**PART II**

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**DECLARATION**
**OF**
**PROTECTION COVENANTS,CONDITIONS,RESTRICTIONS,**
**EASEMENTS, CHARGES, AND LIENS - HILLSBORO COVE TOWNHOUSES**
**( THE HILLSBORO COVE DECLARATION)**

MADE BY: HILLSBORO COVE DEVELOPMENT CO.,INC.
1770 East Ridge Road
Rochester, New York 14622

DATED:_____

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - HILLSBORO COVE TOWNHOUSES

(THE HILLSBORO COVE DECLARATION)

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# DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS EASEMENTS, CHARGES, AND LIENS - HILLSBORO COVE TOWNHOUSES

## (THE HILLSBORO COVE DECLARATION)

**THIS DECLARATION**, made this day of , 198 , by HILLSBORO COVE DEVELOPMENT CO., INC., having an office at 1770 East Ridge Road, Rochester, New York, 14622, being hereafter referred to as "the Sponsor."

**W I T N E S S E T H**

**WHEREAS**, the Sponsor is the owner of the real property described in Article II of this Declaration which the Sponsor desires to develop into a residential community known or to be known as "HILLSBORO COVE TOWNHOUSES" with open spaces and other common facilities for the benefit of said community; and

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

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

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

**WHEREAS**, the Sponsor has incorporated HILLSBORO COVE HOMEOWNERS ASSOCIATION,INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid funtions.

**NOW THEREFORE**, the Sponsor, for itself, its successors, and its assigns, declares that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

## ARTICLE I

## DEFINITIONS

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

A." Association" shall mean and refer to HILLSBORO COVE HOMEOWNERS ASSOCIATION,INC.,its successors, and its assigns.

B." Association Property" shall mean and refer to all land, improvements, and other properties heretofore or hereafter owned by the Association.

C. "Class A Member" shall mean and refer to the Owner of a Lot or Unit, whether an Owner of a Lot initially under the Declaration pursuant to Section 2.01 hereof or whether an Owner of a Lot on the Additional Property added to the scope of the Declaration pursuant to Section 2.02 hereof. In the case of joint ownership of a Lot or Unit, the Class A Member with respect to such Lot or Unit shall be determined pursuant to Section 3.04 hereof. The Sponsor may not hold Class A membership simultaneously with Class B membership.

D." Class B Member" shall mean and refer to the Sponsor until the Class A members have the exclusive right to elect all of the members of the Board of Directors pursuant to the provisions of the By-Laws, at which time Class B membership shall cease.

E. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens Hillsboro Cove Townhouses as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

F. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Webster or (ii) shown as a separate lot upon any recorded or filed subdivision map.

G. "Member" shall mean and refer to a Class A Member or the Class B Member.

H. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot, and provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be deemed an Owner (and therefore not a Member).

I. "Property" shall mean and refer to all properties as are subject to this Declaration.

J. "Sponsor" shall mean and refer to Hillsboro Development Co., Inc., its successors, and its assigns. The Sponsor is also sometimes hereinafter referred to as the Class B Member.

K. "Unit" shall mean and refer to each completed dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Webster) situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

## ARTICLE II

## PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01 - Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Webster, County of Monroe, and State of New York, all of which property shall be hereinafter referred to as the "Property." The real property initially subject to this Declaration is known as "Phase I" of the Hillsboro Cove Townhouses development and is described in Schedule A attached hereto.

Section 2.02 - Additional Property. Other lands, ("Additional Property") in addition to the lands described in Schedule A, may become subject to this Declaration in the following manner:

a. Land added by Sponsor without consent of Owners. The Sponsor may, without the consent of the Class A Members, within ten (10) years of the date of recording of this Declaration, bring within the scope of this Declaration all or any portion of the lands described in Schedule B of this Declaration.

b. Lands added with consent of Owners. The owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording in the Monroe County Clerk's Office of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration. The average unit density per acre shall at no time exceed ten (10).

The future improvements to be made on any lands which are added to the scope of this Declaration will be consistent in terms of quality of construction with the improvements on lands already covered by the Declaration.

This Section may not be amended to alter or abridge the Sponsor's right to bring lands within the scope of this Declaration prior to fifteen (15) years from the date of recording of this Declaration without the written consent of the Sponsor.

Section 2.03 - Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions, and restrictions established upon any other properties. No such merger or consolidation, however, shall

effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

## ARTICLE III

## THE ASSOCIATION
## STRUCTURE, MEMBERSHIP, VOTING RIGHTS, AND DIRECTORS

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

Section 3.02 - Membership. The Association shall have as Members only Owners and the Sponsor. The Sponsor shall be the Class B Member. All Owners (other than the Sponsor and except for the case of joint ownership as set forth in Section 3.04 of this Declaration) shall, upon becoming such, be deemed automatically to have become Class A Members and there shall be no other qualification for membership. Except as Section 3.04 of this Declaration may be applicable, membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03 - Voting Rights. The voting rights of the Members shall be as determined in the By-Laws of the Association.

