accounts

- a. The receipts and expenditures of the Association shall be Common Expense Assessments and Common Expenses, respectively, and shall be credited and charged to account under the following classifications as the Board shall deem appropriate, all of which all expenditures shall be Common Expenses:
  - (i) Current Expenses. The classification shall include all receipts and expenditures within the years for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves. The balance of this fund at the end of each taxable year shall be applied to reduce the assessments for current expenses for the succeeding year, or distributed to the membership in proportion to each member's percentage interest as indicated in the Master Deed, or by whatever formula the Board of Trustees deems equitable;
  - (ii) Reserve for Deferred Maintenance. This classification shall include funds for maintenance items that occur less frequently than annually;
  - (iii) Reserve for Replacement. This classification shall include funds for repair Or replacement of the Common Elements and those portions of the Common Elements for which repair or replacement is required because of damages, depreciation or obsolescence. The amount in this account shall be allocated among each of the separate categories or replacement items, which amount and items shall be determined in the sole discretion of the Board;
  - (iv) Reserves for Capital Improvements. This classification shall include the funds to be used for capital expenditures for additional improvements or

the acquisition of additional personal property that will be part of the Common elements;

- (v) Operations, which shall include the gross revenues from the use of Common Elements and from other sources. Only additional direct expense require by any revenue producing operation will be charged to this account, and any surplus from any operation shall be used to reduce the assessments for the current expenses for the year during which surplus is realized, or, at the discretion of the Board of Trustees, in the year following the year in which the surplus is realized. Losses from the operations or otherwise shall be met by special assessments against Unit Owners, which assessments may be made in advance in order to provide a working fund;
- (vi) Working capital consisting of these non-refundable and non-transferable contributions assessed upon each Owner upon acquisition of title to a Unit imposed under Article II, which may be authorized by the Board in its reasonable discretion to meet unanticipated or other expenses of the Association (but not in order to reduce the Annual Common Expense Assessment);
- (vii) Escrow deposits paid by each Owner to be applied in the event of a default in payment of Common Expenses assessments by that Owner if imposed under Article II; and
- (viii) Bulk real estate tax reserve, which shall be those funds collected by the Association to pay to the municipality those amount estimated or assessed and billed as real estate taxes against the Property as a whole unit such time as the municipality assesses and bills all real estate taxes on a per Unit Basis.

- b. The Board of Trustees shall not be required to physically segregate the funds held in the above accounts except for the reserves for replacement and repair and escrow deposits, if any, which funds must be maintained in separate accounts. The Board may, in its sole discretion, maintain the remaining funds in ne or more consolidated accounts. As to each consolidated account, the division into the various accounts set forth above need be made only on the Associations records.

#### Section 6/Reserves

The Board shall not be obligated to expend all of the revenues collected in any accounting period but may maintain a reasonable reserve for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts. Despite anything herein t the contrary, the Board in its determination of the Common expenses anything herein to the contrary, the Board in its determination of the Common Expenses and the preparation of the budget shall specifically designate and identify that portion of the Common Expenses which is to be assessed against the Unit Owners as a capital contribution and is

allocable to reserves for each separate items of capital contribution of and to said property. Said reserve fund or funds shall, however, be kept in interest bearing savings account(s) or certificates of deposit and shall not be utilized for any purpose other than that which was contemplated at the time of the assessment. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account for the necessary discharge of its functions.

#### Section 7/Notice: Emergencies

The Board shall give written notice to each Unit Owner and Eligible Mortgage Holder the amount estimated by the Board for Common Expenses for the management and operation of the Association for the next ensuing budget period, directed to the Unit Owner at his last known address by ordinary mail, or by ordinary mail, or by hand delivery. Said notice shall be conclusively presumed to have been delivered five (5) days after deposit in the United States mail. After the Sponsor turns over control of the Board to the Unit Owners, if an Annual Common Expense Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior year's Assessment, and monthly installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event the Annual Common Expenses Assessment proves to be insufficient, the budget and Assessments may be amended at any time by the Board, provided that nothing herein shall serve to prohibit or prevent the Board from imposing an Emergency Assessment in the case of any immediate need or emergency which cannot be met by funds earmarked for such contingency.

