

# **WHITE HAWK ECOVILLAGE COMMUNITY, INC.**

## **COOPERATIVE OFFERING PLAN**

White Hawk Lane  
Town of Danby  
Tompkins County, New York  
30 Total Residential Lots / 3,000 Shares in the Cooperative\*  
17 Residential Lots / 1,700 Shares Offered in this Offering Plan\*\*  
Cash Amount of Offering: \$680,000.00  
Outstanding Mortgage: \$445,304.57  
Total Offering Price: \$682,000.00

**Sponsor and Selling Agent**  
**Red Tail, LLC**  
**White Hawk Lane**  
**Danby, New York**

Date of Acceptance for Filing: \_\_\_\_\_, 2019

**THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE COOPERATIVE UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY UNIT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

**\*THE SPONSOR DOES NOT RESERVE THE RIGHT TO RENT UNSOLD LOTS. HOWEVER, MEMBERS OF THE COOPERATIVE MAY ELECT TO PURCHASE AND THEN RENT ONE OR MORE LOTS TO THIRD PARTIES.**

**\*\*THE SPONSOR OF THIS COOPERATIVE IS A LIMITED LIABILITY COMPANY OWNED BY 18 INDIVIDUALS. TOGETHER, THESE INDIVIDUALS PERSONALLY OWN 13 RESIDENTIAL LOTS AND A CORRELATING 1,300 SHARES OF THE COOPERATIVE. THIS OFFERING PLAN OFFERS FOR SALE THE REMAINING RESIDENTIAL LOTS AND SHARES OF THE COOPERATIVE.**

**THIS PLAN CONTAINS SPECIAL RISKS TO PURCHASERS. SEE PAGE 1.**

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## **PART I**

### **SPECIAL RISKS**

- A. The Sponsor of the Cooperative is Red Tail, LLC, a New York limited liability company, which is owned by 18 Principals. The Principals have no profit-seeking motive; instead, they desire to live in and develop an ecologically minded co-housing community. See pages 7-9 for greater detail.
- B. This is an offering plan for cooperative ownership of White Hawk Ecovillage Community, Inc., a business corporation duly organized under New York law. The Cooperative owns in fee simple approximately 120.476 acres of land in the Town of Danby, County of Tompkins and State of New York, upon which sits the intentional ecologically minded community. A cooperative is a way for individual homeowners to share in the use of and responsibility for commonly owned property. Here, the Cooperative will own the land underlying the entire Community, including under each residential dwelling, the private road known as White Hawk Lane, sewer and water systems for the community, and trails and gardens. See pages 9-10, 38-39 for greater detail.
- C. The land owned by the Cooperative was conveyed to an entity related to Sponsor in an arms-length transaction by Seven Circles, LLC, a limited liability company owned by an individual named Henry “Beauty” Peterson, on December 5, 2017 by warranty deed. Prior to that conveyance, Mr. Peterson participated in the founding discussions and actions of the Cooperative. Mr. Peterson executed an Assurance of Discontinuance (“**AOD**”) on January 10, 2019, which AOD may be viewed upon request to the Office of Attorney General. Mr. Peterson has no other current contractual relationship with Sponsor or the Cooperative. See pages 7-9 for greater detail.
- D. The Principals are all individuals who accepted an initial offering from Mr. Peterson without the benefit of an Offering Plan, in contravention of GBL §§ 352-e and 352-h. The Principals formed the Sponsor and submitted this Offering Plan for filing in order to bring the Community into compliance with all applicable rules and regulations. See page 7-9 for greater detail.
- E. Sponsor does not reserve the right to rent unsold Lots and does not intend to rent any unsold Lots. However, Members of the Cooperative may elect to purchase and then rent to third parties one or more Lots. See page 9 for greater detail.
- F. Purchasers should note that in the current real estate market, banks and other lenders are imposing various restrictions on purchase financing. Such restrictions include requiring that a certain percentage of units in a cooperative be sold before a lender will consider making a loan. Thus, it may be possible for a purchaser to experience difficulty obtaining a loan in a building or group of buildings where the sponsor or holder of unsold shares has not sold a substantial percentage of the units in the cooperative, which in some

cases may be as high as seventy percent (70%). Moreover, some lenders will not provide financing in a building or group of buildings where an investor other than the original sponsor has an ownership interest of ten percent (10%) or more. It also may be difficult for a purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions. See page 11 for greater detail.

- G. The Cooperative must approve any prospective purchaser before a Member may sell his or her shares of stock in the Cooperative. Because the Cooperative must approve a prospective purchaser before a Member can sell its shares, this means that it may take longer for a Member to sell their home in the Cooperative than in another setting. See page 10 for greater detail.
- H. The Cooperative shall approve a purchaser through consensus-based decision making of the Members. The Cooperative shall apply with all applicable laws in the approval process, including but not limited to the federal Fair Housing Act and the New York Human Rights Law. See page 25 for greater detail.
- I. As a condition of a sale of stock, the Subscription Agreement requires that Buyer deliver to White Hawk Ecovillage Community, Inc. a non-refundable application fee of \$1,000. This application fee is used to educate prospective purchasers about the Community. See Footnote 1 to Schedule B on page 18 for greater detail.
- J. Each purchaser will receive 100 shares of stock in the Cooperative. In addition, each purchaser receives an exclusive 99-year, renewable ground lease for the lot of land upon which a residential dwelling has been or may be constructed. This ground lease is automatically renewed for one additional 99-year term. See pages 9, 13-16, 38-39 for greater detail.
- K. Upon closing on the purchase of the cooperative interest, a purchaser becomes a Member of the Cooperative. In addition to receiving 100 shares, purchasers will either receive the right to construct a residential dwelling, or a deed from the prior owner for an already constructed residential dwelling. The shares of stock are considered personal property. See pages 9, 38-39 for greater detail.
- L. The Cooperative does not own any residential dwelling. Any constructed residential dwelling is owned by a Member, and sits upon a Lot leased to that Member in conjunction with such Member's purchase of 100 shares of stock. The ground lease interest is considered a real property interest, and the residential dwelling is considered a real property improvement. Upon expiration of the Proprietary Ground Lease, ownership of the Lot and any improvements or structures located thereon will automatically transfer to the Cooperative. See pages 10, 18, 36, 38-39 for greater detail.
- M. The Principals of Sponsor are the first Members of the Cooperative. Collectively, in their capacity as Members, the Principals own 43.3% of the total stock of the Cooperative. This means that until more Lots have been sold, the Principals will have a majority voting

interest as Members in the Cooperative. This also means that Principals will comprise the members of the Cooperative's Board of Directors until replaced in accordance with the Bylaws of the Cooperative. See pages 42 – 44 for greater detail.

- N. All aspects and characteristics of the residential dwelling that is constructed upon a Lot are determined by a Member, or are purchased in an arms-length transaction by the Member from a selling stockholder. Accordingly, provided the residential dwelling complies with the then-applicable construction guidelines adopted by the Members and all applicable rules and regulations, including municipal building codes, the Cooperative has no control over the residential dwelling. For example, the materials and design of the residential dwelling are chosen for and paid by the Member who owns the shares and has entered into a Proprietary Ground Lease for the Lot, which is the instrument by which the ground lease is granted. Similarly, all taxes that are assessed to a residential dwelling or insurance costs for the residential dwelling are paid for by the Member who owns the shares and has entered into a Proprietary Ground Lease for that Lot. See page 44 for greater detail.
- O. All construction of residential dwellings upon Lots leased to Members of the Cooperative must comply with then-applicable construction guidelines adopted by the Members and all applicable rules and regulations, including municipal building codes. See pages 40-41 for greater detail.
- P. It is uncertain what the consequences of purchasing shares in the Cooperative will be on a purchaser's federal income tax liability as a result of the Tax Cuts and Jobs Act of 2017, or TCJA, which increased the standard deduction single taxpayers to \$12,000 and \$24,000 for married couples filing jointly. Because this makes it less likely that the average taxpayer will itemize deductions, a taxpayer may not be able to deduct expenses incident to homeownership from its federal taxable income. In the past, for primary residences, a taxpayer was able to deduct from its federal taxable income all of their real estate taxes and their state income tax burden. Under the TCJA, the maximum deduction allowable to a taxpayer for both real estate tax and state and local taxes is \$10,000. Although the real property taxes allocated to a Lot have historically been below \$10,000, this may affect a purchaser of shares in the Cooperative. See pages 11, 23-24 for greater detail.
- Q. Because the Cooperative does not meet the definition of a "cooperative housing corporation" under 26 U.S. Code Section 216, Members will most likely not be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the Cooperative, subject to all other relevant provisions of the Internal Revenue Code. See pages 11, 23-24 for greater detail.
- R. In addition, it is uncertain whether certain expenses of the Cooperative, such as real property taxes and insurance costs, will be deductible under Section 216 of the Internal Revenue Code. This does not mean that certain expenses may not be deducted under Section 216 of the Internal Revenue Code. See pages 11, 23-24 for greater detail.

- S. The Cooperative does not own any residential improvements other than a bridge, a private road, and the water and sewer infrastructure required to support thirty (30) residential dwellings. As a result, this Offering Plan does not include a building condition report, or a description of property and specifications for any residential improvements. See pages 55-56 for greater detail.
- T. The consideration for the unsold shares at closing will not be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code Section 216. Instead, the Cooperative has relied on an appraisal of fair market value for the Cooperative Property to determine the value of its shares. See page 22 for greater detail.
- U. Each Member shares the responsibility for the expenses of maintaining and repairing Cooperative Property, and will pay a Monthly Assessment to help pay the applicable taxes, insurance and maintenance and to go toward a reserve for capital improvements. The initial Monthly Assessment is expected to be approximately \$119.92. See pages 17-20 for greater detail.
- V. The Cooperative's Bylaws provide that control of the Cooperative is already vested in its Members. The Principals of Sponsor are the initial Members of the Cooperative. A Principal shall cease being a Member of the Cooperative if it sells its shares to a third party. See page 42-44 for greater detail.
- W. Construction of the Cooperative Property is not complete. Utilities and infrastructure required for a purchaser to obtain a building permit shall be completed prior to closing on a Lot. The Sponsor anticipates that all utilities and infrastructure will be complete and all Lots will be sold within ten (10) years of the date this Offering Plan is filed. See page 51 for greater detail.
- X. Sponsor will own all unsold shares of the Cooperative. The Sponsor, as holder of unsold shares, will not cancel its proprietary leases. See page 35 for greater detail.
- Y. Under certain circumstances, Cooperative Property may be used by Members for commercial purposes. The Cooperative will only allow such uses upon consensus of its Members, and only if such uses are consistent with natural and agricultural uses. Currently, a portion of Cooperative Property is leased to individual Members for such uses. See page 47 for greater detail.
- Z. No Member who is delinquent in paying any charges to the Cooperative will be eligible to vote or to be elected to the Board of Directors of the Cooperative. A Member will be considered delinquent if the Member is more than thirty (30) days delinquent in payments due to the Cooperative. See pages 42-44 for greater detail.
- AA. The Cooperative intends to lease all 17 remaining Lots. The Lots are planned in an attached circular pattern of thirty (30) total building lots, with the front of each Lot directed toward White Hawk Lane. Each Lot borders other Lots on two (2) sides except

for Lots 2, 13, 14, 29, 30 and 31, which each share only one border with another Lot. See page 9 for greater detail.

BB. Because the Cooperative owns no residential improvements, the Cooperative will not obtain common fire, liability, property or hazard insurance protection for any of the Lots or any improvements constructed upon the Lots. Instead, each Member is required to insure its residential dwelling. See page 44 for greater detail.

CC. All Members may finance their purchase and ownership of the shares in accordance with the terms set forth in Section 18 of the Proprietary Ground Lease. See pages 38-39 for greater detail.

DD. The Cooperative budget contemplates the replacement of capital improvements, such as resurfacing of White Hawk Lane. Reserves will be set aside to fund these improvements from the Monthly Assessment and will be held by the Cooperative in a segregated account. The Sponsor does not guarantee that the cost of the improvements will be fully covered by the replacement reserves or that there will not be unanticipated expenses that exceed the amount of the reserves that have been set aside. In such cases, special assessments may be made to raise the funds needed to pay for the improvements. See page 16-20 for greater detail.