Section 3.04 - Lots Owned or Held by More Than One Person or by a Corporation. When any Lot is owned or held by more than one person or entity as joint tenants, tenants by the entirety, or tenants in common, such Owners shall agree among themselves as to which one of such Owners shall be a Member of the Association. The Association shall require a written statement (in such form as the Association may prescribe) to be signed by all of such Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no membership in the Association with respect to a jointly owned Lot unless such a

written statement with respect to such Lot has been submitted to the Association.

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

Section 3.05 - Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot or Unit merely as security for the performance of an obligation shall not be a Member.

Section 3.06 - Assigning Right to Vote. Subject to the filing of an amendment to the offering plan pursuant to which the Sponsor has offered interests in the Association, the Sponsor may assign its membership in the Association to any person, corporation, association, trust, or other entity, and such assignee, and any future assignee of such membership, may make successive-like assignments. Any Class A Member shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.07 - Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting, and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.08 - Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.09 - Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.10 - Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason

of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 3.11 - Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than ten years from the date of recording the Declaration, the Board of Directors may not, without the Sponsor's written consent, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property; (ii) assess any amount for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund in excess of an amount equal to the proportion of the then-existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), this Section shall not be amended without the written consent of the Sponsor.

## ARTICLE IV

## PROPERTY RIGHTS AND EASEMENTS

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

Section 4.02 - Right and Easement of Enjoyment in Association Property. Every Owner (and such Owner's guests, licensees, tenants, and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Sections 4.03 and 4.12 herein and the rights of the Sponsor as set forth in Section 4.04 and 4.10 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01 hereof.

Every Owner shall also have (i) an easement and right of access for himself or herself (and any contractors, employees, and agents) in Association Property to maintain, repair, or replace any property of such Member which the Association has no obligation to maintain (e.g., glass breakage); (ii) an easement for ingress and egress by vehicle or on foot as described in Section 4.06 hereof; and (iii) the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Owner for ingress and egress.

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

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

b. to grant easements or rights of way, with or without consideration, to any public or private utility corporation, cable television company, governmental agency, or political subdivision;

c. to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or cable television company or for other public purposes, e.g., as set forth in subsection b above, consistent with the intended use of such land by or for the benefit of the Owners, which shall not require the consent of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Members then entitled to vote (i.e., see Section 3.03 of this Declaration) who shall vote by written ballot which shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3 percent or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable;

d. to charge reasonable admission and other fees for the use of Association Property;

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

f. Each Dwelling Unit(Townhouse) has a water meter and members pay directly for water use in their Townhouse. The association has the right to draw water from Homeowners bibs for watering the lawns and other common area plantings and for repairs to exterior of Dwelling Units for which the Homeowner will be reimbursed. The association will either purchase sub-meter(s) or contract with individual owners.

Section 4.04 - Rights of Sponsor. With respect to Association Property and in addition to the rights reserved in Section 4.10 below, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), the Sponsor shall have the right to:

a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes, and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone, and sewer to service any Additional Property as referred to in Section 2.02 of this Declaration;

b. connect with and make use of utility lines, wires, pipes, conduits, and related facilities located on the Association Property for the benefit of any Additional Property;

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

d. operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and

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

The easements, rights-of-way, and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor, and their successors and their assigns. With respect to its exercise of the above rights, the Sponsor agrees (i) to repair any damages resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Sponsor's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Sponsor.

**Section 4.05 - Common Utility and Conduit Easement.** All pipes, wires, coaxial cables, conduits, and public utility lines located on each Lot or within any Unit shall be owned by the Owner of such Lot or Unit. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use the pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines servicing, but not located on, such other Unit or Lot. The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair, or replacement of any pipes, wires, coaxial cables, conduits, drainage areas, or public utility lines located on any Lot or within any Unit and servicing two or more Units. The cost of such repair, maintenance, or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof.

The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access over the exterior walls of various Units for the placement, maintenance, repair, and replacement of utility boxes and telephone pedestals.

Section 4.06 - Common Access Easement. The Sponsor and all Owners and their guests, mortgagees, licensees, and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways, and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair, and replacement of walkways, driveways, and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.07 - Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

Section 4.08 - Right of Association to Contract Duties and Functions; Restriction Against Self-Management. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums, and cooperatives. The Association shall not establish self-management at any time subsequent to any lending institution which is a first mortgagee of Lots having required professional management.

Section 4.09 - Environment Consideration. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10 - Easements Reserved to Sponsor for Benefit of Additional Property. Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.02 of this Declaration for the following purposes:

a. ingress and egress over roadways; and

b. use and connection with utility lines and related facilities including, but not necessarily limited to, telephone, water, gas, electric, sewer, and cable television. This easement shall not include the right to consume any water, gas, or electricity for which one or more individual Owners are billed directly without the consent of the individual Owners affected.