#### Section 8/Acceleration of Assessment Installment Upon Default

If a Unit Owner shall be in default less than thirty (30) days in the payment of an installment upon an assessment, the Board may notify the delinquent Unit Owner that the remaining installment of the assessment shall be accelerated if the delinquent installment has not been paid by a date stated in the notice, which date shall not be less than five (5) days after delivery of the notice, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail. If the default shall continue for a period of thirty (30) days then the Board shall be required to give such notice. If default continues following the time for payment prescribed in the notice, then the Board shall be required to accelerate the remaining installments of the assessment and notify the delinquent Unit Owner that a lien for the accelerated amount shall be filed on a date certain stated in the notice if the accelerated balance has not been paid. The lien of such accelerated assessment as permitted by law shall then be filed if the delinquent assessment has not been theretofore paid and the Board may also notify any holder of a mortgage encumbering the Unit affected by such default or publish appropriate notice of such delinquency to the membership of the Association. If said default continues for a period of ninety (90) days, then the Board shall foreclose the foregoing lien pursuant to law and/or commence an independent suit against the appropriate parties to collect the Assessment.

#### Section 9/Interest and Counsel Fees

The Board, at its option, shall have the right in connection with the collection of any type of assessment, or other charge, to impose a late charge of any reasonable amount and/or interest at the legal maximum rate permitted by law for the payment of delinquent real estate taxes, if such payment is made after a date certain stated in such notice. In the event that the Board shall effectuate collection of said Assessment or charges by report to Counsel, Board may add to the aforesaid charge or charges by resort to counsel, and/or the filing of a lien, the Board may add to the aforesaid Assessment or charges a reasonable sum as counsel fees, plus the reasonable costs for preparation, filing, and discharge of the lien, in addition to such costs allowable by law.

#### Section 10/Assessments of Expenses in Action by or Against Association; Allocation of Awards

- a. In the case of any action or proceeding brought or defended by the Association or the Board pursuant to the provision of the Master Deed, Certificate of Incorporation, these By-Laws, or any rule or regulation, the reasonable costs and expenses of preparation and litigation, including but not limited to attorney's fees,, shall be a Common Expense among all Unit Owners other than Sponsor.

All Common Expense Assessments received and to be received by the Board for the purpose of paying any judgment obtained against the Association or the Board and right to receive such funds, shall constitute trust funds and the same shall be expended first for such purpose before expending any part of the same for any other purpose.

- b. Allocation of Awards. Money judgments recovered by the Association in any action or proceeding brought hereunder, including cost, penalties or damages shall be deemed a special fund to be applied to (1) the payment of unpaid litigation expenses; (2) Common Expense Assessments, if the recovery thereof was the purpose of the litigation; (3) repair or reconstruction of the Common Elements if recovery of damages to same was the purpose for the litigation; and (4) any amount not applied to (1) (2), and (3) above shall at the discretion of the Board be treated either as (i) a common surplus which shall be allocated and distributed pursuant to the provision of the Master Deed or (ii) a set off against the Common Expense Assessments generally, Despite the foregoing, if a Unit Owner(s), the Board, or any other person or legal entity affected by any such distribution shall assert the damages sustained by a Unit Owner(s) was disproportionate to his allocated amount of any common surplus, the matter shall be submitted to binding arbitration in accordance with Article XVI hereof.
- c. Recovery by Unit Owner, In the event that a Unit Owner(s) succeeds in obtaining a judgment or order against the Association or the Board, then in addition to any other sums to which said Owner(s) would otherwise be entitled by such judgment or order, he or they also be entitled to the restitution or recovery of any sums paid

to the Board as Common Expense Assessments for litigation expenses in relation to said action or proceeding.

#### Section 11/Annual Audit

The Board shall submit its books, records and memoranda to an annual audit by an independent certified public accountant who shall audit the same and render a report thereon in writing to the Board and in summary form to the members and such other persons, firms or corporations as may be entitled to same. If in any year all Unit members consent in writing, this provision shall be waived. While the Sponsor maintains a majority of the Board of Trustees, he shall have an annual audit of Association Funds for the preceding fiscal year prepared by an independent accountant, a copy of which shall be available to the holder, insurer, or guarantor of any first mortgage secured by a Unit upon written request within one-hundred twenty (120) days of the expiration of the fiscal year of the Association. The audit shall cover the operating budget and serve accounts.