## DEFINITIONS

The following words and terms, when used in this Offering Plan or any amendments, shall have the following meanings:

1. The “**AOD**” refers to that certain Assurance of Discontinuance signed by Henry Peterson.
2. The “**Bank**” means M&T Bank, located at 118 North Tioga Street, Ithaca, in the State of New York.
3. The “**Board of Directors**” means the Board of Directors of the White Hawk Ecovillage Community, Inc., a New York business corporation.
4. The “**Bylaws**” are the bylaws of the Cooperative.
5. The term “**Community**” refers to the intentional community located on Cooperative Property. The Community is known as White Hawk Ecovillage.
6. “**Cooperative Property**” means all of the real property and improvements owned in fee simple by the Cooperative for use in common by all of the Members. Cooperative Property includes approximately 120.476 acres of real property, and any the improvements constructed on any part of which has not leased to a Member.
7. The “**Cooperative**” means White Hawk Ecovillage Community, Inc.
8. The “**Escrow Account**” shall be given the meaning ascribed to it on page 26.
9. The “**Escrow Agent**” shall mean Hancock Estabrook, LLP.
10. The “**Land**” refers to the approximately 120.476 acres of real property located in the Town of Danby and owned by the Cooperative.
11. A “**Lot**” refers to that certain portion of land leased by the Cooperative to a Member granting exclusive rights of possession and occupancy.
12. A “**Member**” means any one or more persons who own shares of stock in the Cooperative, and who have satisfied all requirements for membership in the Cooperative, and is entitled to vote on matters before the Cooperative in accordance with the process described in the Bylaws.
13. The “**Monthly Assessment**” means the monthly charge assessed against each Lot and paid by each Member to satisfy the obligations of the Cooperative.
14. The “**Offering Plan**” or “**Plan**” is this Offering Plan accepted for filing by the Attorney General and created under Part 21 of 13 NYCRR.

15. A “**Principal**” means one of the eighteen individuals who own the Sponsor, and are the initial Members of the Cooperative.
16. A “**Proprietary Ground Lease**” is the lease granted by the Cooperative to a Member giving an exclusive right of possession and occupancy of a Lot.
17. The “**Sponsor**” is Red Tail, LLC, a New York limited liability company owned by eighteen individual Principals who are the initial Members of the Cooperative. The Sponsor is the owner of every share of stock until such share is sold or conveyed.
18. A “**Subscription Agreement**” is the contract by which a purchaser purchases shares of stock in the Cooperative.
19. The “**TCJA**” refers to The Tax Cuts and Jobs Act of 2017, “131 Stat. 2054” (Public Law 115-97).

## INTRODUCTION

### 1. General Description of Offering Plan

The purpose of this Offering Plan is to set forth all the terms of the offer by the Sponsor to prospective purchasers of shares of stock of the Cooperative. The Plan may be amended from time to time as amendments are filed with the Office of the Attorney General. All prospective purchasers and Members will receive a copy of the Plan and all filed amendments.

The purpose of the Cooperative is to create an intentional and ecologically-minded community. The Community is located on approximately 120.476 acres in the Town of Danby in Tompkins County, off of State Route 96B. Sponsor conveyed the Cooperative Property to the Cooperative by Warranty Deed dated June 11, 2018. A copy of the Deed from Sponsor to the Cooperative is also shown at Exhibit A-9. The Community is authorized to permit construction of thirty (30) residential dwellings on a total of thirty (30) Lots clustered around an approximately eight (8) acre circle. The remaining acreage is dedicated to natural and agricultural uses as described in greater detail below at page 10. A survey map depicting the site plan of the Community is shown at Exhibit A-11. The survey map is minimized to fit in this Offering and is disclosed in Part II of the Offering Plan. The original site plan, which is more legible and easier to review than the minimized copy in Part II, is available to all prospective purchasers without charge at the offices of the Sponsor.

The Sponsor of this project is Red Tail, LLC, a limited liability company organized under New York law. The Sponsor is owned by of 18 individuals (or “**Principals**”), each of whom is at the time of this initial offering also a Member of the Cooperative. They are listed as follows:

Roger Nelson and Reinhilde Nelson  
2 White Hawk Ln, Ithaca, NY 14850

JoBeth Dingman  
11 White Hawk Ln, Ithaca, NY 14850

Steven E. Woinoski  
5 White Hawk Ln, Ithaca, NY 14850

Mark Pruce and Sara Pruce  
12 White Hawk Ln, Ithaca, NY 14850

Greg H. Nelson  
6 White Hawk Ln, Ithaca, NY 14850

Mark Silver and Holly Glaser  
13 White Hawk Ln, Ithaca, NY 14850

Michael Early and Aelita Early  
7 White Hawk Ln, Ithaca, NY 14850

Melissa Blake and Ernest Blake  
14 White Hawk Ln, Ithaca, NY 14850

Alicia Beebe  
8 White Hawk Ln, Ithaca, NY 14850

Dane Percy and Susan Storey  
10 White Hawk Ln, Ithaca, NY 14850

Kartik Sribarra and Allison Sribarra  
9 White Hawk Ln, Ithaca, NY 14850

### 2. Historical Background of the Community

Henry “Beauty” Peterson took title to the Land by warranty deed dated July 7, 2003. Before or during May of 2004, Mr. Peterson met with a group of individuals who were each interested in creating an ecologically minded village, or “eco-village”, on the Land. Based upon information and belief, the intention of all parties involved at that time was to create a community for like-minded individuals to reside. No one considered the venture a profit-making enterprise.

In 2007, the Town of Danby, in which the Land sits, approved a site plan contemplating thirty (30) homes clustered in a small eight (8) acre circle with the remaining acreage dedicated to natural and agricultural uses. The Town of Danby noted in its approval that the contemplated use of the land and nature of the group involved would help preserve the rural nature of the town in contrast to what a for-profit commercial real estate developer would do.

Mr. Peterson conveyed the Land to Seven Circles, LLC by Warranty Deed on August 13, 2007. Seven Circles, LLC, then leased individual lots to individuals and families, and provided them with an easement to access the remaining land owned. Once a lease was in place, a lessee could then obtain a building loan and construct a single family residence. The tenth home was completed in 2018. Based on information and belief, at all times Mr. Peterson was a principal of Seven Circles, LLC.

In 2016, the lessees, who are the Principals of the Sponsor who is making this offering, were denied the right to develop infrastructure by a local municipality because they were not a duly recognized real estate syndicated entity. This led them to understand that the Community had been developed without regard to applicable rules and regulations governing real estate syndications. After conversations with the Office of the Attorney General and other regulators, the Principals, none of whom develop real estate professionally, took it upon themselves to purchase the Land from Seven Circles, LLC and bring the Community into compliance with applicable law by developing and filing this Offering Plan.

On December 5, 2017, Seven Circles, LLC transferred ownership of the Land to White Hawk Ecovillage, Inc., a not-for-profit corporation affiliated with Sponsor. In 2018, White Hawk Ecovillage, Inc. then conveyed the Land to the Sponsor, who in turn conveyed it to the Cooperative. The Principals collectively invested funds in order to facilitate the purchase, to create this Offering Plan, and to finance and guarantee the finance of the improvements contemplated under this Offering Plan. In order to secure this investment, the Sponsor conveyed the Land to the Cooperative in exchange for a note and mortgage. The note is in the principal amount of \$449,489.00, and is held by the Sponsor. The interest charged is 2.98% annual, and is payable in equal monthly installments of \$1,546.22. The loan has a term of 43 years, but it is anticipated that the loan will be paid off earlier. An amortization schedule displaying how these payments will be allocated to principal and interest is attached to the mortgage, a copy of which with the note is shown at Exhibit A-10.

No Principal has or shall receive any compensation from the Cooperative other than any interest on the Mortgage and Note or reimbursement for out-of-pocket expenses. Neither the Sponsor nor the Principals are developing the Land or Community to make a profit. The Sponsor and

Principals are filing this Offering Plan solely to preserve the value of their homes and to create the ecologically minded community they first intended to join.

Mr. Peterson executed an AOD on January 10, 2019, which AOD may be viewed upon request to the Office of the Attorney General. While in the past Mr. Peterson participated in decisions regarding the Community, Mr. Peterson has no other current contractual or governance relationship with Sponsor or the Cooperative and no longer participates in any decisions regarding the Community.

The Principals are all individuals who accepted an initial offering from Mr. Peterson without the benefit of an Offering Plan, in contravention of GBL §§ 352-e. The Principals formed the Sponsor and submitted this Offering Plan for filing to comply with all applicable rules and regulations.

### 3. Detailed Description of Offering Plan

Sponsor shall endeavor in good faith to sell, in a reasonably timely manner, all shares of stock in the Cooperative. Sponsor intends to sell all issued shares of stock in the Cooperative within ten (10) years of the date this Offering Plan is accepted for filing.

The Cooperative owns the Land in fee simple. When a prospective purchaser closes on a Proprietary Ground Lease for a Lot in the Community, the prospective purchaser shall become an owner of the Cooperative. The purchased ownership interest is evidenced by shares of the Cooperative. See Specimen Stock Certificate at Exhibit B-6. The shares are considered personal property. Upon receiving the shares, a purchaser becomes a Member of the Cooperative.

In addition to receiving shares in the Cooperative, each purchaser shall receive an exclusive 99-year, renewable Proprietary Ground Lease granting exclusive use and possession for a specific Lot. The Proprietary Ground Lease is automatically renewed for an additional 99-year term. Upon expiration of the 99-year renewable Proprietary Ground Lease, ownership of the Lot and any improvements or structures located thereon will automatically transfer to the Cooperative. See Specimen Proprietary Ground Lease at Exhibit A-2.

The Site Map shows that the Community has 31 Lots. Lot 1 is not intended for residential use, or for any use other than natural or agricultural use. The remaining 30 Lots are intended for residential use. Thirteen of the Lots are leased to Principals pursuant to a Proprietary Ground Lease. These Lots are numbered: 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 29. Sponsor neither reserves the right nor intends to rent unsold Lots. However, individual Principals or purchasers under this Offering Plan may elect to purchase and then rent one or more Lots to third parties.

The remaining 17 Lots are offered to prospective purchasers under this Offering Plan. The initial share purchase price for a Lot unimproved by a residential dwelling will be \$400, so that each total purchase price paid for a Lot is \$40,000. See Schedule A for purchase price details. This purchase price has been approved by Sponsor and is not subject to the approval of the Department of Law or any other government agency. When a Member sells its shares, provided that the purchaser has been previously approved by the Cooperative, the purchaser automatically

becomes a Member of the Cooperative. The purchase price includes the cost of becoming a Member in the Cooperative.

The remaining 106.54 acres of the Cooperative Property, which are not intended to be developed with residential homes, are used for natural and agricultural purposes, including but not limited to hiking, gardening, farming, animal husbandry and recreation.

This Offering Plan, including all schedules and Parts A, B and C of the Exhibits, constitutes the entire offer. Copies of the Plan and all schedules and Exhibits will be available for inspection with charge to prospective purchasers upon reasonable notice.

Purchasers shall receive either the right to construct a residential dwelling, or a deed from the prior owner for an already constructed residential dwelling. The Cooperative does not own any residential dwelling. The Cooperative only owns the real property underlying a Lot. Any residential dwelling that is constructed is owned by a Member, and sits upon a Lot. This is considered a real property improvement, and the Member has a real property interest in it. Any type of loan or mortgage on any Lot or any part of the Cooperative Property will encumber only the premises leased under the Proprietary Ground Leases.

Each Member will have the exclusive right to occupy and use the Lot under the Proprietary Ground Lease. Each Member will maintain exclusive control over a residential dwelling or any improvements constructed on a Lot, in accordance and subject to the limitations of the Proprietary Ground Lease and Bylaws of the Cooperative.

The construction of homes in the Community must comply with construction standards as adopted by the Cooperative from time to time. The current standards are housed in an instrument called "Green Construction Guidelines for White Hawk Homes" and is dated November 15, 2016. A copy of the guidelines is attached at Exhibit A-12. See page 40 for greater detail. The construction of homes in the Community must also comply with all applicable rules and regulations, including any municipal building code then in effect.

All aspects of the residential dwelling constructed upon a Lot are determined by the Member, so long as it complies with the then-applicable construction guidelines adopted by the Members. For example, the materials and design of the residential dwelling are chosen for and paid by the Member who owns the shares and has entered into a Proprietary Ground Lease for the Lot. Similarly, all taxes that are assessed to a residential dwelling or insurance costs for the residential dwelling are paid for by the Member who owns the shares and has entered into a Proprietary Ground Lease for that Lot.

The Cooperative must approve all prospective purchasers before they may become Members of the Community. The Cooperative shall invite prospective members to come and meet the community several times over a period of time before making a firm commitment to move forward. All corporate financial records are open to prospective purchasers, the budget is distributed to all Members annually, and monthly finance committee reports are given to the Members. The approval process is described in the Bylaws. See Bylaws at Exhibit A-4. The

Cooperative will comply with all applicable laws when considering whether to approve a prospective purchaser.

Control over the Cooperative is vested in a governing board. The governing board may include a minority of non-Member directors. Non-Member directors shall be prospective purchasers who desire to learn about the Community.

Immediately upon acceptance of this Offering Plan for filing, the Cooperative shall be Member-run. Any purchaser who closes on a purchase of shares of stock shall have the right to participate in all Cooperative decisions. All Cooperative decisions are made by consensus. The consensus process is described in greater detail at pages 42-44. Each Member shall have the right to run for election to sit on and vote for the elections of members of the governing board. See pages 35-37 for greater detail.

Because the Principals comprise the initial Members of the Cooperative, under applicable regulation the Cooperative shall be considered “sponsor-run” until a majority of Members or members of the Board of Directors are not Principals. The Cooperative shall comply with all requirements imposed on it as a sponsor-run board of directors until it no longer meets this regulatory definition.