Upon the connection of lines and/or facilities servicing such land area comprising the Additional Property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.11 - Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

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

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

Section 4.12 - Association Easement for Maintenance and Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible to maintain, repair or replace as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

Section 4.13 - Easement for the Frank M. Hill Subdivision and the Frederick P. Stallman Subdivision. The subject subdivisions have had a right-of-way over the land being developed as HILLSBORO COVE known as Sunset Trail. An easement may being granted and filed in the County Clerk's Office to provide access for the Frank M. Hill Subdivision and the Frederick P. Stallman Subdivision via Hillsboro Cove Circle and Spinaker Lane. HILLSBORO COVE will be responsible for maintaining all of the newly constructed, paved roadway and appurtenances, and the remainder of the existing unpaved roadway will be maintained by the property owners of the Frank M. Hill Subdivision and the Frederick P. Stallman Subdivision as they have done in the past.Sunset Trail Easement will remain until Sunset Trail residence cease to use said access.

## ARTICLE V

## ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01 - Imposition, Personal Obligation, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

a. annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); and

b. special assessments ("Special Assessments"), together hereinafter being referred to as "Assessments."

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

Section 5.02 - Purpose of Maintenance Assessment. The purpose of Maintenance Assessment shall be to fund the maintenance, preservation, operation, and improvement of the Association Property and the promotion of the recreation, safety, and welfare of the Owners, including but not limited to: the payment of taxes on Association Property, the Units, the Owners and the Association's officers, directors, and employees obtained pursuant to Article IX of this Declaration; the maintenance, repair, and replacement of all facilities commonly servicing the Owners, whether on or off the Lots, such as the private roadways and landscaped areas; and the maintenance, repair, and replacement of the Unit exteriors - siding, roofs, gutters, and walkways placed on the Property and the painting of exterior trim, and the exterior of doors and windows which open from the Unit; the cost of labor, equipment, materials, management, and supervision thereof, and for such other needs as may arise. The amount of any reserves shall be adequate to fund the periodic maintenance, repair and replacement of property the Association is obligated to maintain and shall be not less than the reasonable requirements of existing or proposed lenders, holders, and insurers of first mortgages on the Lots and Units.

Section 5.03 - Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or, if the Sponsor assumes responsibility for all Association expenses until such time, on such date thereafter as determined by the Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The

Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04 - Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, except that the Sponsor will only be obligated for the lesser of (i) the difference between the actual Association expenses (including budgeted amounts for reserves) and the Association charges levied on Owners who have closed title to their Lots as projected in the offering plan filed with the New York State Department of Law pursuant to which interests in the Association were initially offered for sale; or (ii) Maintenance Assessments and Special Assessments on all unsold Lots.

Section 5.05 - Basis for Maintenance Assessment. Subject to a lesser amount payable by the Sponsor as permitted by Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06 - Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Members then entitled to vote (i.e., see Section 3.03 of this Declaration), voting in person or by proxy, written notice of which change shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than ten (10) years after the date of recording the Declaration, any change in the basis of Assessments which adversely affects a substantial interest

or right of the Sponsor with respect to unsold dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3 percent or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Any change in the basis of Assessments shall be equitable and non-discriminatory within the following classifications: (i) Lots paying full Maintenance Assessments; and (ii) Lots paying less than full Maintenance Assessments pursuant to Section 5.04 above.

Section 5.07 - Special Assessments. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, unusual expenses including capital improvements, including without limitation, the construction, reconstruction, or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 100 percent of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Members then entitled to vote (i.e., see Section 3.03 of this Declaration) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members then entitled to vote at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.08 - Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property

in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

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

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

If the Assessment or any installment thereof is not paid within sixty (60) days after the due date, the Association shall notify any first mortgage holder, as shown on the records of the Association, on the Lot for which the Assessment or any installment thereof is past due, of such non-payment.

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

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

Section 5.09 - Notice of Default. The Board of Directors, when giving notice to a Unit Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of said Assessment.

Section 5.10 - Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11 - Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender on the Lot or Unit on which such certificate has been furnished.

Section 5.12 - Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments, provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13 - Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith, mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note
holders shall be subject solely to the discretion of the Board of Directors acting in its absolute discretion, except that (i) any member of the Board of Directors of the Association who has been elected or appointed by the Sponsor shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Sponsor; and (ii) any consent of the Sponsor as required by Section 3.11 of this Declaration must be obtained.

Section 5.14 - Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

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

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

(1) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;

(2) establish sinking funds and/or other security deposits;

(3) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;

(4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;

(5) provide for the custody and safeguarding of all funds received by it.

## ARTICLE VI

## MAINTENANCE BY THE ASSOCIATION

**Section 6.01 - Maintenance and Repair by the Association.** Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of the private roadway and driveways on the Property, snow removal from the private roadway and driveways on the Property, and, except as otherwise provided in this Declaration, the Maintenance of all landscaped areas (whether or not such areas are on Association Property) shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing the Units and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of, the Association.

The Association shall be responsible for the maintenance of all shrubbery and other plantings (except for flower beds) installed by or at the direction of the Sponsor or the Association but not for shrubbery, flower beds or other plantings installed by or at the direction of any Lot Owner or Unit occupant.