#### Section 12/Examination of Books

Each Unit Owner shall be permitted to examine the books of account of the Board of Trustees by appointment in the offices of the Association or such other place as may be designated therefore by the Board at a reasonable time on business days; provided, however, that the Treasurer has been given at least ten (10) days prior written notice of the Unit Owner's desire to make such examination.

#### Section 13/Fidelity Bonds

Fidelity bonds shall be required by the Board from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board in its sole discretion. The premiums on such bonds shall be paid by the Association. While the Sponsor maintains a majority of representation on the Board, he shall post a fidelity bond or other guarantee acceptable to the New Jersey Department of Community Affairs in an amount equal to the annual budget. For the second and succeeding years, the bond or other guarantee shall include accumulated reserves.

### ARTICLE VIII

#### OFFICERS

#### Section 1/Designation

The principal Officers of the Association shall be a President, a Vice-President, both of whom shall be members of the Board, a Secretary and a Treasurer. The Board may also appoint

such other Assistant Treasurers and Assistant Secretaries as in their judgment may be necessary. Any two offices, except that of President and Vice-President, may be held by one person.

#### Section 2/Election of Officers

The Officers of the Association shall be elected annually by the Board of Trustees at the first Board of Trustees meeting following each annual meeting and such Officers shall hold office at the pleasure of the Board.

#### Section 3/Removal of Officer

Upon an affirmative vote of a majority of the full number of Trustees, any Officer may be removed, either with or without cause, after opportunity for a hearing, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board for such purpose.

#### Section 4/Duties and Responsibilities

- a. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually invested in the office of President of an Association.
- b. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Trustees shall appoint some other member to do so on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Trustees.
- c. The Secretary shall keep the minutes of all meetings of the Board of Trustees and the minutes of all meetings of the members of the Association; he shall have charge of such books and papers as the Board of Trustees may direct; and he shall, in general, perform all the duties incident to the office of the Secretary.
- d. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be authorized by the Board.

#### Section 5/Other Duties and Powers

The Officers shall have such other duties, powers and responsibilities as shall from time to time, be authorized by the Board.

### Section 6/Eligibility of Trustees

Nothing herein contained shall prohibit a Trustee from being an Office.

## ARTICLE IX

### COMPENSATION, INDEMNIFICATION AND EXCULPATION

#### Section 1/Compensation

No compensation shall be paid to the President or the Vice-President or any Trustee, or committee member for acting as such Officer or Trustee. The Secretary and Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall prevent any officer, Trustee or committee member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided, however, that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

#### Section 2/Indemnification

Each Trustee, officer or committee member of the Association, shall be indemnified by the Association against the actual amount of net loss including counsel fees reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Trustee, officer, or committee member of the association, except as to matters for which he shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had been not guilty or gross negligence or willful misconduct.

#### Section 3/Exculpation

Unless acting in bad faith, neither the Board as a body nor any Trustee, officer or committee shall be personally liable to any Unit Owner in any respect for any action arising out of the execution of his office. Each Unit Owner shall be bound by the good faith actions of the Board, officers, and committee members of the Association, in the execution of the duties and powers of said Trustees, officers and committee members. Nothing contained herein shall be construed so as to exculpate Board Members appointed by the Sponsor from discharge their fiduciary responsibilities.

## ARTICLE X

### ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

The Board may establish an Alternate Resolution Committee ("ADR Committee"), consisting of a chairman and two or more members. The ADR Committee shall have the power to appoint a subcommittee from among its members and may delegate to any such subcommittee any of its powers, duties and functions.

If initial attempts by the Association, on its own initiative or upon the receipt of a formal complaint from an Owner, to secure compliance with the Governing Documents through correspondence to the Owner disclosing the nature of the violation, are not successful, it shall be the duty of the ADR Committee to conduct a hearing and issue a decision pursuant to the applicable Governing Documents and Rules and Regulations adopted thereunder.

#### Section 1/Alternative Dispute Resolution Procedure

- a. Authority. In addition to the mediation authority granted to it herein, the ADR Committee shall have a addition duties, power and authority as the Board may from time to time provide by resolution. This shall include the right to resolve dispute arising under and to enforce the provisions of the Condominium Documents including the tight to (i) impose temporary cease and desist orders and (ii) levy fines pursuant to Article XI to the extent permitted by law. The ADR Committee shall carry out its duties and exercise its powers and authority in the manner provided for in these By-Laws, the Rules and Regulations or by Resolution of the Board. Despite the foregoing, no action may be taken by the ADR Committee without giving the Owner(s) involved at least ten (10) days prior written notice and affording the Owner an opportunity to be hear, with or without counsel, with respect to the violation(s) asserted.