Each Member is responsible for paying maintenance charges and assessments allocated to its shares in the Cooperative. See Schedules A and B on pages 8-12.

The Cooperative will be assessed for the real estate taxes for the Cooperative Property. As a result, the Members are co-dependent on each other for the payment of the taxes, the default of which will jeopardize each Member’s equity in its shares and Lot. When the Cooperative owns a substantial percentage of Shares, a default in obligated payments to the Cooperative jeopardizes the equity interest of the Members.

Each Member shall be independently and separately assessed for any real property taxes applicable to the Lot and the residential improvements constructed upon the Lot owned in fee simple by the Member. The assessments shall be made by the Town of Danby assessor and the Tompkins County Department of Assessment. Each Member must communicate directly to Tompkins County Department of Assessment with respect to any questions it may have regarding past or present assessments, deadlines, and amounts owing. The Tompkins County Department of Assessment is located at 128 E. Buffalo Street, Ithaca, New York and can be reached at (607) 274-5517.

Purchasers should note that in the current real estate market, banks and other lenders are imposing various restrictions on purchase financing. Such restrictions include requiring that a certain percentage of apartments in a building or group of buildings be sold before a lender will consider making a loan. Thus, it may be possible for a purchaser to experience difficulty obtaining a loan in a building or group of buildings where the Sponsor or holder of unsold shares has not sold a substantial percentage of the apartments in the building or group of buildings, which in some cases may be as high as 70%. Moreover, some lenders will not provide financing in a building or group where an investor other than the original sponsor has an ownership interest

of 10% or more. It also may be difficult for a purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

It is uncertain what the consequences of purchasing shares in the Cooperative will have on a purchaser's federal income tax liability as a result of the Tax Cuts and Jobs Act of 2017, which increased the standard deduction for each taxpayer and therefore made it less likely that the average taxpayer will itemize deductions. In addition, it is uncertain whether certain expenses of the Cooperative, such as real property taxes and insurance costs, will be deductible under Sections 216 and 164 and 164 of the Internal Revenue Code. This does not mean that certain expenses may not be deducted under Sections 216 and 164 and 164 of the Internal Revenue Code. Greater detail on the tax consequences of this Offering are outlined on pages 23 and 24 below.

The plan as presented to prospective purchasers contains all of the detailed terms of the transaction as it relates to the Cooperative. Copies of the offering plan and all Exhibits submitted to the Department of Law will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers at the office of the Cooperative.

**THE PURCHASE OF A COOPERATIVE HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A SUBSCRIPTION AGREEMENT.**

**PURCHASE PRICE OF SHARES**

SCHEDULE A

First Year of Cooperative Operation Beginning July 1, 2019 (Fn # A)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>	<b>Column 7</b>
Lot No. (Fn #1)	Acreage (Fn #2)	Share per Lot (Fn #3)	Purchase Price (Fn #4)	Annual Mortgage Payment (Fn #5)	Annual Property Maintenance Costs (Fn #6)	Total Annual Assessment (Fn #7)
Lot 1	0.060 Acres ±	*Not Residential				
Lot 2	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 3	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 4	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 5	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 6	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 7	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 8	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 9	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 10	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 11	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 12	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>	<b>Column 7</b>
Lot No. (Fn #1)	Acreage (Fn #2)	Share per Lot (Fn #3)	Purchase Price (Fn #4)	Annual Mortgage Payment (Fn #5)	Annual Property Maintenance Costs (Fn #6)	Total Annual Assessment (Fn #7)
Lot 13	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 14	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00
Lot 15	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 16	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 17	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 18	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 19	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 20	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 21	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 22	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 23	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 24	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 25	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 26	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 27	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 28	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 29	0.070 Acres ±	100	Owned by Principal	\$618.50	\$820.50	\$1,439.00

Lot 30	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00
Lot 31	0.070 Acres ±	100	\$40,000.00	\$618.50	\$820.50	\$1,439.00

This Offering Plan does not disclose projected income tax deductions because of the uncertain effect of the ground lease structure and because of the Tax Jobs and Acts. See pages 23 and 24 for greater detail.

The offering prices described in Schedule A above may be decreased or increased by a duly filed amendment to the Offering Plan when the change in price is an across-the-board change affecting all of the Lots. The prices are not negotiable.

The Sponsor will not obtain a further opinion as to reasonable relationship prior to the closing of a sale of a Lot after an amendment affecting an offering price has been changed.

No change will be made in the total number of shares in or in the size or quality of public areas unless purchasers who executed and delivered subscription agreements to Sponsor and are not in default receive a right to rescind and a reasonable and specified period in which to exercise the right.

## FOOTNOTES TO SCHEDULE A

**FOOTNOTE #A:** All projected charges are for the 12 month period commencing July 1, 2019 and ending on June 30, 2020.

**FOOTNOTE #1:** Each lot designation in Column 1 matches the Site Plan shown at Maps, at Exhibit A-11.

**FOOTNOTE #2:** Each lot size shown in Column 2 matches the acreage shown on the Site Plan shown at Maps, at Exhibit A-11. Because no residential dwellings are included in this Offering, this Offering Plan cannot and does not disclose the number of rooms and baths or square footage of any residential dwelling.

**FOOTNOTE #3:** Each Lot identified in Column 1 corresponds to one hundred shares as shown in Column 3. Each Lot is of approximately equal size. The allocation of shares to each Lot is based on the square footage of a Lot, and therefore allocations between Lots are exactly equal.

**FOOTNOTE #4:** The purchase price disclosed in Column 4 is paid by a purchaser to the Sponsor. This price is not negotiable. The purchase price shown in Column 4 is only one expense a purchaser may incur when purchasing shares in the Cooperative. In addition, a purchaser would likely have additional closing expenses, such as legal or accounting fees, recording costs, or taxes. If a purchaser obtains personal residential financing, his or her lender may charge additional costs, and resulting debt service will be an additional expense. **IN ADDITION, A PROSPECTIVE PURCHASER MUST PAY A ONE-TIME, NON-REFUNDABLE APPLICATION FEE OF \$1,000 TO THE COOPERATIVE TO SUPPORT EDUCATIONAL INITIATIVES OF THE COOPERATIVE.** See page 25 for greater detail.

**FOOTNOTE #5:** The mortgage payment shown in Column 5 reflects the annual amount of loan payments under the loan and mortgage held by the Cooperative and disclosed at page 37. Although a purchaser will not be personally liable to pay the mortgage, the Cooperative is responsible for paying the loan off. A portion of your maintenance charges shown in Column 7 and disclosed on Schedule B below on page 17-19 include payments for this debt service.

**FOOTNOTE #6:** The annual assessment of projected maintenance charges for the Cooperative Property is set forth in Column 6 above, and is based on Schedule B below. The annual maintenance charges for Cooperative Property do not include those costs which a Member is individually responsible for, such as any construction, repair or maintenance cost of a residential dwelling.

**FOOTNOTE #7:** The total annual assessment for each Lot is shown in Column 7 above, and includes the amounts disclosed in Column 5 (debt service) and Column 6 (property maintenance changes) together.

**PROJECTED BUDGET FOR THE FIRST YEAR OF OPERATION OF COOPERATIVE**

**SCHEDULE B**

Budget for First Year of Cooperative Operation Beginning July 1, 2019  
 Monthly Assessment of \$119.92 per 100 Shares

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Operating Charges	\$42,170.00
Capital Reserve charges	\$2,000.00
<u>Less Income</u>	<u>\$1,000.00</u>
<b>TOTAL</b>	<b>\$43,170.00</b>

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*Projected Commercial Income*

Application Fees for Prospective Purchasers (footnote 1)	\$1,000.00
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*Projected Expenses*

Utilities - Electricity for common property (footnote 2)	\$1,500.00
Repairs, Maintenance and Supplies (footnote 3)	\$1,050.00
Landscaping (footnote 4)	\$0.00
Snow Removal (footnote 5)	\$1,485.00
Refuse Removal (footnote 6)	\$1,410.00
Insurance (footnote 7)	\$4,330.00
Management Fees (footnote 8)	\$0.00
Mortgage Loan Payments (footnote 9)	\$18,555.00
Legal Fees (footnote 10)	\$1,900.00
Accounting Fees (footnote 11)	\$5,000.00
Taxes (Town, County, School, Other) (footnote 12)	\$6,090.00
Franchise and Corporate Tax (footnote 13)	\$50.00
Reserve (footnote 14)	\$2000.00
<u>Other (footnote 15)</u>	<u>\$800.00</u>
<b>TOTAL</b>	<b>\$44,170.00</b>
Less Income	<u>- \$1,000.00</u>
<b>TOTAL EXPENSES</b>	<b>\$43,170.00</b>

If the projected commencement of the budget year in the Offering Plan differs by six months or more from the anticipated date of closing, the plan will be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the Sponsor will offer all purchasers the right, for a period of thirty (30) days, to rescind their offer to purchase and have their deposits refunded. Sponsor's guaranty of the budget will not avoid an offer of rescission.

## FOOTNOTES TO SCHEDULE B

**FOOTNOTE #1** (Income): Application fees for prospective new residents based on Subscription Agreement. A prospective purchaser must pay a one-time, non-refundable application fee of \$1,000.00 to the Cooperative. See page 25 for greater detail. A template of the Subscription Agreement is shown at Exhibit A-1. It is anticipated that the Cooperative will only sell only one to two Lots a year. As a result, the Cooperative is budgeting only \$1,000 of income from this source.

**FOOTNOTE #2** (Utilities): NYSEG electric services, billed monthly, and based on forward projection of 2018 annual usage. Copies of all utility invoices for the previous 12 months are included in Exhibit B-8. The Cooperative pays any amount due monthly in response to an invoice from NYSEG. Water testing for Water Treatment facility by Community Science Institute.

THIS OFFERING PLAN IS NOT FOR THE PURCHASE OF A RESIDENTIAL DWELLING. AS A RESULT, THE COOPERATIVE DOES NOT HAVE ANY INFORMATION RELATING TO PROJECTIONS FOR HEAT, HOT WATER AND ELECTRICITY OF A RESIDENTIAL DWELLING. EACH PURCHASER WILL BE RESPONSIBLE FOR PAYING FOR THE UTILITIES REQUIRED BY THEIR RESIDENTIAL DWELLING.

**FOOTNOTE #3** (Repairs, Maintenance, and Supplies): Road repair, lawn equipment repair, water system repair, tools, check printing, envelopes, postage, and other supplies.

**FOOTNOTE #4** (Landscaping): No professional landscaping services are under contract.

**FOOTNOTE #5** (Snow Removal): Plowing services by Enslow Landscaping, at a rate of \$135/plow. Estimate of 11 plows based on historical data. No hand-shoveling is performed as residents are responsible for clearing their own pathways from common roadway to entrance.

**FOOTNOTE #6** (Refuse Removal): Septic pumping services by Mark Thomas Septic (NYSDEC permit 7A-472) for 6000 gallons at \$200/1000 gal, plus tax. NYS DEC SPDES permit 7-5022-00051/00003.

**FOOTNOTE #7** (Insurance). General Liability and Directors and Officer's Liability Insurance is provided by Tompkins Insurance Agencies. Collectively, insurance premiums are \$4,430. The Cooperative shall not provide fire insurance because the improvements to be constructed and owned by the Cooperative are not subject to fire risks. The insurance is adequate to replace any improvements to be constructed in the event of a total loss. There are no insurance requirements imposed by a lender or a managing agent. There is no managing agent. All insurances that would insure a purchaser's residential dwelling may be obtained by the purchaser from an insurance agent. As a requirement of this Offering Plan, each Member must obtain property, fire and hazard insurance for their residential dwelling. The insurance obtained is described in greater detail at page 44.

**FOOTNOTE #8** (Management Fees): No management fees are charged.

**FOOTNOTE #9** (Mortgage loan payments): Mortgage loan payments at \$1546.22/month. Each payment is applied first to interest and then to principal. Please see page 37 for greater detail.

**FOOTNOTE #10** (Legal Fees): General legal representation, estimated. The Cooperative will determine who its counsel will be in the future.

**FOOTNOTE #11** (Accounting Fees): A certified public accountant will provide a reviewed financial statement and will file the required tax returns for the Cooperative. The Cooperative intends to hire Patrick Jordan, CPA, of Insero & Co.

**FOOTNOTE #12** (Town, County, and School Taxes): The Tompkins County Department of Assessment is the assessing authority. The projected assessed fair market value of the Common Areas assessed to each Lot is based on the value reached by the Department of Assessment which assesses property in Tompkins County at one hundred percent (100%) of market value. The assessed value for 2018 is Two Hundred and Ten Thousand and Five Hundred Dollars (\$210,500.00) because the Cooperative Property on its own is not marketable and there are only minimal erected improvements thereon. This assessed value is for the Common Areas only. Each individual Lot will be separately assessed and taxable to the individual Member. The Ithaca City School District tax rate is \$16.9995 per \$1,000.00 of assessed value. The Town and County Tax rate is at \$11.935663 per \$1,000.00 of assessed value. Thus, the total yearly tax on a property valued at \$210,500.00 and would average \$6,090.85 annually.