**Units.** With respect to the Units, the Association shall repair and replace the exterior siding, gutters and roofs, paint the exterior trim, and the exterior of windows and doors (excluding storm doors) which open from a Unit and caulk the windows, but shall not (i) repair or replace window panes; or (ii) maintain, repair or replace doors.

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall paint, repair and replace fences or railings initially installed by the Sponsor, and maintain, repair and replace all walkways, patios and decks.

The Association may increase or decrease its maintenance responsibilities, e.g., to maintain, repair and replace as necessary the roofs and gutters to the Units, or to paint or stain as necessary Unit exteriors, trim, windows and doors, provided (i) such increase or decrease is approved in writing by two-thirds (2/3) of all Members then entitled to vote (i.e., see Section 3.03 of this Declaration); and (ii) if such increase or decrease is proposed while the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than ten (10) years after the date of recording the Declaration, the written consent of the Sponsor will be required.

Any responsibility for maintenance, repair or replacement with respect to the Lots and Units which is not the responsibility of the Association is the responsibility and shall be made at the cost and expense of the respective Owner(s).

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.12 of this Declaration.

Stormwater Management System. The stormwater management system has been designed as an infiltration system in accordance with the "Environmental Objectives and Development Management Measures - Irondequoit Bay - May, 1985" and the "Best Management Practices for Stormwater Runoff Management - May, 1985." The site was determined as an ideal location for the installation of a stormwater infiltration management system to mitigate direct stormwater runoff into Irondequoit Bay. The stormwater infiltration management system requires a degree of maintenance. All inlets (catch basins and manholes) and conducts shall be inspected annually and any residue found in an inlet(s) and conducts shall be removed. The maintenance and repair of and replacement of the Stormwater Management system shall be the responsibility of, and expense of , the association.

**Section 6.02 - Repairs and Maintenance Which Are Not the Responsibility of the Association.** Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of an Owner (including (1) any family member, tenant, guest or invitee of such Owner; (2) any family member, guest or invitee of the tenant of such Owner; and (3) any guest or invitee of (i) any member of such Owner's family; or (ii) any family member of the tenant of such Owner) or the Sponsor shall be made at the cost and expense of such Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit or Lot, as the case may be, to secure the payment thereof.

**Section 6.03 - Quality and Frequency of Maintenance and Repairs.** All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance [illegible] Property.

## ARTICLE VII

## ARCHITECTURAL CONTROLS

**Section 7.01 - Control by Association.** After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee as provided in Section 7.02 below.

Section 7.02 - Composition and Function of Architectural Committee. The Architectural Committee shall be a permanent committee of the Association and shall (i) review and approve or disapprove all proposed additions, modifications or alterations to any improvements or any proposed change in the use of a Lot or any other portion of the Property (including Association Property) after transfer of title to such Lot or other portion of the Property; and (ii) enforce those provisions of the General Covenants and Restrictions set forth in Article X of this Declaration pertaining to the exterior appearance and use of the Property as specifically set forth in Article X. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three or more persons (as determined by the Board of Directors of the Association) for terms of two years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03 - Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor, no exterior addition, modification or alteration (specifically including, but not limited to landscaping) shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by, the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04 - Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;

b. failure to include information in such plans as requested;

c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including, without limitation, colors or color scheme, finish, proportion, style or architecture, proposed parking;

d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

e. failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations;

f. any other matter which, in the judgment and sole discretion of the Architectural Committee, would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05 - Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

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

Section 7.07 - Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 35 days after submission thereof, said applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

a. 15 days after the date of receipt of such second notice, if such second notice is given;

b. 70 days after the date the plans were originally submitted.

Section 7.08 - Committee's Right to Promulgate Rules and Regulations. Subject to the provisions of Section 7.12 below, the Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements or uses, provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09 - Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees or individual members of the Architectural Committee to perform any or all of the functions of the Committee as long as the number and

identity, the functions and the scope of authority of such staff or members have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Committee.

Section 7.10 - Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof shall entitle any person to rely thereon (i) with respect to conformity with laws, regulations, codes or ordinances; or (ii) with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person in connection with such submission.

Section 7.11 - Architectural Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.12 - Restrictions on Change of Architectural Controls, Rules or Regulations. The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Members then entitled to vote (i.e., see Section 3.03 of this Declaration) voting in person or by proxy, written notice of which change shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the association at least forty (40) days

in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33 1/3 percent or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

## ARTICLE VIII

## PARTY WALLS AND ENCROACHMENTS

**Section 8.01 - Party Walls.** A wall shall be considered a party wall where all of the following conditions are met:

a. the wall is built as part of the original construction of the Units;

b. the wall is an interior wall of a Building; and

c. the wall serves as a common wall of two adjoining Units, whether or not the wall is on the dividing line between such Units.

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

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

**Section 8.03 - Exposure of Wall.** An Owner who, by negligent or willful act causes the party wall to be exposed to the elements or otherwise damaged, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements or other cause of damage.

Section 8.04 - Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall.