Any dispute between or among Owners or with the Association may first be submitted to the ADR Committee for medication or non-binding arbitration before any litigation is commenced with respect to the dispute in question. Any owner who is aggrieved by any decision of the ADR Committee shall have the right to agree to binding arbitration or to appeal such decision de novo to a court of competent jurisdiction. If there is not an appeal to a court of competent jurisdiction, or if the parties do not agree to binding arbitration within forty-five (45) days of the decision by the ADR Committee, the decision of the ADR shall be binding on all parties and shall have full force and effect under the laws of the State of New Jersey.

- b. Mediation Alternative. Prior to the commencement of any court appeal or binding arbitration procedure pursuant to this Article, any party to the dispute, or

the ADR Committee on its own motion, may request mediation of the dispute by an impartial mediator appointed by the ADR Committee in order to attempt to settle the dispute in good faith. Such mediator may be a member of the ADR Committee, or any qualified mediator. Any such mediation shall be concluded within fifteen (15) days after request, unless extended by the mediator for good cause. In the event that no settlement is reached within said fifteen (15) days period, all relevant time periods in the hearing process shall be extended for fifteen (15) days plus any extension period.

- c. Arbitration. Any arbitration provided for in these By-Laws shall be conducted before one arbitrator in Morris County, New Jersey by the American Arbitration Association, in accordance with its rules then obtaining and the decision rendered in such arbitration shall be binding upon the parties and may be entered in any court expenses of counsel and experts shall be Common Expenses.

## ARTICLE XI

### ENFORCEMENT

#### Section 1/Enforcement

The Board, or the ADR Committee, if applicable, shall have the power, at its sole option, to enforce the terms of this instrument or any Rule or Regulation promulgated thereto, by any or all of the following: self-help, sending notice to the offending party to cause certain things to be done or undone; restoring the Association to its original position and charging the breaching party with the entire cost of any party thereof; complaint to the duly constituted authorities; or by taking any other action, summary or otherwise, before any court as may be provided by law.

#### Section 2/Fines

To the extent now or hereinafter provided by the law of the State of New Jersey, the Board, or the ADR Committee, if applicable, shall also have the power to levy fines against any Unit Owner(s) for violation(s) of any Rule or Regulation of the Association or for any covenants or restrictions contained in the Master Deed or By-Laws, except that no fine may be levied for more than \$25.00 for any one violation; provided, however, that for each day a violation continues after notice it shall be considered a separate violation. Collection of fines may be enforced against any Unit Owner(s) involved as if the fine were a Common Expense owed by the particular Unit Owner(s). Despite the foregoing, before any fine is imposed by the Board, the Unit Owner involved shall be given at least ten (10) days prior written notice and afforded an opportunity to be heard, with or without counsel, with respect to the violations asserted.

#### Section 3/Waiver

No restrictions, conditions, obligations or covenants contained in these By-Laws shall be deemed to have been abrogated or waived by reason of the failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

#### Section 4/Cause of Action Against Association

Subject to the mediation requirement set forth in Section b. of Article X, Unit Owners shall have a cause of action, to the extent permitted by the laws of this State, against the Association for its failure to act in accordance with the Master Deed, Certificate of Incorporation, these By-Laws, any Rules and Regulations, or any formal decision of the Association. Any dispute between or among Owners or with the Association, other than collection matters, may first be submitted to the Alternative Dispute Resolution Committee for mediation before any litigation is commenced with respect to the dispute in question, as contemplated. Such mediation shall be conducted in accordance with Alternative Procedures for Dispute Resolution of the Association formally established by the Board.

### ARTICLE XII

#### AMENDMENTS

These By-Laws or any part thereof may be altered or repealed, or new By-Laws may be made, at any meeting of the Association duly held for such purpose, and previous to which written notice to Unit Owners of the exact language of the amendment or of the repeal shall have been sent, a quorum being present, by an affirmative vote of fifty-one (51%) percent of the votes entitled to be cast in person or by proxy, except that (i) the first annual meeting may not be advanced, (ii) the first Board (including replacements in case of vacancies) may not be enlarged or removed, (iii) the obligation of the proportionate responsibility for the payment of Common Expenses with respect to Units or the Common Elements may not be changed by reason of any such new By-Law, amendment or repeal, or (iv) no such new By-Law, amendment or repeal shall in any way affect the Sponsor, including any successor of the Sponsor, unless the Sponsor, or its successor, has given its prior written consent thereto.

