



DECLARATION
establishing
KIRKDALE VILLAS ASSOCIATION, INC.

Kirkdale Villas Association, Inc.
P.O. Box 16101
Rochester, NY, 14626

LOCATION MAP: (N.T.S.)

LAKE
ONTARIO

EDGEWATER DR.



KUHN RD.

LAKE
ONTARIO

STATE

JANES ROAD

KIRK ROAD

SITE

LATTA ROAD

LONG POND ROAD

FLYNN ROAD

POST AVE.

NORTH GREECE ROAD

RD. PARKWAY

ISLAND COTTAGE

DEWEY AVE.



TOWN OF GREECE

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

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

WITNESETH:

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

WHEREAS, Kirkdale Villas Association, Inc. desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community, and

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

WHEREAS, Kirkdale Villas Association, Inc. has incorporated the Kirkdale Villas Association, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the afore said functions.

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

ARTICLE I
DEFINITIONS

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

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

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01 Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Greece, County of Monroe and State of New York, and is more particularly shown on the map of Kirk Road Villas, Section 1, filed in the Monroe County Clerk's Office on November 16th 2005 in Liber 325 of Maps, at page 81, and Kirk Road Villas, Section 2, filed in the Monroe County Clerk's Office on May 4th, 2006 in Liber 327 of Maps, at page 63, all of which property shall be hereinafter referred to as "Property".

Section 2.02 Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

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

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

Section 3.03 Voting. All Owners, shall be Class A Members and all Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned.

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

Section 3.05 Assigning Right to Vote. Any Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.06 Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.07 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 3.08 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 3.09 Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled

ARTICLE IV
PROPERTY RIGHTS AND EASEMENTS

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

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

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

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

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

- e. to enter into agreements, reciprocal or otherwise, with other Homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than 60 days in advance of the vote on the proposed agreement;
- f. to use electricity from any Lot for the incidental maintenance needs of the Association;
- g. to draw water more or less equally from Lot Owners outdoor hose bibs for watering lawns and shrubs. Lot Owners shall have the responsibility to have their water supply valve for the outdoor bibs in the open position from May 1st through October 31st of each year.

Section 4.04 Rights of Kirkdale Villas Association, Inc. Kirkdale Villas Association, Inc. reserves an easement for utility purposes over and under the Common Area of the Association, as more particularly described on Schedule B attached hereto and made a part hereof, for the development of lands to the south of the Property. This easement shall be permanent, run with the land and be binding upon and for the benefit of the Association their respective successors and assigns.

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

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's driveway as constructed by the Kirkdale Villas Association, Inc

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's enclosed porch, deck or patio, if any, as constructed by the Kirkdale Villas Association, Inc., or by the Lot Owner with the Association's prior consent, servicing the Owner's Villa.

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

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

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

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

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

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

Kirkdale Villas Association, Inc. and all Owners and their guests, licensees and invitees shall have an easement of ingress and egress by foot and vehicle, and for utilities, for the use and enjoyment of the paved right of way known as Kirkdale Circle, as same is shown on the map of Kirk Road Villas, Section 1, filed in the Monroe County Clerk's Office on November 16th 2005 in Liber 325 of Maps, and Kirk Road Villas, Section 2, filed in the Monroe County Clerk's Office on May 4th 2006 in Liber 327 of Maps, at page 63.

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

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

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

ARTICLE V

ASSESSMENTS

Section 5.01 Imposition, Personal Obligations, Lien. Each 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"); (b) special assessments for capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year ("Special Assessments"); hereinafter collectively referred to as "Assessments".

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

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

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

Section 5.04 Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot transferred to a third-party purchaser for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by a fraction, the numerator of which is one (1), and the denominator of which is the total number of Lots then subject to this Declaration, as amended.

Section 5.05 Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until the Kirkdale Villas Association, Inc., or its designee, no longer owns a Lot then subject to this Declaration, no change in the basis of Maintenance Assessments which adversely affects the interest of the Kirkdale Villas Association, Inc. with respect to unsold Lots shall be valid except with the specific consent of the Kirkdale Villas Association, Inc. in writing. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Section 5.06 Special Assessments for Capital Improvements and Other Needs. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date

Section 5.07 Non-Payment of Assessment If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

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

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

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

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

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or at the request of a mortgagee, shall send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The Mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessment.

Section 5.08 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 5.09 Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

Section 5.10 Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.11 Right to Borrow and Mortgage. In order to fulfill the purposes, set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject to the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called.

Section 5.12 Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

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

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01 Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all paved areas on the Association Property, the private right-of-way known as Kirkdale Circle, snow plowing of all paved areas (including sidewalks), and the maintenance of all landscaped areas within Lots and Association Property shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether such lines and facilities are

on individual Lots or Association Property) also shall be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

With respect to the Villas, provided the Association elects to maintain the exterior of the Villas, the exterior maintenance of the Villas, including or excluding such elements as the Association may decide. The Association is not responsible for the maintenance of any portion of the individual dwellings. The Association shall not be responsible for the removal of snow from roofs.