**FOOTNOTE #13** (Corporate and Franchise Taxes): It is anticipated that the Cooperative will pay the minimum franchise tax. It is anticipated that the Cooperative will pay income taxes. It is also anticipated that the Cooperative will be liable for sales tax if it has any sales activity.

**FOOTNOTE #14** (Reserves): Each Member will pay \$5.56 a month towards a capital improvement reserve. Based on a preliminary reserve study, major road maintenance costing between \$10,000 and \$18,000 will be required within 2 to 5 years; existing reserves are approximately \$7,000.

**FOOTNOTE #15** (Other): Costs for community outreach, including Intentional Communities membership and advertising, brochures, and costs for our community's annual Equinox Celebration, including music and equipment rental.

Documents supporting these figures are attached as Exhibit B-7.

The Sponsor anticipates that the first closing of a Lot will occur by December 31, 2019. Purchasers will be offered a right of rescission if: (i) the actual date of closing of title to the first unit, or (ii) the projected date of closing of title to the first unit occurs later than December 31, 2020, twelve months after the date of the projected date for the first closing. If the Offering Plan is amended for a later projected date for the first closing, purchasers will be entitled to an offer of rescission if the first closing occurs more than 12 months beyond that amended, later date.

However, if the first closing occurs before December 31, 2019, the Sponsor may schedule the closings of title to other Lots significantly later than such date. Unless your Subscription Agreement contains an outside closing date, the Sponsor is not obligated to schedule your closing within any specified time frame, or to ensure that closing of title within any specified time frame, or to ensure that closing of title to your Lot will occur by any date certain. **PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A LOT.** In the event, however, that Sponsor cannot convey title to the Lot on or before twelve (12) months from the date of the Subscription Agreement, affected purchasers will be offered a right of rescission.

## CHANGES IN PRICES AND LOTS

The offering prices set forth in Schedule A must be decreased or increased by a duly filed amendment to the plan when the change in price is an across-the-board change affecting all of the Lots or is to be advertised. However, the Sponsor may enter into an agreement with a purchaser to sell one or more units at prices different from those set forth in Schedule A without filing an amendment before entering the agreement if the Plan discloses in the footnotes to Schedule A and in this section that the prices are negotiable. The prices are not negotiable. The Sponsor will not obtain a further opinion as to reasonable relationship prior to the closing of a sale of a Lot after an amendment affecting an offering price has been changed.

No change in the size or number of Lots, share allocations, or total number of shares or the size or quality of the Common Area will occur without an amendment to the Offering Plan. Any purchasers who have executed and delivered Subscription Agreements to the Cooperative that have a Lot or share allocation that has been affected by such an amendment, and who are in compliance with the Subscription Agreement shall receive a right to rescind the Subscription Agreement within thirty (30) days of such notice. Holders of unsold shares must comply with this requirement.

Unless an affected purchaser consents, no change will be made to a Lot size, location or share allocation if a Subscription Agreement from Cooperative has already been executed and delivered to the Cooperative for a Lot, and the purchaser remains in compliance with the Subscription Agreement.

No change will be made in the total number of shares or in the size or quality of public areas unless purchasers who executed and delivered Subscription Agreements to the Sponsor and are not in default receive a right to rescind which they shall exercise within no more than sixty (60) days.

## **OPINION OF REASONABLE RELATIONSHIP**

The consideration for the unsold shares at closing will not be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code Section 216. Instead, the Cooperative has relied on an appraisal of fair market value for the Cooperative Property to determine the value of its shares. The opinion from a real estate appraiser is attached as Exhibit B-3.

Each Lot is approximately 0.07 acres and has approximately 37 feet of frontage along an unpaved access road. The Lots have access to communal septic and water systems, public electricity and telephone services, and have cooperative access to the Cooperative Property's remaining acreage. To estimate the value of the Lot, sales of similar building lots were collected and analyzed. Upon recognizing the characteristics associated with each building lot sale, the appraiser then compared them to the Lots. The sales vary in both size and location, but do reflect the current demand for a similar type of building lots. The comparable building lots sold between \$32,000 and \$34,000, situated in the neighboring City and Town of Ithaca. Based upon the analysis and data reviewed by the appraiser, as of December 1, 2017, each Lot, excluding a share in the remaining undeveloped land, has a fair market value of \$33,000.

After deducting the developed area from the total site area, approximately 106.54 acres remain. Based on this information, the appraiser then reviewed sales of similar acreage tracts. Upon recognizing the characteristics associated with each acreage tract sale, the appraiser then compared them to the undeveloped land. The sales vary in both size and location, but do reflect the current demand for a similar type of building lots. Before adjustments, the comparable acreage sales indicate a range based on a per acre basis between \$1,596 and \$1,919 per acre. This equals a total fair market value of the acreage tract of \$192,000. Upon estimating the market value of the remaining acreage, the contributing value of said acreage to the Lots can be estimated. Based on the acreage tract, the contributing value to each Lot is \$6,400, which is arrived at by dividing \$192,000 by the 30 Lots.

Together, each Lot has a fair market value of \$33,000 and \$6,400, which brings the total appraised fair market value to \$39,400. The Cooperative will offer the Lots for the purchase price of \$40,000.

## ATTORNEY'S TAX OPINION

The Cooperative will own and maintain the Land for the common enjoyment of the tenant-stockholders, and will provide proprietary ground leases to each tenant-stockholder granting a long-term renewable leasehold interest for the exclusive use and possession of a Lot. The Cooperative Property includes thirty (30) Lots, and remaining acreage which shall remain undeveloped. Membership in the Cooperative automatically occurs upon the purchase of 100 shares of stock. A holder of 100 shares of stock is entitled to receive a proprietary ground lease. One or more people purchase the shares of stock, and thus become a tenant-stockholder in the Cooperative.

The Cooperative does not, nor shall it in the future, own houses or any other residential dwelling now or to be constructed upon a Lot. Instead, each tenant-stockholder shall receive a ground lease from the Cooperative, together with the right to construct and/or occupy a residential dwelling located upon the leased premises. At all times, any residential dwelling will be owned entirely by the tenant-stockholder.

Under 26 U.S. Code Section 216, certain tenant-stockholders of a “cooperative housing corporation” may be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder’s proportionate share of the (1) real estate taxes allowed as a deduction to the Cooperative under 26 U.S. Code Section 164, which are paid or incurred by the corporation only upon the houses and the land on which the houses are situated, or (2) the interest allowed as a deduction to the Cooperative under 26 U.S. Code Section 164, which is paid or incurred by the Cooperative on its indebtedness contracted in the acquisition of the land upon which the houses are situated.

In material part, Section 216 defines a “cooperative housing corporation”, *inter alia*, as a corporation [in which] “each of the stockholders [] is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house...*owned or leased by such corporation*” (emphasis added). Here, each stockholder is entitled solely by reason of his or her ownership of stock in the Cooperative to construct and/or occupy a constructed residential dwelling upon his or her leased premises. However, the Cooperative will neither own nor lease any residential dwelling now or to be constructed upon a Lot.

Under present law, regulations, rulings and decisional law, and based on the terms of the Offering Plan, the Cooperative will likely not qualify at closing or at any other time as a cooperative housing corporation under 26 U.S. Code Section 216. This means that Members will most likely not be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the Cooperative, subject to all other relevant provisions of the Internal Revenue Code.

This does not mean that the Internal Revenue Service will not render a contrary decision and allow deduction for these expenses. Instead, a prudent purchaser should assume that the Internal Revenue Service will determine that the Cooperative is not a “cooperative housing corporation” under the Internal Revenue Code, and therefore, the deductions under Section 164 for each

Member's proportionate share of real estate taxes and any interest on a mortgage of Cooperative Property will not be available to the Members. A Tax Opinion is attached hereto as Exhibit A-8.

It is uncertain what the consequences of purchasing shares in the Cooperative will be on a purchaser's federal income tax liability as a result of the Tax Cuts and Jobs Act of 2017 (the "TCJA"). The TCJA increases the standard deduction for single taxpayers to \$12,000 and \$24,000 for married couples filing jointly. This change makes it less likely that the average taxpayer will itemize deductions. This means that a taxpayer may no longer deduct expenses incident to homeownership, such as deductions relating to mortgage interest or real property or state income taxes, from its federal taxable income.

In addition, the TCJA capped the allowable deduction to a taxpayer for real property taxes and state income taxes. In the past, for primary residences, a taxpayer was able to deduct from its federal taxable income one hundred percent (100%) of their real estate taxes and their state income tax burden. Under the new law, the maximum deduction for both real estate tax and state and local taxes is \$10,000. Although the real property taxes allocated to a Lot have historically been below \$10,000, this may affect a purchaser of shares in the Cooperative.

## PROCEDURE TO PURCHASE

As of the date of this Plan, the Cooperative has eleven (11) Members, each of whom is one or more Principals. No other contracts or agreements, written or oral, have been entered into for the sale or transfer of shares and neither the Sponsor nor the Cooperative have accepted any deposits or advances of funds.

There are limitations on who may purchase the shares and become a Member of the Cooperative. A prospective purchaser must pay a one-time, non-refundable application fee to the Cooperative in the amount of \$1,000. This application fee is used by the Cooperative to provide educational resources for other prospective purchasers. All corporate financial records are open to prospective purchasers, the budget is distributed to all Members annually, and monthly finance committee reports are given to the Members.

The Cooperative must approve all prospective purchasers before they may become Members of the Community. The Cooperative shall invite prospective members to come and meet the community several times over a period of time before making a firm commitment to move forward. The Cooperative shall approve a purchaser through consensus-based decision making of the Members. See Bylaws at Exhibit A-4.

The Cooperative will comply with all applicable laws when considering whether to approve a prospective purchaser. The Cooperative shall apply with all applicable laws in the approval process, including but not limited to the federal Fair Housing Act and the New York Human Rights Law, which prohibits discrimination in housing decisions on the basis of a person's race, familial status, color, national origin, religion, disability, sex, creed, age, sexual orientation, marital status, or military status.

A Specimen of Subscription Agreement between the Sponsor and a prospective purchaser is shown at Exhibit A-1 and below on page 28. In addition to the payment of the one-time, non-refundable application fee, each purchaser will be required to pay a down payment in the amount of One Thousand Dollars (\$1,000). This down payment will be held in escrow. No purchaser will be required to make a lump-sum payment for a working capital or reserve fund at closing; instead, each purchaser will make payments into a reserve fund maintained by the Cooperative as part of his or her monthly common charges.

A purchaser will be afforded seven (7) days after delivering an executed Subscription Agreement together with the required deposit in order to rescind the Subscription Agreement and have the full deposit refunded promptly. If a purchaser desires to so rescind, a written notice of rescission must be delivered to the Cooperative within the seven-day period or, if mailed, the notice of rescission must be marked within the seven-day period. Within fourteen (14) days after the purchaser delivers an executed Subscription Agreement together with the required deposit, the Sponsor shall either accept the Subscription Agreement and return a fully executed counterpart to the purchaser or reject the Subscription Agreement and refund the full deposit previously tendered. If the Sponsor fails to reject the Subscription Agreement and refund the full deposit previously tendered, the Purchaser shall be entitled under the Escrow Agreement to be

reimbursed in full. The rights and responsibilities of the Purchaser, Sponsor, Cooperative and Escrow Agent under the Escrow Agreement is laid in out in detail below.

Any conflict between this Offering Plan and the Subscription Agreement shall be resolved in favor of this Offering Plan.

The Subscription Agreement may not contain, or be modified to contain, a purchaser waiving purchaser's rights or abrogating sponsor's obligations under this Offering Plan or under article 23-A of the General Business Law.

#### 1. The Escrow Agent

The law firm of Hancock Estabrook, LLP, with an address at 401 E. State Street, Suite 304, Ithaca, New York 14850, telephone number (607)391-2860, shall serve as escrow agent (the "**Escrow Agent**") for Sponsor, Cooperative and the purchaser. The Escrow Agent has designated the following attorneys to serve as signatories: Carrie J. Pollak, Esq, Daniel K. Mannion, Esq, John Powers, Esq., Catherine A. Diviney, Esq., Joseph Mancuso, Esq., Cora Alsante, Esq., and Timothy Murphy, Esq. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, selling agent, managing agent, or any Principal thereof, or have any beneficial interest in any of the foregoing.

#### 2. The Escrow Account

The Escrow Agent has established the escrow account at M&T Bank, located at 118 North Tioga Street, Ithaca, in the State of New York ("**Bank**"), a bank authorized to do business in the State of New York. The escrow account is entitled "Hancock Estabrook Escrow for White Hawk Ecovillage Community, Inc." (the "**Escrow Account**"). The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured.

All deposits received from a purchaser shall be in the form of checks, money orders, or wire transfers, and shall be made payable to or endorsed by the purchaser to the order of Hancock Estabrook, LLP as Escrow Agent.