### ARTICLE XIII

#### CONFLICT: INVALIDITY

**Conflict.** Despite, anything to the contrary herein notwithstanding, if any provision of these By-Laws is in conflict with or contradicts the Master Deed, the Certificate of Incorporation or the requirements of the Law, then the requirements of said Master Deed, Certificate of Incorporation or Law shall be deemed controlling.

**Invalidity.** The invalidity of any part of these By-Laws shall not impair or effect in any manner the enforceability or affect the validity of the remaining provisions of the By-Laws.

#### ARTICLE XIV

#### CIVIL ACTION FOR DAMAGES

The Association shall not be liable in any civil action brought by or on behalf of a Unit Owner to respond in damages as a result of bodily injury to the Unit Owner occurring on the premises of the Association except as the result of its willful, wanton, or grossly negligent act of commission or omission.

#### ARTICLE XV

#### CORPORATE SEAL

The corporation shall have a seal in circular form having within its circumference the words the "ORCHARD STREET TOWNHOMES AT DENVER, INC."

**Rules and Regulations of ORCHARD STREET TOWNHOMES AT DENVILLE, INC.,**

**a New Jersey Not for Profit Corporation**

Applicability: These Rules and Regulations apply to all persons or entities owing any interest in, occupying, or using any Unit in the Condominium, or using any if its General Common Elements or limited Common Elements.

These Rules and Regulations are in addition to, and not to be construed as replacing or in any way abrogating the restrictions on, or duties and responsibilities of, the Master Deed or By-Laws as amended.

Obligations and/or Prohibitions:

Occupancy:

1. Two (2) bedroom units shall not be occupied by more than four (4) persons consisting of one familial unit.

Noise:

1. No Unit Owner shall make or permit any disturbing noises in the building by himself, his family, friends or servants, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of other occupants, including but not limited to loud gatherings, stereo, radio, television or exercise equipment.
2. Construction or repair work or other installation involving noises shall not be conducted in any unit except between the hours of 8:30 a.m. and 8:00p.m., except on an emergency basis.
3. A contractor under contract to the Condominium, with the approval of the occupant, may enter the occupant's unit at a mutually agreeable time, between the hours of 8:30 a.m. and 8:00p.m to provide services required.
4. In case of an emergency, access must be provided at any time.

Windows:

1. Nothing shall be hung or shaken from the windows or doors of any unit. Objects shall not be permitted on the outside window sills of any unit.
2. Window air conditioning units are not permitted under any circumstances.
3. No signs, notices, advertisements, or commercial illumination shall be allowed to be inscribed or exposed on or at any residential unit window or any exterior part of the building, except for the limited common areas granted to the commercial units.

4. Seasonal decorations are permitted for a period of time up to four (4) weeks before and after each holiday.
5. The interior and exterior of windows must be kept clean by the occupants.
6. All windows should be covered with shades, blinds, or other such window treatments designed to cover windows, and all such shades, blinds and window treatments shall be maintained in good repair by the occupant.

Common Element Areas:

1. All exterior and interior common areas shall be kept free of all personal property of the occupants.
2. At no time shall any carriages, play pens, bicycles be left outside of the front of any unit.
3. Occupants are not to place any newspapers, boxes, bags or other packages in any common element area for any duration of time.
4. The front stoop, entry, passages, garages and stairways shall not be obstructed by any of the occupants or be used for any purpose except for ingress and egress to their respective units
5. No waste shall be committed upon any common element area.
6. Nothing shall be stored upon any common element are without the prior written consent of the Association.
7. The common element areas shall not be obstructed, littered, defaced or misused in any manner.
8. No part of the common element areas shall be used for commercial purposes, activities or solicitation.
9. The common element areas shall be reasonably utilized in accordance with the use for which they are intended and suited.
10. Damage to common element areas must be reported in writing to the Association Management as soon as it occurs. Any damage caused by an occupant in connection with the moving of furniture, bulk items, appliances or other personal property to or from their unit shall be the responsibility of the occupant causing the damage to pay any reasonable expenses incurred for repairs as determined by the Association Management.
11. Smoking is not permitted in any common element areas.
12. No alcoholic beverages shall be permitted in any common element area at any time.