Section 8.05 - Destruction of Party Wall. Except as provided in Section 8.03 above, in the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit which used the wall may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half the cost of such restoration) from the Owner of the other Unit which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06 - Encroachments or Projections. If any Unit encroaches or projects up to two feet upon or over any other Unit or Lot or upon or over any portion of the Association Property or if any deck or patio (if any) servicing a Unit encroaches or projects upon or over any portion of the Association Property as a result of: (i) original construction; (ii) settling or shifting; or (iii) replacement as a result of fire, condemnation, eminent domain proceedings, or proceedings of similar import and effect, such encroachments or projections shall be permitted and valid easements for such encroachments or projections and the maintenance thereof shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

Section 8.07 - Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Owner.

## ARTICLE IX

## INSURANCE AND RECONSTRUCTION

Section 9.01 - Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain: (1) fire and casualty insurance; (2) liability insurance for occurrences on the Association Property; (3) directors' and officers' liability

insurance covering wrongful acts of officers and directors of the Association; (4) fidelity insurance covering those who handle Association funds; and (5) worker's compensation insurance covering Association employees and those who perform work for the Association, with coverages to be as follows:

1. **Fire and Casualty.** The policy shall cover the interests of the Association, the Board of Directors and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value (without deduction for depreciation) of all improvements on the Property under the "single entity" concept, i.e., covering the Units as initially built and including the wall-to-wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings and all machinery servicing the Units and common facilities, excluding: (i) the land and foundations; (ii) the personal property of Unit Owners and occupants; and (iii) any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by present or prior Unit Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; (ii) "agreed amount" (unless not obtainable) and inflation guard; (iii) coverage for loss of maintenance assessments from Unit Owners forced to vacate because of fire or other insured against casualty; (iv) waiver of any right to claim by way of subrogation against individual Unit Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association; (v) an exclusion from the "no other insurance" clause of individual Unit Owners' policies which shall provide that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Unit Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Unit Owners or mortgagees; (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control; (vii) cross-liability giving the Unit Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant; (viii) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Units reported to the insurance carrier or its agent; (ix) a provision requiring periodic review at least every two years to assure the

sufficiency of coverage; and (x) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or from such other source as the Board of Directors shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land, foundations and improvements made by present or prior Unit Owners or occupants) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The proceeds of all policies of physical damage insurance, if $50,000.00 or less, shall be payable to the Association, and if $50,000.00 or more, to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Unit Owners pursuant to Section 9.02 of this Declaration. This $50,000.00 limitation shall increase automatically by 5 percent each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

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

The Association, each Unit Owner, and such Unit Owner's known mortgagee shall be a named insured on the policy, as their interests may appear. Each Unit Owner and such Owner's known mortgagee shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Duplicate originals of the policy, all renewals thereof, and any certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished to all mortgagees of Units requesting the same.

2. **Liability.** The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences within such Owner's Unit or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander, false arrest and invasion of privacy); (ii) personal injury; (iii) medical payments; (iv) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to a Lot Owner because of negligent acts of the Association or any other Lot Owner; (vi) contractual liability; (vii) water damage liability; (viii) hired and non-owned vehicle coverage; (ix) liability for the property of others; (x) host liquor liability coverage with respect to events sponsored by the Association; and (xi) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be cancelled or suspended (including cancellation for non-payment of premium) or substantially modified without at least thirty (30) days prior written notice to the insured, including all known mortgagees of Units or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

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

3. **Directors' and Officers' Liability.** The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims-made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. The policy shall provide for "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

4. **Fidelity Insurance.** The fidelity insurance shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The insurance shall be in an amount not less than a sum

equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the insurance may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to all institutional first mortgagees of any Unit (s) whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Lot Owner, Lot mortgagee or prospective Lot Owner or Lot mortgagee, increase the amount of such insurance to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot.

5. **Workers' Compensation.** To the extent deemed reasonable and necessary by the Board of Directors, worker's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

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

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

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

Section 9.02 - Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments, provided, however, that if three-fourths (3/4) or more of the Units in a Building are destroyed or substantially damaged and the Owners of 75 percent or more of all Units do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to an Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Unit. In the event that insurance proceeds are, for any reason, insufficient to pay all off the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against the Owners of the damaged property, which Special Assessment to make up the deficiency against the Owners of the damaged property, which Special Assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property.

In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be; (ii) arrange for the prompt repair and restoration of the damaged property; and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Unit Owner or any other party shall have priority to receive any portion of such surplus over such Unit Owner's mortgagee.