With respect to the other improvements on a Villa Lot, those portions of sewer, water, and utility laterals servicing one (1) or more Villas and not maintained by a utility company, public authority, municipality or other entity, will be maintained by the Association, limited however to repair necessitated by leakage or structural failure only.

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

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

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property, but which is occasioned by a negligent or willful act or omission of a Lot Owner, shall be made at the cost and expense of such Lot Owner. 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 Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot 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, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

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

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01 Control by Association. 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, including but not limited to Article X, shall be the responsibility of the Association, acting through the Board of Directors, or through the Architectural Standards Committee when one is appointed by the Board of Directors (hereinafter referred to as the “Architectural Committee”) as provided in Section 7.02 below.

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

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

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

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

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

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

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

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

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

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

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

brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

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

ARTICLE VIII

PARTY WALLS AND ENCROACHMENTS

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

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

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

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

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

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

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

Section 8.07 Encroachments and Projections. If any Villa and all improvements associated with it, including but not limited to patios, porches, walks, decks, and privacy fencing, or any other improvement installed by the Kirkdale Villas Association, Inc., encroaches or projects upon any other Villa Lot or upon any portion of the Association Property as a result of the construction of such Villa, or if any such encroachment or projection shall occur as a result of settling or shifting of such Villa or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Villa or portion thereof shall stand. In the event one (1) or more Villas or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or Proceedings of similar import and effect, and such Villa(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Villa(s) or portions thereof upon any other Villa or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

ARTICLE IX

INSURANCE AND RECONSTRUCTION

Section 9.01 Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) fire and casualty insurance on the

Association Property, the Villas, (ii) liability insurance on the Association Property, (iii) directors' and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

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

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

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

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

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

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to the mortgagees as its interest shall appear, subject,

however to the loss payment provisions in favor of the Association and the Insurance Trustee. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

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

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

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

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

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

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

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

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

the coverage shall be \$5,000.00 for forgery.

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

6. No Liability for Failure to Obtain Above 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.

7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense for those claims relating to Association maintenance responsibility. The Board of Directors of the Association shall assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner, as well as any deductible amount necessitated by a fire within the Lot Owners dwelling and not caused by the Association's negligence or activities. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02 Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Villa, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if the Owners of 75% or more of all Villas 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 Villa Owners in proportion to the damage to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to a Villa Owner until there has first been paid out of such Villa Owner's share of such funds all liens on such Owner's Villa. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners of the damaged Villas in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Villa and any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to the respective mortgagees and Villa Owners in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Villa and Lot, provided, however, that no part of a

distribution that results from an Assessment paid by a Villa Owner, shall be made to all Villa Owners and their mortgagees as their interest may appear.

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

ARTICLE X

GENERAL COVENANTS AND RESTRICTIONS

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

Section 10.02 Pets. The Association may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of pets and (ii) prohibit certain types of pets entirely. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. Provided an Owner obtains the prior written consent of the Association, an underground pet containment system may be installed. Assuming the Owner has installed an underground pet containment system, a pet may be let outdoors within the area of the underground pet containment system in the company of a responsible person, but need not be leashed. No above ground or visible pet containment enclosures shall be permitted. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any pet, if, in the opinion of the Association, acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners.

- a. Pets are limited to two (2) per household. Each pet must weigh less than 30 pounds.

Section 10.03 Protective Screening and Fences. Any screen planting, fence enclosures or walls initially installed by the Kirkdale Villas Association, Inc. on a Lot or other portion of the Property and not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall or screen planting of any kind, including but not limited to a visible pet enclosure, shall be planted, installed or erected upon said parcel or other portion of the Property. Notwithstanding the

foregoing, no fence, wall or screenplanting shall be maintained so as to obstruct sight lines for vehicular traffic.

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

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

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

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

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

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

Requirements:

- A. In accordance with the Federal Communications Commission rules governing Over-the-Air-Reception Devices, Members may only install Satellite Dishes that are one meter or less in diameter.
- B. Owners may not install a Dish on any Common Area. The Dish must be installed on an Owner's home only. The Dish must be placed in the first of the following locations that allows reception of a signal of acceptable quality without unreasonably increasing cost of the installation or unreasonably delaying the installation.
 - 1. The rear wall or roof of Owner's dwelling in such a manner that no part of the Dish or its mounting is visible from the center of the street directly in front of the respective dwelling.
- C. The Owner shall be responsible for the maintenance of the Dish at all times. Maintenance and repair shall include, but not be limited to:
 - 1. Reattachment or removal within 72 hours of dislodgment from its original point of installation
 - 2. Repair or replacement if for any reason the Dish no longer retains its original condition, including cosmetically
 - 3. Repair or replacement to prevent the Dish from becoming a safety hazard.
- D. The Owner is responsible for all cost associated with the Dish, including, but not limited to, cost to:
 - 1. Repair, maintain, remove, or replace the Dish
 - 2. Repair damages to the common area, and other property, caused by the installation, existence, or use of the Dish
 - 3. Pay for medical expenses incurred by persons injured by the installation, existence, or use of the Dish, and
 - 4. Reimburse residents or the Association for damages caused by the installation, existence, or use of the Dish.
- E. For safety reasons regarding radiation exposure limits, any Dish capable of transmitting a signal must be professionally installed.
- F. Should the Owner fail to follow these rules, the Association may fine the Owner in accordance with the "Rules for Fines".