#### Garbage/Trash/Recycling:

1. Garbage, trash or personal items shall be stored in receptacles provided by the Unit owners at unit owners own cost and expense and shall not be placed outside of the unit for pickup until the morning of the scheduled garbage/recycling pick-up. It is the responsibility of each occupant to dispose of their own refuse in accordance with all state and city recycling and sanitary codes.
2. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, materials, or trash of any kind shall be permitted within any Unit or upon any common element area.
3. Bulk items such as furniture, refrigerators, and appliances, must be disposed of in accordance with the Association Management during normal business hours.

#### Scooter/Mopeds:

The operation of motorized scooters, mini-bikes, mopeds, dirt-bikes, ATVs, or any similar unlicensed motorized recreational vehicle is prohibited anywhere in the Condominium and any common element area.

#### Gas Grill/Propane Tanks:

In accordance with the New Jersey Fire Safety Code (Section 5:1803, (h)3):

- a) Barbecue grills of any type shall not be placed, stored or used on any porch/balcony or within five (5) feet of any building.
- b) Propane tanks are not to be stored in any unit, storage bin, garage, attic or in any common element area.

#### Maintenance Requests:

1. All requests for maintenance shall be reported to the Association Management during normal business hours.
2. Any condition, which is an imminent threat to the occupant's health or safety, shall be immediately reported to the Association Management.

#### Criminal Activity/Controlled Substance:

1. Any occupant, family member, or guest, or any other person under the occupant's auspices, shall not engage in or facilitate criminal activity at or on the Condominium or any common element area, including but not limited to, violent criminal activity or drug related criminal activity.
2. Occupant agrees that if controlled substances as defined in Section 102 of the Controlled Substance Act, (21 USC, Section 802) are found in the owned or leased premises, except for such

controlled substances as have been dispensed to persons in possession of same pursuant to a lawfully issued prescriptions, it being the burden of the occupant to establish that all elements of the foregoing exception apply, the existence of such controlled substances shall constitute a material breach by the occupant of the lease agreement.

Pets:

1. One (1) domesticated dog weighing less than fifty (50) pounds shall be kept or harbored in a unit or permitted in any common element area. At no times shall any dog be unleashed nor unaccompanied.
2. One (1) domesticated house cat may be kept in a unit, but will not be permitted in any common element area.
3. No more than two (2) domesticated birds, caged, will be permitted in a unit.
4. One (1) fish tank not larger than thirty (30) gallons, may be kept in a unit.
5. The pet must not endanger the health and safety, or unreasonably disturb the owner or occupants of any other units.
6. The keeping of pets shall be subject to such rules and regulations as may be issued by the Condominium Association.
7. If a Unit Owner fails to abide by the rules and regulations applicable to pets, the Unit Owner shall be subject to fines and/or removal of the pet from their unit.
8. The Condominium Association may impose a registration fee for each pet and require proof of valid immunizations.
9. In addition, any pet which endangers the health of any unit Owner or occupant of a unit, or which creates a health hazard or nuisance or an unreasonable disturbance, as may be determined by the Condominium Association, must be permanently removed from the property within seven (7) days written notice by the Condominium Association.
10. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit, or in any common element areas.
11. Other customary household pets may be permitted in a Unit, provided that written permission is granted by the Association and that it is not kept, bred or maintained for a commercial purpose; provided they are housed within the Unit and kept under supervision and do not cause or create any nuisance, or unreasonable disturbance or noise, and do not endanger the health or welfare of any person.

Notwithstanding, Units with occupants at the time of adoption of these Rules and regulations may keep those pets, provide the pets are registered and reported with the Association Management and do not

cause or create any nuisance, or unreasonable disturbance or noise, and do not endanger the health or welfare of any person.