Section 9.03 - Insurance Carried by Unit Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty and theft coverage for Owner's personal property; (2) coverage for such Owner's personal liability within the Owner's Unit and on such Owner's

Lot; and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that (i) such policies contain waivers of subrogation, if available; and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

Section 9.04 - Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Units, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

## ARTICLE X

## GENERAL COVENANTS AND RESTRICTIONS

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

Section 10.02 - Animals Including Birds and Insects. Except fish or birds kept in a cage, no animals or reptiles of any kind shall be raised, bred or kept or maintained on any Lot or other portion of the Property, except owners may keep a small dog or cat inside their townhouse units. No more than one small dog or cat shall be kept in any one townhouse, however, and any dog or cat must be kept on a leash at all times when outside of a townhouse on the Properties. No small dog or cat may be kept or left unattended on the grounds, in the garages, patios or decks at any time, whether or not chained, caged or tethered. Any pet waste shall be properly disposed of by the owner of the townhouse in which the pet is kept. No pet waste shall be deposited or left anywhere on the grounds. The Board of Directors may, in their sole discretion, require that any animal which a majority of the Directors deem to be a nuisance, or which has been kept in violation of any of these restrictions, or the

owner of which has repeatedly failed to observe and comply with these restrictions or any rules promulgated by the Directors in connection therewith, be permanently removed from the Properties upon three (3) days written notice to the owner or occupant harboring the same. Any small dog or cat found on the properties outside of a townhouse which is not on a leash or in a cage or similar restraint, or which has been left unattended, may be summarily removed by the Association or the managing agent, or their employees, and delivered to the custody of any local or municipal authority with power to impound the same, without any liability on the part of the Association, its directors, agents or employees, for such removal.

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

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

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

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

Section 10.07 - Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors.

Section 10.08 - Television and Radio Antennas. No outside television or radio antenna shall be erected on any Lot or other portion of the Property except with the consent of the Architectural Committee.

Section 10.09 - Landscaping. After the transfer of title by the Sponsor to a Lot or other portion of the Property, no landscaping (specifically including but not limited to the removal of trees) shall be performed on such Lot or other portion of the Property except with the permission of the Architectural Committee. The Architectural Committee, in its discretion, may adopt and promulgate rules and regulations regarding landscaping of the Property and the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization. This Section shall not apply to the Sponsor.

Section 10.10 - Residential Use Only. Except as provided in Section 10.11 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto, except that so long as the Sponsor holds for sale any lot or dwelling unit located on the Property or on the Additional Property (whether or not subject to the Declaration), the Sponsor may use one or more Lots or other portions of the Property for model homes and/or a real estate office.

**Section 10.11 - Commercial and Professional Activity on Property.** No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except (i) by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots and Units; and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

**Section 10.12 - Outside Storage.** Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be allowed for no more than seven (7) consecutive days in any thirty-day period, except as may be otherwise permitted by the Association's Board of Directors (unless prohibited altogether by the applicable zoning requirements).

**Section 10.13 - Outdoor Repair Work.** With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association's Board of Directors.

**Section 10.14 - Oversized, Commercial or Unlicensed Vehicles.** Unless used in connection with the construction or sale of Units by the Sponsor or maintenance of the Property, or unless otherwise consented to by the Board of Directors, the following shall not be permitted to remain overnight on the Property:

a. commercial vehicles of a weight of two (2) tons or more;

b. unlicensed motor vehicles of any type.

c. use of all terrain vehicles on the property.

**Section 10.15 - Clotheslines.** No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Architectural Committee.

**Section 10.16 - Lease of Unit.** Any lease of a Unit shall be (i) in writing; (ii) for an initial term of not less than six (6) months; and (iii) for the entire Unit.

Section 10.17 - Public Safety. HILLSBORO COVE is a private housing project and traffic will be regulated in accordance with the New York State Vehicle and Traffic Law which will be enforce in accordance with Article 39, Section 1660a of the N.Y.S. Vehicle and Traffic Law.

## ARTICLE XI

## ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

Section 11.02 - Enforceability.

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

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or rules and regulations of the Association or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future

violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

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

Section 11.04 - Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot, Unit or other portion of the Property owned by such Owner, if any.

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

In addition to the above, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is

unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

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

Section 11.07 - Amending or Rescinding. The Sponsor, during the time the Sponsor owns any Lot, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent. In the event that New York Law is changed to permit Members to cast the same amount of votes as the number of Lots such Member owns, the Sponsor reserves the right to amend such provisions of this Declaration as are necessary to allow Members to cast the same amount of votes as the number of Lots owned, pursuant to the provisions of such law. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of not less than 67 percent of the Members then entitled to vote. In addition, and notwithstanding the above, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than ten (10) years after the date of recording the Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

The Members then entitled to vote shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or rescission.

In addition to the approval of the Owners and Sponsor as provided for herein, no amendment or rescission of a material nature shall be effective if lending institutions, which together are first mortgagees on 51 percent or more of the Lots on which there are mortgages as shown on the records of the Association, advise the

Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 11.08 - Owner Responsible for Tenants. Any lease of a Unit shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws, or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.09 - When Amendment or Rescission Becomes Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Monroe. Which instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10 - Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2020, and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten (10) years.

Section 11.11 - Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

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

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

Section 11.12 - Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.13 - Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.14 - Invalidity of Provision of Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII

## GENERAL

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

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

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

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

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

(SEAL) HILLSBORO COVE DEVELOPMENT CO., INC.

By:_____

HILLSBORO COVE HOMEOWNERS ASSOCIATION, INC.