The Escrow Account is an Interest-On-Lawyer's-Account (IOLA). Therefore, purchasers will not be credited with interest earned on deposits. No fees of any kind may be deducted from the Escrow Account, and the Cooperative shall bear all costs associated with the maintenance of the Escrow Account.

#### 3. The Escrow Agreement

Each purchaser will execute an Escrow Agreement at the same time as they sign a Subscription Agreement. A copy of the Model Escrow Agreement is shown as Exhibit B-11.

#### 4. Notification to Purchaser

Within five (5) business days after the Subscription Agreement and Escrow Agreement has been tendered to the Escrow Agent along with the deposit, the Escrow Agent shall sign the Escrow Agreement and place the deposit into the Escrow Account. Within ten (10) business days of placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit.

Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, at 28 Liberty Street, New York, New York 10005. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning deposits and requisite notice was timely mailed to the Purchaser.

#### 5. Release of Funds

All deposits are and shall continue to be the purchaser's money, and may not be commingled with any other money or pledged or hypothecated by the Cooperative, as per GBL § 352-h.

Under no circumstances shall the Cooperative seek or accept release of the deposit of a defaulting purchaser until after consummation of the Plan, as evidenced by the acceptance of a post-closing amendment by the New York State Department of Law. Consummation of the Plan does not relieve Sponsor of its obligations pursuant to GAL §§ 352-3(2-b) and 352-h.

The Escrow Agent shall release the deposit if so directed:

(a) pursuant to terms and conditions set forth in the Subscription Agreement upon closing of title to the Unit; or

(b) in a subsequent writing signed by both the Cooperative and the purchaser; or

(c) by a final, non-appealable order or judgment of a court.

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

Neither the Cooperative nor Sponsor shall object to the release of the deposit to:

(a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

(b) all purchasers after an Amendment abandoning the Plan is accepted for filing by the Department of Law.

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

## 6. Waiver Void

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

All subscription or purchaser deposits or down payments shall be held in an escrow account as described above.

The Subscription Agreement does not allow the Sponsor to retain any sum in excess of ten percent (10%) of the cash purchase price as liquidated damages. The Sponsor shall not seek specific performance of a Subscription Agreement.

Under the Subscription Agreement, the closing shall take place approximately ten (10) days after the purchaser's legal representative has indicated that closing can occur. Any balance of the purchase price will be paid at closing. Closing will not occur without payment in full of the purchase price. There shall be no "time is of the essence" provision. Accordingly, there shall be no penalties or additional costs assessed against a prospective purchaser for failure to timely close.

Purchaser will be given written notice of the scheduled closing date, the obligation to pay the balance of the purchase price, of their right to inspect the Lot at least five (5) days in advance of closing.

If Purchaser's legal representative fails to indicate that closing can occur within twenty (20) days of receipt of proposed closing documents, or, if applicable, within twenty (20) days of receipt of any curative instrument delivered at the request of Purchaser's legal representative, Sponsor must make a written demand for payment at least thirty (30) days before Purchaser is declared to be in default. After Purchaser is declared in default, Purchaser shall have fifteen (15) business days to cure such default before Sponsor exercises any attendant right to Purchaser's default granted under the Subscription Agreement.

The risk of any damage to a Lot remains with Sponsor until closing.

Purchaser shall have at least three (3) days to review the Offering Plan and all filed amendments prior to executing a Subscription Agreement.

7. Below is a complete copy of the Subscription Agreement:

## **SUBSCRIPTION AGREEMENT**

### **SALE OF COOPERATIVE SHARES FROM SPONSOR**

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the parties below hereby agree as follows:

**Seller:** RED TAIL, LLC ("**Seller**").

**Buyer:** Name: \_\_\_\_\_ ("**Buyer**")

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

Seller shall sell and Buyer shall buy the property described herein on the terms stated in this Subscription Agreement ("**Agreement**").

The word "Buyer" shall be construed as if it read "Buyers" and the word "Seller" shall be construed as if it read "Sellers" whenever the sense of this Agreement so requires.

Seller shall accept the Subscription Agreement and return a fully executed counterpart to the Buyer, or reject the Subscription Agreement and return any deposit previously tendered by the Buyer within ten (10) business days.

#### 1. PROPERTY

The property is described as follows: 100 Shares ("**Shares**") in the Seller and the associated right to enter into a Proprietary Ground Lease ("**Lease**") with Seller for Lot \_\_\_\_ ("**Lot**") located within the Seller's development commonly known as "White Hawk Ecovillage" located in the Town of Danby, County of Tompkins, State of New York.

#### 2. SALE INCLUDES

The sale includes:

- a) The Shares.
- b) The right to enter into the Lease with the Buyer.

The sale does not include a transfer of any structures or personal property located on the Lot.

The sale of the Shares and the right to enter into the Lease with the Buyer is subject to the following documents:

- a) The Bylaws of the Seller.
- b) The Offering Plan which has been delivered to the Buyer, and by signing this Agreement, Buyer acknowledges receipt of same.

### 3. PURCHASE PRICE

The purchase price is \$40,000 ("**Purchase Price**") and is payable as follows:

\$1,000.00 deposited with Hancock Estabrook, LLP, Attorneys for the Seller and held in accordance with the terms of the Escrow Agreement attached hereto and made a part hereof.

\$39,000.00 cash and/or mortgage proceeds on delivery of the Shares and Lease; any amount in excess of \$500.00 shall be delivered by Bank, Certified or Attorney Escrow Check.

### 4. APPLICATION FEE

This Agreement requires that Buyer deliver to White Hawk Ecovillage Community, Inc. a non-refundable application fee of \$1,000. This application fee is used to provide educational resources to prospective members of the community. By signing below, Buyer acknowledges that he or she or it has already delivered the Application Fee to White Hawk Ecovillage Community, Inc.

### 5. DEPOSIT

The deposit hereunder shall be held in escrow by the Seller's attorney, Hancock Estabrook, LLP, pending Closing of title, at which time it will be applied to the purchase price. In the event this Agreement is terminated by Buyer in accordance with the financing contingency set forth in Section 5 below, the inspection contingency set forth in Section 5 below, or Seller's default under the terms of this Agreement, the escrow funds shall be returned to the Buyer. The terms of the escrow agreement are set forth in that certain Escrow Agreement signed by and between the Buyer, Seller and Hancock Estabrook dated as of \_\_\_\_\_, 20\_\_.

### 6. FINANCING

This Agreement IS / IS NOT (circle one) contingent upon the Buyer obtaining a commitment for a first mortgage loan in the amount of not less than \$\_\_\_\_\_ at market rate and terms. The Buyer shall have ten (10) business days after full execution of this Agreement to apply for financing. In the event that the Buyer is unable to obtain a commitment for financing within forty-five (45) calendar days from the date of application, this Agreement, at the Seller's option, may be deemed null and void and the deposit shall be forthwith returned to the Buyer.

### 7. CORPORATE SEARCHES

The Seller will provide franchise tax searches and New York State Uniform Commercial Code searches evidencing that the Seller has an unencumbered title to the Shares.

### 8. SURVEY

The Seller shall provide a copy of the most recent White Hawk Ecovillage development survey prepared by T.G. Miller P.C. The Seller shall not be obligated to provide an updated survey of the Lot and the

Buyer acknowledges that any survey required by Buyer or Buyer's lender shall be paid for solely at the cost and expense of the Buyer.

#### 9. HAZARDOUS MATERIALS

The Seller hereby warrants and represents that so far as the Seller is aware, there are currently no hazardous or toxic chemicals, materials, substances or waste (other than those used in connection with ordinary household activities) produced, manufactured, stored, or located on, about or under (including in the soil, ground or surface water) within the Lot.

#### 10. COMPLIANCE WITH LOCAL LAWS

The Seller warrants and represents that the Lot conforms to all municipal codes and regulations.

#### 11. LIENS

The Seller may pay and discharge any liens and encumbrances not provided for in this Agreement. The Seller may make payment out of the balance of the Purchase Price paid by the Buyer on the transfer of title.

#### 12. SHARES AND LEASE

At the Closing, the Seller shall deliver to the Buyer:

- a) The Seller's original certificate for the Shares duly endorsed to transfer to the Buyer or accompanied by a separate duly executed stock power to the Buyer;
- b) The Seller's counterpart original of the Lease and a duly executed assignment thereof to the Buyer in the form required by the Seller;
- c) A written statement by an officer of the Seller or its authorized agent consenting to the transfer of the Shares and Lease to the Buyer and setting forth the amounts and payment status of the maintenance and any assessments levied against the Shares; and
- d) Executed Foreign Investment in Real Property Tax Act Affidavit.

A memorandum of lease confirming the Lease will be executed at the Closing by the parties and recorded in the Tompkins County Clerk's office.

#### 13. IMPROVEMENTS

The Seller acknowledges that all planned improvements to the property as disclosed in the Offering Plan ("**Community Improvements**") have been or will be completed by the Seller and/or the Cooperative at Seller's or Cooperative's sole cost and expense.

#### 14. WARRANTIES

The Seller agrees to assign to the Buyer rights under any and all applicable manufacturers or suppliers' warranties affecting the Community Improvements, and the fixtures or equipment used therein.

The Seller warrants to the Buyer that the Community Improvements shall be free from defects in materials and workmanship, normal wear and tear excepted. The obligation of the Seller under this

warranty shall be limited to the repair or replacement of any structural or mechanical element which may prove defective in association with normal home use and service within one (1) year from the date of Closing. This warranty shall survive the Closing of title.

#### 15. INSPECTION

Upon reasonable notice to the Seller or their agent, the Buyer may inspect the Lot. In the event that the inspection determines that defects in the Lot exist, the Seller may declare this Agreement null and void and the deposit shall be returned. The Seller shall have ten (10) business days to exercise this contingency.

#### 16. POSSESSION

Possession of the Lot shall be given at Closing.

#### 17. CLOSING

The Closing will take place at the office of the attorneys for the lending institution or, if none, then at the office of Hancock Estabrook, LLP, on \_\_\_\_\_ (“Closing”) or at sooner or later date as the parties may agree. It is the intention, however, of the parties to close this transaction as soon as practicable.

#### 18. BROKER

The Buyer and the Seller affirm that neither party has a contractual agreement relationship with any realtor or broker in connection with this sale other than \_\_\_\_\_, and, aside from said realtor or broker, that neither party is liable for the payment of any sales commission or fee. This representation shall survive Closing.

#### 19. FUTURE SALE OF SHARES BY THE BUYER

The Buyer acknowledges that restrictions governing the future sale of the Shares and the future sale and transfer of the Lease by the Buyer are set forth in the Seller’s Bylaws and that the Shares will include language written on its face stating that ownership is subject to said restrictions.

#### 20. NOTICE

Any notice or other communication from one party to the other shall be delivered in person or by first class mail addressed to the party at the address above. The address above may be changed by notice to the other party.

#### 21. PRIOR UNDERSTANDING

All prior understandings and agreements between the Seller and the Buyer are merged in this Agreement. This Agreement completely expresses their full agreement and has been entered into after full investigation. Neither party is relying upon statements made by anyone that is not a party to this Agreement. Buyer acknowledges that he or she has had at least three (3) days to review the entire Offering Plan accepted for filing on \_\_\_\_\_ and all filed amendments thereto prior to the execution of this Subscription Agreement. Any conflict between the Offering Plan and this Subscription Agreement shall be resolved in favor of the Offering Plan.

## 22. ATTORNEY REVIEW CONTINGENCY

Both the Buyer and the Seller shall have three (3) business days after Agreement execution to consult with an attorney regarding the terms and conditions of this Agreement. In the event that either attorney requests changes and or revocation hereof, such changes or revocation shall be communicated in writing within the 3-day period.

## 23. APPROVAL BY BOARD OF DIRECTORS OF WHITE HAWK ECOVILLAGE COMMUNITY, INC.

This Agreement requires that Buyer deliver to White Hawk Ecovillage Community, Inc. a non-refundable application fee of \$1,000. This application fee is used to provide educational resources to prospective members of the community. This Agreement shall be subject to the final approval of the Board of Directors of White Hawk Ecovillage Community, Inc.

## 24. RIGHT OF RESCISSION

Buyer shall be afforded seven (7) days after delivering an executed Subscription Agreement together with the required deposit and having received this Plan and all filed amendments thereto in order to rescind the Subscription Agreement and have the full deposit refunded promptly. If a purchaser desires to so rescind, a written notice of rescission must be delivered to the Cooperative within the seven-day period or, if mailed, the notice of rescission must be marked within the seven-day period.

In addition, if Seller makes any change in the total number of shares or in the size or quality of public areas, Buyer shall receive notice within three (3) business days of such change and a period of sixty (60) days after receipt of such notice to rescind the Subscription Agreement and have the full deposit refunded promptly. If Buyer desires to so rescind, a written notice of rescission must be delivered to the Cooperative within the 60-day period or, if mailed, the notice of rescission must be marked within the 60-day period.