Vehicles/Parking:

1. Parking spaces are licenses only and may only be used by Unit Owners in good standing.
2. All vehicles must be parked head on.
3. Any vehicle that is found to be unregistered, has an expired registration, lacks current inspection sticker, or appears to be inoperable for some reason, shall not be parked in any common element area or complex.
4. Each unit with a garage has one (1) assigned parking space located in front of the garage and the unit without a garage will be assigned one parking space for its exclusive use. If any unit occupant has more than one vehicle, it must be parked in an unassigned space or on the street.
5. Parking in another occupant's assigned space is not permitted. Violators may be towed at the vehicle's owner's expense.
6. Parking is not permitted in posted or restricted areas. Parking is not permitted in entryways to parking areas or walkways.
7. Double parking or piggyback parking is not permitted.
8. No vehicle belonging to an occupant, family member, guest or employee shall be left in such a manner as to impede or prevent ready access or egress to any entrance or exit by any other vehicle.
9. Notification to the Association Management for any vehicle that will remain stationary for fourteen (14) days or longer.
10. Parking in a restricted area is a municipal violation and the police may ticket violators.
11. Parking spaces are for motor vehicles **ONLY**. No boats, motor homes, trucks, or other oversized vehicles are allowed.
12. No commercial vehicles are allowed.
13. No inoperable or junk vehicles are allowed.
14. No automobile repair of any kind or extraordinary maintenance, including but not limited to oil changes, are permitted.
15. Washing of any vehicle is not permitted.
16. Vehicles are not permitted to idle.

17. If a Unit Owner fails to abide by the Parking Rules and Regulations, the Unit Owner shall be subject to fines and/or revocation of its parking privileges.

Towing Procedures:

Vehicles may be towed from the Orchard Street Townhomes premises at owner's expense for the following reasons:

1. If an unauthorized car is parked in an assigned space and the owner of the assigned space requests the Towing Company to move it, the following steps will be taken:
  - a) The Towing Company who responds to the call shall verify that the space belongs to the complainant by confirming same with specified appointed members of the Board of Directors, prior to the vehicle being removed/towed.
  - b) After verifying the license rights to the parking space, the Towing Company shall have the authority to remove the vehicle.
  - c) After the vehicle is removed, the Towing Company shall notify the local police that the vehicle has been towed and the telephone number and address to where the vehicle has been towed.
2. If a vehicle is found to be unregistered, or with an expired registration, or lacks a current inspection sticker, or lacks proper license plates, or is inoperable, or has been abandoned by the owner (defined as a vehicle that has not pre-notified with the Association management by its owner and has not been moved from the parking space it occupies (occupied) for six (6) consecutive weeks):
  - a) Association Management may elect to tag the vehicle with a warning that will require removal, valid registration and/or inspection, valid license plates, valid Branch Brook sticker/parking pass by a certain date or the vehicle can be immediately towed at the sole discretion of the Association Management.
  - b) If after a warning is issued, the vehicle is not removed, displaying a valid registration and/or inspection, displaying valid license plates, stickered or obtained a valid parking pass, the vehicle shall be towed at the expense of the owner of said vehicle from Branch Brook property.
3. Any vehicle belonging to a Unit Owner not in good standing as defined by the Master Deed or more than sixty (60) days in arrears on their Condominium Association dues, maintenance and/or special assessment payments is subject to have their vehicle towed without any additional warning or notice.

4. Any vehicle belonging to a Unit Owner whose parking privileges have been suspended and/or revoked due to failure to abide by the Parking Rules is subject to have their vehicle towed without any additional warning or notice.
5. In an emergency, any vehicle that impedes emergency vehicles will be towed at the vehicle owner's expense.

General/Miscellaneous:

1. No occupant shall use or permit the use of their Unit, or do or allow to be done any act that may, or in fact does, disturb, annoy, or endanger the health, safety or welfare of any person in the Condominium Association or the immediately surrounding neighborhood.
2. Nothing shall be done or maintained in any Unit or upon any common element area which would violate any local, state or federal law or regulations.
3. No outdoor clothes lines may be erected, and nothing shall be hung out or exposed on any part of the common element areas.
4. All Units shall be kept in a good state of preservation and cleanliness, and no sweepings, dirt or other substances shall be discharged from any doors, windows or balconies.
5. No signs of any character shall be erected, posted or displayed upon, in, from or above any residential Unit.
6. Any checks made payable to the Condominium Association and returned by the bank for insufficient funds or any other reason shall result in a charge to be determined and in no circumstances less than Twenty Five (\$25.00) Dollars per check.
7. No structural alteration, construction, addition or removal of any Unit shall be commenced or conducted except in strict accordance with the provisions of the Master Deed, By-Laws and any Amendment thereto.
8. No residential Unit shall be permitted to carry on any home business or commercial use, with exception of maintaining a home office that does not involve seeing any clients, vendors or guests.
9. Nothing shall be done or maintained in any Unit or upon any common element area which would increase the rate of insurance on any Unit or common element area, or result in the cancellation thereof, unless the prior written approval of the Condominium Association is obtained.
10. No occupant shall be permitted to install, erect, attach, paste, apply, screw, nail, build, alter, remove, construct or place any object in, on, under, or from the exterior of any Unit or any part of the common element areas, or to make any change or otherwise alter the exterior of

any Unit (including any alteration in door color), without the prior written consent of the Condominium Association.