By:_____

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

On this day of , 1987, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of the HILLSBORO COVE DEVELOPMENT CO., INC., the corporation described in, and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that (s)he signed his/her name thereby by like order.

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

On this day of , 1987, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of the HILLSBORO COVE HOMEOWNERS ASSOCIATION, INC., the corporation described in, and which executed the above instrument; that said corporation has no seal, never having adopted any seal, and that the foregoing instrument was executed without corporate seal by order of the Board of Directors of said corporation and that (s)he signed his/her name thereto by like order.

DESCRIPTION OF COMMON AREA FOR
HILLSBORO COVE - PHASE I

All that tract or parcel of land containing 9.550 acres, more or less, situate in part of Town Lot No. 47 and Town Lot No. 36, Gore Tract, Township 14, Range 7, Town of Webster, County of Monroe, State of New York, all as shown on a map entitled, "Hillsboro Cove - Phase I, Plat Map", prepared by Charles J. Costich, P.E.,L.S.,P.C., dated January 1987, having drawing number 131-25, more particularly bounded and described as follows:

Commencing at a point on the centerline of improvement of Bay Road, said point being the westerly extension of the common property line of lands now or formerly owned by Vivian Wallace to the north and lands formerly owned by Henry J. Kujawa to the south; thence

A) S 88°-10'-43" W, along the extension of the aforesaid common property line, a distance of 75.12 feet to a point on said common property line, said point also being on the westerly right-of-way line of Bay Road and the true point of beginning; thence

1) Southeasterly, along the aforesaid westerly right-of-way line of Bay Road and along a curve to the right, having a radius of 5659.58 feet, an arc distance of 522.62 feet to a point of cusp, said point also being the intersection of the aforesaid westerly right-of-way line of Bay Road and the northerly right-of-way line of Glen Edith Drive; thence

2) Southwesterly, along the aforesaid northerly right-of-way line of Glen Edith Drive and along a curve to the left, having a radius of 135.00 feet, an arc distance of 188.37 feet to a point of tangency; thence

3) S 14°-59'-30" E, continuing along the aforesaid right-of-way line of Glen Edith Drive, a distance of 151.45 feet to an angle point; thence

4) S 31°-09'-06" W, continuing along the aforesaid right-of-way line of Glen Edith Drive, a distance of 145.08 feet to a point; thence

5) N 81°-22'-11" W, a distance of 39.09 feet to a point; thence

6) S 79°-02'-22" W, a distance of 219.26 feet to a point; thence

7) N 36°-21'-00" W, a distance of 82.47 feet to a point, said point being on a curve; thence

8) Northeasterly and northerly, along a curve to the left, having a radius of 360.00 feet, an arc distance of 337.09 feet to a point of tangency; thence

9) N 00°-00'-00" E, a distance of 160.08 feet to a point of curvature; thence

10) Northwesterly, along a curve to the left having a radius of 360.00 feet, an arc distance of 114.58 feet to a point on said curve; thence

11) S 86°-40'-35" W, a distance of 366.66 feet to a point; thence

12) N 38°-19'-15" W, a distance of 146.24 feet to a point, said point being on a curve; thence

13) Southwesterly, along a curve to the left, having a radius of 360.00 feet, an arc distance of 158.99 feet to a point on said curve; thence

14) N 38°-19'-15" W, a ditance of 298.10 feet to a point; thence

15) S 88°-10'-43" W, a distance of 142.01 feet to a point; thence

16) N 01°-49'-17" W, a distance of 50.00 feet to a point, said point being on the southerly property line of lands now or formerly owned by Damascus Temple; thence

17) N 88°-10'-43" E, along the aforesaid southerly property line of Damascus Temple and continuing along the southerly property line of lands now or formerly owned by Vivian Wallace, a distance of 1020.00 feet to the point of beginning.

Excluding from the above mentioned area, 2.192 acres of land, to be reserved for building purposes. It is the intent of this description to describe a common area for Hillsboro Cove - Phase I, containing a total of 7.358 acres of land.

SCHEDULE-B

# DESCRIPTION OF
# REMAINING LANDS OF HILLSBORO COVE
# (EXCLUDING PHASE I)

All that tract or parcel of land containing 34.075 acres, more or less, situated in part of Town Lot No. 47 and Town Lot No. 36, Gore Tract, Township 14, Range 7, Town of Webster, County of Monroe, State of New York, more particularly bounded and described as follows:

Commencing at a point on the centerline of improvement of Bay Road, said point being the westerly extension of the common property line of lands now or formerly owned by Vivian Wallace to the north and lands formerly owned by Henry J. Kujawa to the south; thence

(A) S 88°-10'-43" W, along the extension of the aforesaid common property line, a distance of 75.12 feet to a point on said common property line, said point also being on the westerly right-of-way line of Bay Road; thence

(B) S 88°-10'-43" W, along the aforesaid southerly property line of Vivian Wallace and continuing along the southerly property line of lands now or formerly owned by Damascus Temple, a distance of 1020.00 feet to the true point of beginning; thence