**IN WITNESS WHEREOF**, the parties have signed this agreement on the dates indicated besides their names.

## **EFFECTIVE DATE**

Sponsor is making this Offering not because it desires to, but because it is comprised of individuals who purchased real property in a Community that was developed without compliance with applicable rules and regulations. As a result, the Principals were faced with a decision to either bring the Community into compliance with applicable laws, or abandon their real property interests. The Principals elected to form Sponsor, purchase the Land, develop and file this Offering Plan, and finance the infrastructure contemplated under this Offering Plan. Based on all of these circumstances, this Plan is unique amongst offerings of cooperative interests in realty.

Sponsor conveyed the Cooperative Property to the Cooperative by deed dated June 11, 2018 and recorded on August 31, 2018 in the Tompkins County Clerk's Office as Instrument No. 2018-09911. At that same time, certificates for the shares of the Cooperative were given to each Principal together with their Proprietary Ground Lease, all of which were also recorded in said Clerk's Office. The Principals of Sponsor are the first Members of the Cooperative.

This Plan shall be deemed effective upon the date the Attorney General accepts this Offering Plan for filing. Collectively, solely in their capacity as Members, the Principals own 43.3% of the total stock of the Cooperative. The Plan will not be abandoned by Sponsor or its Principals. The Plan will be declared effective by service of written notice on all Members.

## UNSOLD SHARES

The Sponsor shall hold all unsold shares until they are sold at a closing. The Sponsor shall guarantee payment of all maintenance charges and assessments due on unsold shares until purchased by a bona fide purchaser for occupancy.

The Sponsor has the financial resources to meet its obligations with respect to unsold shares. The financial resources shall come from mortgage loan payments made by the Cooperative to it and from capital contributions of its Principals. The Cooperative shall have a lien against the shares to secure the performance of Sponsor. No additional bond or security has been furnished to secure Sponsor's obligations. The Principals of Sponsor will pool profits or losses with each other.

The consideration for the unsold shares at closing will not be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code Section 216. Instead, the Cooperative has relied on an appraisal of fair market value for the Cooperative Property to determine the value of its shares. The opinion from a real estate appraiser is attached as Exhibit B-3. See page 35 for greater detail.

Under 26 U.S. Code Section 216, certain tenant-stockholders of a "cooperative housing corporation" may be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of the (1) real estate taxes allowed as a deduction to the Cooperative under 26 U.S. Code Section 164, which are paid or incurred by the corporation only upon the houses and the land on which the houses are situated, or (2) the interest allowed as a deduction to the Cooperative under 26 U.S. Code Section 164, which is paid or incurred by the Cooperative on its indebtedness contracted in the acquisition of the land upon which the houses are situated.

In material part, Section 216 defines a "cooperative housing corporation", *inter alia*, as a corporation [in which] "each of the stockholders [] is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house...*owned or leased by such corporation*" (emphasis added). Here, each stockholder is entitled solely by reason of his or her ownership of stock in the Cooperative to construct and/or occupy a constructed residential dwelling upon his or her leased premises. However, the Cooperative will neither own nor lease any residential dwelling now or to be constructed upon a Lot.

Under present law, regulations, rulings and decisional law, and based on the terms of the Offering Plan, the Cooperative will likely not qualify at closing or at any other time as a cooperative housing corporation under 26 U.S. Code Section 216. This means that Members will most likely not be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the Cooperative, subject to all other relevant provisions of the Internal Revenue Code.

Unsold shares may be sold to persons who purchase for their own account or persons who purchase on account of others.

## FINANCIAL FEATURES

- The Cooperative maintains fee simple ownership of the Cooperative Property. When a prospective purchaser closes on a Subscription Agreement, provided that the purchaser has been previously approved by the Cooperative, the prospective purchaser become a Member of the Cooperative.
- In addition to receiving shares in the Cooperative, each purchaser receives an exclusive 99-year, renewable ground lease granting exclusive use and possession for a specific portion of land which is called a Lot. The ground lease is automatically renewed for an additional 99-year term. The land itself remains under the ownership of the Cooperative. A Member receives either the right to construct a residential dwelling and/or to occupy a constructed residential dwelling on a Lot.
- Any type of loan or mortgage on any Lot will encumber only the leased premises.
- Each Member is responsible for paying maintenance charges and assessments allocated to its shares in the Cooperative. See Schedules A and B on pages 13-20.
- The Cooperative will be assessed for the real estate taxes for the Cooperative Property. As a result, the Members are co-dependent on each other and on the Sponsor for payment of the taxes, the default of which will jeopardize each Member's equity in its Share and Lot.
- The Cooperative is expected to be at fully constructed and occupied within ten (10) years from the date this Offering Plan is accepted for filing.
- The consideration for the unsold shares at closing will not be approved by a qualified expert as meeting the reasonable relationship standard of Internal Revenue Code Section 216. Instead, the Cooperative has relied on an appraisal of fair market value for the Cooperative Property to determine the value of its shares. The opinion from a real estate appraiser is attached as Exhibit B-3. See page 22 for greater detail.
- A single residential dwelling may be constructed on a Lot. Construction must be consistent with the then applicable construction guidelines adopted by the Cooperative. The construction of homes in the Community must also comply with all applicable rules and regulations, including any municipal building code then in effect. See page 40 for greater detail.
- Under present law, regulations, rulings and decisional law, and based on the terms of the Offering Plan, the Cooperative will likely not qualify at closing or at any other time as a cooperative housing corporation under 26 U.S. Code Section 216. This means that Members will most likely not be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the Cooperative, subject to all other relevant provisions of the Internal Revenue Code.

## TERMS OF MORTGAGE

- (1) The Cooperative has received a loan in the amount of \$449,489.00, which is secured by a mortgage and note. The interest rate is 2.98% and all payments are amortized over 43 years. A copy of the mortgage and note is shown at Exhibit A-10.
- (2) The Cooperative has given the Sponsor a mortgage in the principal amount of Four Hundred and Forty-Nine Thousand Dollars and No Cents (\$449,489.00). On closing, the estimated principal balance shall be Four Hundred and Forty-Nine Thousand Dollars and No Cents (\$449,489.00). The mortgage term is 43 years. The maturity date is August 31, 2056. There will be no balance owing on the maturity date.
- (3) The applicable interest rate is a fixed rate of 2.98%.
- (4) The mortgage loan shall be paid by the Cooperative in monthly payments of One Thousand Five Hundred and Forty-Six Dollars and Twenty-Two Cents (\$1,546.22). The mortgage loan payments comprise almost 52% of the Monthly Assessment paid by each Member. Each payment shall be made on the first of the month.
- (5) The mortgage loan may be prepaid in whole or in part. There is no prepayment notice requirement. There is no prepayment penalty.
- (6) The Sponsor, as lender, has imposed no insurance requirements.
- (7) The Sponsor, as lender, requires no escrow or reserve requirements.
- (8) The Sponsor, as lender, imposes no late charges.
- (9) There are no other mortgages on the Cooperative Property.
- (10) There are no additional financing costs.
- (11) The mortgage may be subordinated to future mortgages.
- (12) Failure to pay the mortgage loan payment shall constitute an event of default under the mortgage and note entitling the Sponsor to accelerate payment of the mortgage indebtedness. There is a grace period of sixty (60) days. There is a due on sale clause in the mortgage. It is not a default under the mortgage to alter the Cooperative Property.
- (13) Other than as described above, there are no additional restrictions on the Cooperative's right to alter, improve, sell, occupy or mortgage the Cooperative Property.

## SUMMARY OF PROPRIETARY GROUND LEASE

The Cooperative will continue to own the Land.

Upon closing, a prospective purchaser will become a Member in the Cooperative, and will receive the share certificates representing the Member's ownership interest of the Cooperative. See Specimen Stock Certificate at Exhibit B-6. The Member will also receive a 99-year term automatically renewable Proprietary Ground Lease granting exclusive use and possession of the Lot associated with such Share. See Specimen Proprietary Ground Lease at Exhibit A-2. If the Lot has Improvements constructed thereon, a prospective purchaser will also receive a Deed of Estate in Fee Simple on Condition for any such Improvements. See Specimen Deed of Estate in Fee Simple on Condition at Exhibit A-3.

When the term of a Proprietary Ground Lease expires, the Cooperative will automatically become owner of all Improvements located on a Lot. See Specimen Proprietary Ground Lease at Exhibit A-2.

The following bullets summarize the Proprietary Ground Lease.

- The term is for a ninety-nine (99) year term, which is automatically renewed for another ninety-nine (99) years.
- The Member must be and remain at all times while the Proprietary Ground Lease is in effect the owner of the shares associated with the Lot.
- The Member must pay when due all sums that are due under the Lease or other applicable documents. Failure to do so will result in a default under the Proprietary Ground Lease.
- The Member agrees to abide by the Articles of Incorporation and Bylaws of the Cooperative, and any other rules and regulations adopted by the Cooperative.
- The Member may not permit any lien or claim of lien to be filed against a Lot, other than an interest that comports with the Proprietary Ground Lease.
- The Member must obtain fire and hazard insurance on any improvements located on a Lot.
- The Cooperative may pay past due taxes, assessments or expenses for repairs required as a result from the acts or omissions of Member on behalf of a Member and seek reimbursement accordingly.
- The Member must keep a Lot in a clean and sanitary condition, free of all fire and other hazards, and maintain all Improvements in a clean and sanitary condition and free of all fire and other hazards at all times.
- The Member must respect and not interfere with the rights of other Members.
- The Member is responsible for the conduct and actions of any person he or she invites to the Community.

- A single residential dwelling may be constructed on a Lot. Construction must be consist with the then applicable construction guidelines adopted by the Cooperative and any applicable municipal building code then in effect.
- Upon expiration of the term of the Proprietary Ground Lease, ownership of the Improvements transfers to the Cooperative.
- A Proprietary Ground Lease shall terminate when a Member sells, transfer or conveys its shares to purchaser, abandons a Lot, or fails to satisfy the obligations imposed under the Proprietary Ground Lease in accordance with the terms and conditions stated therein.
- Upon a taking or condemnation of the shares or Lot, some or all of the award may go to the Cooperative.
- The Cooperative may arbitrate any dispute arising under the Ground Lease.
- All financing must comply with the Proprietary Ground Lease.
- Members are not free to assign, sell, convey or transfer the shares without the Cooperative's consent.
- Upon sale of a Member's shares, the Member may owe a fee to the Cooperative. The terms of such fee are set out in the Proprietary Ground Lease.
- The Sponsor shall hold all unsold shares. The Sponsor shall not transfer to any third party the unsold shares.

## CONSTRUCTION GUIDELINES

As explained elsewhere in this Offering Plan, a Member has the right to construct a residential dwelling upon a Lot and/or to occupy a constructed residential dwelling located upon a Lot. The construction of homes in the Community must comply with construction standards, as adopted by the Cooperative from time to time. The current standards are housed in an instrument called “Green Construction Guidelines for White Hawk Homes” and is dated November 15, 2016. A copy of the guidelines is attached at Exhibit A-12.

The construction guidelines include the following restrictions, some of which are based on applicable zoning law and others from consensus from Cooperative Members:

- Floor space must meet the minimums set by zoning, which are a function of family size and room types. The area may not exceed 2000 sq. ft. Basement space is not considered in the overall square footage for this policy.
- Buildings must be a minimum of 3 feet from interior lot lines or to an imaginary line between buildings on the same lot (guaranteeing 6 feet between houses) and a minimum of 2 feet to the same for overhangs. An increased distance of at least 10 feet between buildings is preferred by the Fire Department and will improve fire safety.
- Height cannot exceed 35 feet above grade at highest point.
- Must be a permanent building
- Houses tested for air leakage
- Vent stack for radon mitigation
- Insulation levels of R-10 for slab, R-19 for foundation walls, R-25 for exterior walls
- Good attic insulation, such as blown cellulose loose fill (typ. R-49) where possible; attic hatch insulated to R-20
- Low U-value windows (0.35 or less)
- Egress requirements for windows/doors
- An energy-efficiency heating source
- Energy Star appliances
- Intake vents as needed for proper air infiltration
- No central air in most homes
- Low-flow showerheads, faucets, toilets
- Affordability – *White Hawk reserves the right to reject a design on the grounds that (a) the member building it cannot qualify for financing to pay for it, or (b) the potential resale price of the dwelling would be so high that the community might be unable to find a buyer at a future time.*
- R304.1 Minimum Area: At least one habitable room  $\geq$  120 sq. ft

- R304.2 Other Rooms: Other habitable rooms, except kitchens  $\geq 70$  sq ft
- R304.3 Height Effect: Area under sloped ceilings below 5' not counted as habitable
- R305.1 Minimum Height: Habitable rooms 7'6" min; hallways, corridors, toilet rooms, laundry rooms 7' min; bathrooms 6'8" over fixtures
- R306.1 Toilet Facilities: Every unit (ex. owner-occupied one-family, subject to approval of code enforcement) must have water closet/lavatory and bathtub/shower.
- R306.2 Kitchen: Every unit (ex. owner-occupied one-family, subject to approval of code enforcement) must have kitchen area with sink.
- R306.3 Sewage Disposal: All plumbing fixtures connected to sanitary sewer or approved private sewage disposal system.
- R404.4.1 Area for sleeping purposes: Every bedroom  $\geq 70$  sq ft for one person, or  $\geq 50$  sq ft/person for more than one person
- R404.4.4 Prohibited occupancy: Kitchens and nonhabitable spaces shall not be used for sleeping purposes.
- R404.5 Overcrowding
  - 1-2 occupants: no living room or dining room requirement; kitchen  $\geq 50$  sq ft
  - 3-5 occupants: living room  $\geq 120$  sq ft, dining room  $\geq 80$  sq ft, kitchen  $\geq 50$  sq ft
  - 6+ occupants: living room  $\geq 150$  sq ft, dining room  $\geq 100$  sq ft, kitchen  $\geq 60$  sq ft
- R404.5.2 Combined spaces: living room/dining room may be combined if they meet total area requirement
- R404.6 Efficiency unit: 1-2 occupants  $\geq 220$  sq ft; 3 occupants  $\geq 320$  sq ft; separate bathroom

With the exception of duplexes as allowed under applicable law, no Lots will share party walls for any structures, and no Member shall place any structures within three (3) feet, or any awnings or porches within two (2) feet, of any Lot boundary line. If a duplex is constructed, its party wall must be centered upon the Lot boundary line. The respective owners of such duplex or duplexes shall negotiate any necessary party wall agreement.