11. Neither ORCHARD STREET TOWNHOMES AT DENVILLE, INC. or its MANAGEMENT shall be responsible for loss, injury or damage to the personal property or person, Unit Owner or tenant or his guest or visitors, caused directly or indirectly by acts of God, fire, water, theft, burglary, malicious acts, unforeseeable criminal activities, riots, civil commotion, the elements, walks or landscaping, or by the neglect of other occupants or owners of contiguous property.
12. In the event it becomes necessary for ORCHARD STREET TOWNHOMES AT DENVILLE, INC. and/or its MANAGEMENT to employ an attorney to enforce any rule, regulation or other rights under the Master Deed, By-Laws or any Amendment thereto, or Rules and Regulations or any law of the State of New Jersey or Municipal Ordinance, the Unit Owner shall be solely responsible and agrees to pay the actual amount of all costs, expenses and reasonable attorney's fees incurred in connection therewith, whether or not a suit is filed.

Application/Notification of Transfer:

1. In order to provide an orderly procedure in the case of title transfer, and to assist in the maintenance of a current, up-to-date roster of Unit Owners, the owner of the Unit shall give the Association Management timely notice of his intent to list his Unit for sale or rent. No less than fifteen (15) days prior to the actual date of transfer of title/closing or commencement /possession date on any lease, the Unit Owner shall notify the Association management with names, home address and contact information of the purchasers and/or tenants.
2. Notification for the transfer of ownership, leasing or subleasing MUST be filed in advanced with the Association Management and an up-to-date emergency contact form must be completed and submitted to the Association Management, where in the case of a rental, the Unit Owner must also provide the prospective tenant's names, ages, employment contact information, contact information and the contact information for the person responsible for any and all Unit repairs during the term of the lease.
3. Copies of all tenant leases must be on file with the Association Management. No month-to-month or verbal tenancies are permitted.
4. All prospective Unit Owners and Tenants must sign an Acknowledgment and file same with the Association Management confirming they are in receipt of a copy of the Master Deed, By-Laws any Amendments thereto, and the Rules and Regulations and that they are legally bound to and agree to same.
5. Any and all move-in or move-out of Unit Owners or Tenants must be scheduled in advance with the Association Management and only conducted on Mondays, Tuesdays, Wednesdays or Thursdays. There shall not be permitted to be any moving of trunks, furniture, large appliances

and/or heavy baggage or personal property on Fridays, Saturdays, Sundays or Holidays, unless prior written consent is obtained by the Association Management. Any damage caused by the moving or carrying of any articles shall be paid by the Unit Owner or Tenant responsible for the presence of such articles.

6. Any new Unit purchaser shall be a Statement of Account fee to the Association Management in an amount to be determined that shall be no less than One Hundred Fifty (\$150.00) Dollars.

#### **Exhibit B**

#### **Schedule of Current Fines of ORCHARD STREET TOWNHOMES AT DENVER, INC.,**

#### **a New Jersey Not for Profit Corporation**

<u>INFRACTION</u>	<u>FINES PER DAY</u>
Unauthorized alterations to Condominium Property, plus cost to repair	\$500.00
Disturbing Noises	\$100.00
Parking Violations	\$100.00
Pet Rule Violations	\$100.00
Window Air Conditioners	\$200.00
Common area storage	\$150.00
Over-occupancy of Unit	\$500.00

In addition to fines, the Unit Owner shall be responsible for the costs of repairs to damaged property. All other violations not covered may be subject to fines at the discretion of the Board of Trustees.

Fines will continue at the amount charged for each day the violation(s) continue after service of notice. Each day is considered a separate violation.

NOTE: The Board of Trustees reserves the rights to issue a notice of violation(s) and intent of levying a fine.