(1) S 01°-49'-17" E, a distance of 50.00 feet to a point; thence

(2) N 88°-10'-43" E, a distance of 142.01 feet to a point; thence

(3) S 38°-19'-15" E, a distance of 298.10 feet to a point, said point being on a curve; thence

(4) Northeasterly, along a curve to the right, having a radius of 360.00 feet, an arc distance of 158.99 feet to a point on said curve; thence

(5) S 38°-19'-15" E, a distance of 146.24 feet to a point; thence

SCHEDULE-B

DESCRIPTION OF
REMAINING LANDS OF HILLSBORO COVE
(EXCLUDING PHASE I)

(6) N 86°-40'-35" E, a distance of 366.66 feet to a point, said point being on a curve; thence

(7) Southeasterly, along a curve to the right, having a radius of 360.00 feet, an arc distance of 114.58 feet to a point of tangency; thence

(8) S 00°-00'-00" W, a distance of 160.08 feet to a point of curvature; thence

(9) Southerly and southwesterly, along a curve to the right, having a radius of 360.00 feet, an arc distance of 337.09 feet to a point on said curve; thence

(10) S 36°-21'-00" E, a distance of 82.47 feet to a point; thence

(11) S 79°-02'-22" W, a distance of 63.01 feet to a point; thence

(12) S 60°-09'-07" W, a distance of 71.49 feet to a point; thence

(13) S 21°-37'-42" W, a distance of 209.30 feet to a point; thence

(14) S 63°-21'-07" W, a distance of 107.23 feet to a point; thence

(15) S 44°-07'-19" W, a distance of 132.33 feet to a point; thence

(16) S 85°-33'-35" W, a distance of 670.15 feet to a point; thence

(17) S 88°-29'-46" W, a distance of 85.22 feet to a point; thence

(18) N 08°-27'-33" W, a distance of 89.41 feet to a point; thence

(19) S 88°-29'-46" W, a distance of 43.85 feet to a point; thence

SCHEDULE-B

DESCRIPTION OF
REMAINING LANDS OF HILLSBORO COVE
(EXCLUDING PHASE I)

(20) N 01°-30'-14" W, a distance of 75.17 feet to a point; thence

(21) N 06°-32'-58" W, a distance of 80.92 feet to a point; thence

(22) N 11°-08'-15" W, a distance of 52.49 feet to a point; thence

(23) N 01°-20'-58" W, a distance of 18.02 feet to a point; thence

(24) N 01°-41'-49" E, a distance of 312.84 feet to a point; thence

(25) N 20°-50'-02" W, a distance of 209.96 feet to a point; thence

(26) N 34°-32'-52" W, a distance of 107.54 feet to a point; thence

(27) N 48°-03'-52" W, a distance of 81.04 feet to a point; thence

(28) N 01°-49'-17" W, a distance of 377.20 feet to a point, said point being on the southerly property line of lands now or formerly owned by Damascus Temple; thence

(29) N 88°-10'-43" E, along the aforesaid southerly property line of Damascus Temple, a distance of 579.77 feet to the true point of beginning.

# CERTIFICATE OF INCORPORATION

# OF

# HILLSBORO COVE HOMEOWNERS ASSOCIATION, INC.

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

IT IS HEREBY CERTIFIED THAT:

1. The name of the corporation is:

HILLSBORO COVE HOMEOWNERS ASSOCIATION, INC.

2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

3. The purpose or purposes for which the corporation is formed are as follows:

To associate its members together for their mutual benefit as homeowners, to represent its members' point of view to the owners and managing agents, to provide its members with information relating to their rights as homeowners, to promote good will and cooperation among its members, and generally to do any and all acts suitable, proper and conducive to the successful conduct of a homeowner's association.

4. In furtherance of its corporate purposes, the corporation shall have all the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law, together with the power to solicit grants and contributions for the corporate purposes.

5. The corporation shall be a Type A corporation pursuant to Section 201 of the Not-For-Profit Corporation Law.

6. The names and addresses of the all the initial directors of the corporation are:

Sam F. La Franco
1071 Larkston Drive
Webster, New York 14580

Daniel P. Cappa
14 LaCroix Court
Rochester, New York 14609

Franklin D'Aurizio
400 Imperial Circle
Rochester, New York 14617

7. The county in which the office of the corporation is located in the State of New York is: Monroe

8. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

The corporation
1770 East Ridge Road
Rochester, New York 14622

IN WITNESS WHEREOF, the undersigned incorporator, being at least eighteen years of age, has executed and signed this Certificate of Incorporation this 30th day of January, 1987.

Diane L. Foley
Diane L. Foley
33 Rensselaer Street
Albany, New York 12202

STATE OF NEW YORK )
)ss.
COUNTY OF ALBANY )

On this 30th day of January, 1987, before me personally came Diane L. Foley to me known to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

Barbara Kinnaw
Notary Public, State of New York
No. 4720956
Qualified in Albany County
Term Expires May 31, 1988

Notary Public