The construction of homes in the Community must also comply with all applicable rules and regulations, including any municipal building code then in effect.

## COOPERATIVE COOPERATION

### 1. Description of Corporation

The Cooperative was formed as “White Hawk Ecovillage Community, Inc.”, a business corporation duly organized under Section 402 of the Business Corporation Law (the “**Cooperative**”) on June 11, 2018 by filing its Certificate of Incorporation with the Secretary of State of the State of New York. The issuance of 3,000 shares was authorized at that time. 1,300 shares have been sold to the Principals. See Certificate of Incorporation at Exhibit B-5. An additional 1,700 shares are contemplated under this Offering Plan.

### 2. Board Governance

Under this Offering Plan, Sponsor shall not maintain any control over the Cooperative. Because each Principal is a Member, the Cooperative shall immediately be controlled by the Members. Sponsor is making this Offering not because it desires to but because it is comprised of individuals who collectively purchased real property rights in a community that was developed without compliance with applicable rules and regulations. As a result, the Principals were faced with a decision to either bring the Community into compliance with applicable laws, or abandon their real property interests. The Principals elected to form Sponsor, purchase the Land, develop and file this Offering Plan, and finance the infrastructure contemplated under this Offering Plan. Based on all of these circumstances, this Plan is unique amongst offerings of cooperative interests in realty.

The Principals of Sponsor are the first Members of the Cooperative. Collectively, solely in their capacity as Members, the Principals own 43.3% of the total stock of the Cooperative. Sponsor conveyed the Cooperative Property to the Cooperative by deed dated June 11, 2018 and recorded on August 31, 2018 in the Tompkins County Clerk’s Office as Instrument No. 2018-09911. At that same time, certificates for the shares of the Cooperative were given to each Principal together with their Proprietary Ground Lease, all of which were also recorded in said Clerk’s Office.

In light of the unique nature of this Community, the Principals of Sponsor, in their capacity as Members, shall not participate in any decision by the Community in electing whether to sue Sponsor with respect to this Offering Plan. Any provisions to the contrary are not lawful.

The Cooperative has Bylaws that explain how the Board of Directors is elected, how long they serve, and what they do for the Cooperative. The term of the Directors named in the Certificate of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called for that purpose. At the first annual meeting of the members the term of office of President shall be fixed for three (3) years, the terms of office of Secretary and Treasurer shall be fixed for two (2) years, the term of office of one Vice President shall be two (2) years and the term of office of a second Vice President shall be one (1) year. At the expiration of the initial term of office of each respective Director, his or her successor shall be elected to serve a term of three (3) years. The Directors shall hold office until their successors

have been elected and hold their first meeting. There must be at least three (3) directors. See Bylaws at Exhibit A-4.

The following are the present directors.

President	Aelita Early 7 White Hawk Lane Ithaca, New York 14850	Secretary	Mark Pruce 12 White Hawk Lane Ithaca, New York 14850
Vice-President	Steve Woinoski 5 White Hawk Lane Ithaca, New York 14850	Treasurer	Greg Nelson 6 White Hawk Lane Ithaca, New York 14850
Vice-President	Dane Percy 2 White Hawk Lane Ithaca, New York 14850		

They will serve until the next election of directors, in accordance with the Bylaws. Directors and officers are not paid for their services.

The Board of Directors shall:

- Set the annual budget of the Cooperative and the assessments on the Lots,
- Decide how to maintain the Common Areas,
- Make sure that assessments are paid and enforce the rights of the Cooperative,
- Borrow money, if the Members unanimously approve the loan.

The Board of Directors is elected by the Members. Any Member in good standing may sit on the Board of Directors. No other eligibility requirements apply.

The directors shall have no personal liability for acts of the Cooperative, unless they engage in willful or intentional bad acts.

### 3. Member Decision-Making

Each Member has one (1) vote, regardless of how many Lots it owns. A Member is a tenant-stockholder of the Cooperative. When more than one person comprises a Member, they must decide among themselves how to cast the one vote. No votes will be cast for unsold Lots. Only votes for sold Lots will be considered.

All decision making authority in the Cooperative rests with the Members unless specific decision making authority has been delegated to an officer, committee, or other subset of the membership in these by-laws or by decision of the membership. No Member who is delinquent in paying any charges to the Cooperative will be eligible to vote or to be elected to the Board of Directors of

the Cooperative. A Member will be considered delinquent if the Member is more than thirty (30) days delinquent in payments due to the Cooperative.

Decisions are reached by consensus, unless otherwise specified in the Bylaws. A decision may be reached by a supermajority vote of 75% of the Members present in the meeting where the vote occurs, under the following circumstances:

- (a) When the Board of Directors have declared a matter as ‘Urgent Business’ and consensus cannot be reached in a reasonable amount of time, as determined by the officers;
- (b) When a member or group of members brings the same issue or question up to the membership at two successive meetings (General, Special or Annual) held on different days with no decision reached by consensus, supermajority can be used to reach decision at a third successive meeting;
- (c) If the authority to make decision by Supermajority vote has been explicitly granted by the membership.

This means that all Members have equal power to participate and be considered in all consensus-based decision-making, and if necessary, voting.

The Cooperative may be dissolved upon a unanimous vote of the Members.

The Cooperative’s Certificate of Incorporation and Bylaws may be amended upon a unanimous vote of the Members. Copies of these documents are shown Exhibits A-4 and B-5.

#### 4. Cooperative Responsibilities

The Cooperative shall have sole responsibility for repair, replacement and maintenance of Cooperative Property. General Liability and Directors and Officer’s Liability Insurance is provided by Tompkins Insurance Agencies. Collectively, insurance premiums are \$4,430 a year. The Cooperative shall not provide fire insurance because the improvements to be constructed and owned by the Cooperative are not subject to fire risks. The insurance is adequate to replace any improvements to be constructed in the event of a total loss. There are no insurance requirements imposed by a lender or a managing agent.

The Cooperative shall have no responsibility to repair, replace or maintain property owned individually by a Member, such as their residential dwelling. All insurances that would insure a purchaser’s residential dwelling may be obtained by the purchaser from an insurance agent. As a requirement of this Offering Plan, each Member must obtain property, fire and hazard insurance for their residential dwelling. Each Member is responsible for insuring his or her privately owned property, including the residential dwelling constructed upon a Lot. The Cooperative has no control over, nor any ability to determine or protect the value of property owned solely by Cooperative Members.

The Cooperative shall provide annual reports to the Members. Notice of meetings shall be provided at least ten (10) days in advance. Books and records are available to all Members for inspection upon reasonable notice.

## **RESERVE FUND AND WORKING CAPITAL FUND**

The Cooperative will develop a reserve fund for future capital expenses such as maintaining the private road. If capital expenditures are needed which cannot be met from this fund, the Cooperative may levy a special assessment against all Lots. Any unexpected expenses will also be funded through special assessments. The Cooperative may accumulate reserves for capital replacements and improvements. There is no restriction upon this right.

The Cooperative is budgeted to set aside certain reserves for capital replacements improvements. These reserves will be funded by Monthly Assessments paid by the Members. The initial Cooperative budget includes a \$166.66 reserve fund monthly payment per Member. Expenses for all other anticipated repairs and maintenance and other common property are included in the annual budget. See Schedule B at page 17 for greater detail.

As long as the Sponsor is in control of the Board of Directors, the reserve fund may not be used for anything other than a capital improvement and may not be used to reduce projected maintenance charges or the Cooperative's obligation to pay assessments on unsold shares.

Neither the Department of Law nor any other government agency has approved the adequacy of the reserve fund.

The Cooperative will have available means and options to finance needed capital expenditures such as renewal or replacement of Cooperative Property components or systems. The general repair and maintenance fund should be enough to cover any repairs to the Cooperative Property within the ten (10) years following the date upon which the first closing has occurred. It is not anticipated that any major repairs will be needed within the first ten (10) years of the Cooperative.

The Cooperative will not have a working capital fund. Any unanticipated expenses will be paid by a special assessment as determined by the Cooperative.

## CONTRACT OF SALE BETWEEN SPONSOR AND COOPERATIVE

Sponsor transferred the Cooperative Property to the Cooperative by warranty deed dated June 11, 2018. A copy of the Deed is attached at Exhibit A-9. The purchase price for the Cooperative Property was \$449,489.00.

The purchase price was paid in the form of a promissory note secured by a mortgage. The interest rate is 2.98% and all payments are amortized over 43 years. A copy of the mortgage and note is shown at Exhibit A-10. The maturity date is August 31, 2056. There will be no balance owing on the maturity date.

The mortgage loan shall be paid by the Cooperative in monthly payments of One Thousand Five Hundred and Forty-Six Dollars and Twenty-Two Cents (\$1,546.22). The mortgage loan payments comprise almost 52% of the Monthly Assessment paid by each Member. Each payment shall be made on the first of the month. The mortgage loan may be prepaid in whole or in part. There is no prepayment notice requirement. There is no prepayment penalty.

The Sponsor had an approximate tax basis of \$239,800, plus the costs of all capital improvements it made to the Cooperative Property prior to conveyance. The Cooperative will have a basis of \$449,489 in the Cooperative Property.

Sponsor shall procure title insurance through Stewart Title Insurance Company. The coverage shall be for \$449,489.00. Sponsor shall pay the title insurance premium. A copy of a proforma title company report is attached as Exhibit B-2.

Sponsor paid all costs of closing.

Any conflict between the Offering Plan and the purchase agreement shall be resolved in favor of the Offering Plan.

## MANAGEMENT AGREEMENTS, CONTRACTS AND LEASES

Sponsor is making this Offering not because it desires to but because it is comprised of individuals who collectively purchased real property rights in a community that was developed without compliance with applicable rules and regulations. As a result, the Principals were faced with a decision to either bring the Community into compliance with applicable laws, or abandon their real property interests. The Principals elected to form Sponsor, purchase the Land, develop and file this Offering Plan, and finance the infrastructure contemplated under this Offering Plan. Based on all of these circumstances, this Plan is unique amongst offerings of cooperative interests in realty.

The Principals of Sponsor are the first Members of the Cooperative. Sponsor conveyed the Cooperative Property to the Cooperative by deed dated June 11, 2018 and recorded on August 31, 2018 in the Tompkins County Clerk's Office as Instrument No. 2018-09911. At that same time, certificates for the shares of the Cooperative were given to each Principal together with their Proprietary Ground Lease, all of which were also recorded in said Clerk's Office. A copy of the Deed is shown at Exhibit A-9, and copies of the leases given to each Principal is shown at Exhibit B-7.

The Cooperative will retain responsibility of managing its own business and affairs. All duties of the Cooperative shall be shared amongst all of its Members, which include any purchasers and the Principals. The major duties and services to be performed by the Cooperative include bookkeeping, collecting association assessment charges, preparing (in conjunction with the accountant) all required tax filings and overseeing any necessary maintenance work.

The Cooperative and its officers will not charge a fee for their services, and will act without compensation. The Cooperative shall reimburse any officers for expenses incurred or to indemnify the Cooperative against liability for acts properly performed by it pursuant to its agreement.

Cooperative Property may be used by Members for commercial purposes. The Cooperative will only allow such uses upon consensus of its Members, and only if such uses are consistent with natural and agricultural uses. Currently, a portion of Cooperative Property is leased to individual Members for such uses. The Cooperative has given a lease to Principals Michael Early and Aelita K. Early for approximately 2 acres to use exclusively for permaculture and agricultural purposes. The Cooperative has given a lease to Principal Dane Percy for approximately 1 acre to use as a food store. The lessee under that lease intends to operate a bread shop. The leases are shown at Exhibit B-8.

## IDENTITY OF PARTIES

There are no known prior felony convictions of the Sponsor or the Principals of the Sponsor. There are no known prior convictions, injunctions and judgments against the Sponsor or the Principals of the Sponsor that is material to the offering plan or an offering of securities generally.

Sponsor has been in control of the Cooperative Property since 2017.

Sponsor has not offered any other cooperative, condominium or planned unit developments within the past five (5) years.

The Principals are each individuals who are Members of the Cooperative. They are listed as follows:

Roger Nelson and Reinhilde Nelson  
2 White Hawk Ln, Ithaca, NY 14850

JoBeth Dingman  
11 White Hawk Ln, Ithaca, NY 14850

Steven E. Woinoski  
5 White Hawk Ln, Ithaca, NY 14850

Mark Pruce and Sara Pruce  
12 White Hawk Ln, Ithaca, NY 14850

Greg H. Nelson  
6 White Hawk Ln, Ithaca, NY 14850

Mark Silver and Holly Glaser  
13 White Hawk Ln, Ithaca, NY 14850

Michael Early and Aelita Early  
7 White Hawk Ln, Ithaca, NY 14850

Melissa Blake and Earnest Blake  
14 White Hawk Ln, Ithaca, NY 14850

Alicia Beebe  
8 White Hawk Ln, Ithaca, NY 14850

Dane Percy and Susan Storey  
10 White Hawk Ln, Ithaca, NY 14850

Kartik Sribarra and Allison Sribarra  
9 White Hawk Ln, Ithaca, NY 14850

### 2. Attorneys:

Hancock Estabrook, LLP, Gateway Center, 401 E. State Street, Suite 304, Ithaca, New York 14850 is the Sponsor's attorney for purposes of the preparation of this Plan and will represent the Cooperative at closings and as escrow agent. Carrie J. Pollak and Daniel K. Mannion prepared this Offering Plan.

Mariette Geldenuys, Esq., Gateway Center, 401 E. State Street, Suite 306, Ithaca, New York, 14850 is the Cooperative's attorney for ongoing and general representation.

### 3. Managing Agent:

As set forth above, the Cooperative will manage its own business and affairs. There are no known prior felony convictions of the managing agent or any principals of the managing agent. There are no known prior convictions, injunctions and judgments against the managing agent or any principal of the managing agent that is material to the offering plan or an offering of securities generally. The Cooperative does not manage other properties.

Sponsor is making this Offering not because it desires to, but because it is comprised of individuals who collectively purchased real property rights in a community that was developed without compliance with applicable rules and regulations. As a result, the Principals were faced with a decision to either bring the Community into compliance with applicable laws, or abandon their real property interests. The Principals elected to form Sponsor, purchase the Land, develop and file this Offering Plan, and finance the infrastructure contemplated under this Offering Plan. Based on all of these circumstances, this Plan is unique amongst offerings of cooperative interests in realty.

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All duties of the Cooperative shall be shared amongst all of the purchasers and the Principals.

### 4. Selling Agent:

The Cooperative will manage the sales of its remaining shares. There are no known prior felony convictions of the selling agent or any principals of the selling agent. There are no known prior convictions, injunctions and judgments against the selling agent or any principal of the selling agent that is material to the offering plan or an offering of securities generally.

Sponsor is making this Offering not because it desires to, but because it is comprised of individuals who collectively purchased real property rights in a community that was developed without compliance with applicable rules and regulations. As a result, the Principals were faced with a decision to either bring the Community into compliance with applicable laws, or abandon their real property interests. The Principals elected to form Sponsor, purchase the Land, develop and file this Offering Plan, and finance the infrastructure contemplated under this Offering Plan. Based on all of these circumstances, this Plan is unique amongst offerings of cooperative interests in realty.

The Principals of Sponsor are the first Members of the Cooperative. Sponsor conveyed the Cooperative Property to the Cooperative by deed dated June 11, 2018 and recorded on August 31, 2018 in the Tompkins County Clerk's Office as Instrument No. 2018-09911. At that same

time, certificates for the shares of the Cooperative were given to each Principal together with their Proprietary Ground Lease, all of which were also recorded in said Clerk's Office.

All duties of the Cooperative shall be shared amongst all of the purchasers and the Principals.

5. Architect:

There is no architect.

6. Engineer:

John M. Andersson, P.E., Water and Waste Water Design Services, 1 Woodland Road, Ithaca, New York 14850.

Mr. Andersson has over 48 years of cumulative experience in evaluating and designing water and waste water facilities.

7. General Contractor:

There is no general contractor.

## OBLIGATIONS OF SPONSOR

Sponsor shall endeavor in good faith to sell in a reasonably timely manner all unsold shares. The Cooperative shall remain responsible for complying with this Offering Plan and the laws of New York State, including the General Business Law, after each Lot has been sold.

There is no construction financing in place. Sponsor does not intend to obtain construction financing. Sponsor shall complete construction in accordance with the specifications shown at Exhibit C-1, provided that Sponsor may make reasonable modifications when necessary. Sponsor may not substitute equipment or materials of lesser quality or design, or change Lot sizes if such changes adversely affect public areas or the value of any shares to which title has closed or a purchase agreement has been executed.

Sponsor shall not be responsible for obtaining certificates of occupancy or compliance for any Lot because Sponsor does not own any residential improvements located on a Lot. Sponsor shall not warrant the materials or workmanship of the Cooperative Property. The Cooperative Property includes equipment or appliances appropriate to sewer and water infrastructure. All warranties associated with such equipment or appliances shall be assigned to the Cooperative.

Sponsor agrees to pay for the authorized and proper work involved in the construction, establishment and sale of all Cooperative Property that it is obligated to construct under this Plan. Sponsor shall cause all mechanics' liens on Cooperative Property to be promptly discharged. Sponsor shall defend the Cooperative and its members in any suit or proceeding arising from acts or omissions. Sponsor shall indemnify and hold the Cooperative harmless for any costs resulting from Sponsor's gross negligence, fraud or willful misconduct.

Sponsor shall complete construction of the infrastructure providing services to a specific Lot prior to the sale of said Lot. Closings for Lots may occur prior to the completion of facilities provided the incomplete facilities are not vital to the health and safety of the Members. White Hawk Lane is the only road in this Plan.

In the event of dissolution or liquidation of the Sponsor prior to the sale of all Lots, the Principals of Sponsor shall assume the status and all of the obligations of Sponsor for all Lots sold under this Offering Plan.

As long as the Community has Lots that have not yet been sold under this Plan which are offered for sale, Sponsor shall amend this Plan whenever the budget changes or when one year has passed since the last budget was updated. The prior year's reviewed financial statements for the Cooperative shall be included even if Sponsor has assumed responsibility for all of the Cooperative operating expenses. After the first closing has occurred, the Sponsor shall pay all Monthly and Special Assessments on all unsold Lots until each Lot has been sold.

The financial statements shall comply with subdivision (h) of Part 22 of 13 NYCRR and be submitted within three months of the end of the latest fiscal year of the operation of the Cooperative.

## **REPORTS TO SHAREHOLDERS**

It will be the obligation of the Board of Directors of the Cooperative to give all Cooperative Members annually:

- (1) A financial statement of the Cooperative prepared by a certified public accountant or public accountant by three (3) months after the close of each fiscal year.
- (2) Prior notice of the annual Members meeting; and
- (3) A certified copy of the proposed annual budget of the Cooperative by thirty (30) days prior to the date set for adoption thereof by the Board of Directors.

## **DOCUMENTS ON FILE**

The Cooperative will keep copies of this Plan, all documents referred to in this Plan and all Exhibits submitted to the New York State Department of Law in connection with the creation of the Cooperative, on file and available for inspection without charge and copying at a reasonable charge at a specified location determined by the Secretary for six (6) years from the date upon which the first shares shall have been sold. The Cooperative will retain a copy of all documents filed with the appropriate recording office at such time that the first shares are sold.

## GENERAL

The Cooperative hereby certifies the following:

- (1) There are no lawsuits, administrative proceedings or other proceedings, the outcome of which may materially affect the offering, the property, and the Cooperative's capacity to perform all of its obligations under the plan, the Cooperative or the operation of the Cooperative.
- (2) The property was not the subject of any prior cooperative, condominium or Cooperative offerings. No preliminary binding agreements have been entered into or money has been collected from prospective purchasers with respect to this Offering.
- (3) The Cooperative represents that the Cooperative and its agents will not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by law.
- (4) Purchasers have a right to rescind Subscription Agreements following material adverse Amendments.
- (5) There are no circumstances which may affect use or enjoyment of the property and appurtenances, such as reciprocal covenants or easements, impending adjacent high-rise construction, any usage restriction by statute, ordinance or zoning resolution such as specified occupancy percentage by certified artists, or historic district or landmark designation, unless disclosed elsewhere in the plan.

## **SPONSOR'S STATEMENT OF BUILDING AND PROPERTY CONDITION**

The Community is located on approximately 120.476 acres in the Town of Danby in Tompkins County, off of State Route 96B. The Community is authorized to permit construction of thirty (30) residential dwellings on a total of thirty (30) Lots clustered around an approximately eight (8) acre circle. The remaining acreage is dedicated to natural and agricultural uses. Each Lot is approximately 0.07 acres and has approximately 37 feet of frontage along an unpaved access road. The Lots have access to communal septic and water systems, public electricity and telephone services, and have cooperative access to the Cooperative Property's remaining acreage. The Community Property is improved by an unpaved private road called White Hawk Lane, and water and waste water infrastructure currently providing services to the ten (10) already constructed residential dwellings located upon Lots leased to the Principals.

Additional improvements to be constructed on the Cooperative Property includes only water and waste water infrastructure. The specifications of these facilities are shown as Exhibit C-1. The water and waste water infrastructure intended to provide necessary utilities to the Lots offered in this Offering Plan have not yet been constructed. Permit for construction of the water facility has been received, Town of Danby permit #1459 issued to Creative Constructions of Ithaca. The Sponsor shall construct the water and waste water infrastructure only after first obtaining all required approvals and permits. Any changes to the specifications shown shall be certified to and disclosed in an amendment to this Offering Plan.

Approximately seven (7) acres of the total acreage are for proposed residential use. The remaining 100+ acres are not intended for residential development. The soil on half of the Cooperative Property, including all of this proposed residential area, is identified as Erie Channery silt loam, hydrologic soil group/ D, non-hydric. This soil has good stability, moderately high bearing capacity, and is good fill material. A fragipan (dense soil layer) at 10-21 inches may create a seasonal water table there, but that water is controlled by proper grading, ditching and foundation drainage.

Other non-hydric silt loam or silt loam soils (Darien gravelly silt loam, Howard gravelly loam, and Langford channery silt loam) cover over thirty percent (30%) of the Cooperative Property, with properties similar to the Erie Channery silt loam.

The remaining acreage, approximately twenty percent (20%) of the total, of the Cooperative Property has soils identified as Eel silt loam, Wayland soils, and Alluvial land, all hydric, and may be subject to season or occasional flooding, and so are generally not suitable for development. These soils are associated with the water courses running through the Cooperative Property. All these soils are at least 200 feet (and up to 1,500 feet) away from the proposed residential and are significantly lower in elevation.

The Tompkins County Health Department observed seven soil profile holes across the Cooperative Property in 2006. These were located generally around the proposed residential area. All were 4-6.5 feet deep and reported as silty loam to clayey loam the full depth. Saturated soil was found in only one hole at four feet deep; no water was found in any other hold. Bedrock was not encountered. These observations confirm the soil type described above.

No land subsidence is evident on the Cooperative Property.

Based on the information presented above, the soils located in and around the residential area are suitable for the proposed construction and have no serious restrictions for development.

The soils on eighty percent (80%) of the Cooperative Property are identified as having no flooding potential. No water bodies, dams or levees are located above the proposed residential area. Drainage patterns are established to safely convey storm water runoff around the proposed residential area and are routed through storm water control features to protect the streams to which they discharge. The twenty percent (20%) of the Cooperative Property with soils that may flood is located adjacent to water courses running through the Cooperative Property. All these soils are at least 200 feet (and up to 1,500 feet) away from the proposed residential area, and significantly lower in elevation and do not pose a flooding threat to the developed area. The soil on the entire property is stabilized and there is no history of mudslides.

The Cooperative Property is not identified as in a flood zone on the Flood Rate Zone Map prepared for Danby, New York. It is shown as not in a flood zone on the Tompkins County GIS site. However, a seasonally flooded wetland is identified by Tompkins County GIS along both sides of Buttermilk Creek that crosses the Cooperative Property. This wetland is 1,500 feet from and 60 feet lower than the proposed residential area and therefore poses no risk of flooding to the residential improvements intended to be constructed thereon.

There are no known hazardous materials or environmental restrictions on the Cooperative Property. Searches of the New York State Department of Environmental Conservation databases for Spill Incidents and Environmental Remediation turned up no results on the Cooperative Property or adjacent properties. The nearest spill incident was a 2016 spill of 75 gallons of residential heating oil downslope and more than 4000 feet away.

Please see the Property Report shown at [Exhibit C-2](#) for additional information.

## PART II