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

- a. Homeowners must request approval before removal or alteration to the landscape, shrubs or trees.
- b. Any request for additional landscaping on the side and/or the rear of the lot must be

submitted in writing with a drawing of the plan showing the size, type of bushes, flowers and shrubs.

- c. Any areas improved by the homeowner must be properly mulched and edged to assist in the maintenance of the property.
- d. Any additional landscaped areas must be planted tight to the foundation of the property and/or the back property line.
- e. The homeowner is responsible for all maintenance (trimming, mowing, mulching, weeding) of any landscaping installed by the homeowner after approval from the association. The homeowner must keep the area free of weeds and keep it mowed if the area is not mowed by the association's landscaping company.
- f. If the homeowner does not maintain the landscaping installed by the homeowner, the Association has the right to ask, in writing, that the homeowner restore the area to the condition prior to the alteration, at the homeowner's expense.
- g. The Association may perform maintenance not performed by the Lot Owner, at the Owner's expense, the cost of said maintenance or restoration to be assessed against the defaulting Lot Owner and shall be deemed to be a common assessment, a lien against the Lot and collectible as such.

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

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

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

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

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

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

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

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

Section 10.18 Pools. No aboveground or inground pools shall be erected or constructed on the Property.

Section 10.19 Window Projections. No air conditioning unit or other equipment shall hang from or project from the walls or units of the dwelling.

Section 10.20 Architectural and Home Exterior Repairs and Modifications:

- a. All alterations to a unit, visible from the outside or capable of affecting the structure or uniformity of other units, must be approved by the Association.
- b. All replacement and alterations to permanent items installed by the builder must be approved by the Association
- c. **Both sides of the duplex** will need to come to a **joint agreement** to all exterior modifications/alterations to be completed to their duplex. Both parties need to keep in mind that both duplexes need to maintain a consistent appearance to retain their property value. **After** both parties have come to an agreement on the changes or alterations, they may bring their request in writing to the Association.
- d. Homeowners need to request approval for any changes and/or modifications to:
 - (i) door colors, paint, shutters, electrical fixtures*, patios, decks, walk-ways and sidewalks.
 - (ii) Electrical fixtures must be carriage or lantern style in white, black, or bronze.

Example: paint color –provide a sample;

electrical – send a picture and description of item,

decks – provide dimensions and materials as well as the contractor.

Section 10.21 General Conveniences: Please ensure that guests and contractors do not park near the mailboxes, so that the mail will be delivered in a timely manner.

Section 10.22 Flag Poles:

- a. Any addition of a flag pole to the lot by the homeowner must follow all rules for additions or changes to the landscape. The homeowner will request approval in writing from the Association to install a flag pole.
- b. The flag pole must be placed in the landscaped area at the corner of the lot or in the landscaped area in the rear of the property.
- c. The landscaped area of flag pole must be maintained in a manner that all homeowner installed landscaping areas are to be maintained.

Article XI

INFORCEMENTS, 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, or for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become do while he is the owner thereof, and also covenants to incorporate this Declaration by reference to any deed, lease or other instrument further transferring an interest in such Lot or other portion of the property.

Section 11.02 Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representative, 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 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.

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 similar violation occurring prior to or subsequent thereto. No liability shall attach to the Kirkdale Villas Association, Inc., the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

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

Section 11.05 Inspection and Entry Rights. Any agent of the Association or the Architect Committee may at any reasonable time or times, upon not less than 24-hour 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 structure or other improvements thereon comply with the Declaration, or with the rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have a committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architect Committee determines that it is necessary to trim, cut or prune any tree, hedge or other than either planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the views of the 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 which shall be obliged to remedy the violation. If the owner fails to remedy the violation within 30 days after such notice is given, then the Association may take some remedial action at the expense of the Owner.

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

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

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

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

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

Section 11.08 When Amendment or Recessions Become Effective. Any amendment or recession to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of the Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09 Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against the Property and the Owners thereof until December 31, 2014, and, as then in force, shall be automatically and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

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

Any conflict in construction or interpretation between the Association or 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 in promulgating such rules and regulations, and making and finding, determinations, rulings or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and other residents of the Property to end that the Property shall be preserved and maintained as a high-quality community.

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

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

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

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

ARTICLE XII

GENERAL

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

Section 12.02 Right Reserved to Impose Additional Protective Covenants. The Kirkdale Villas Association, Inc. 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 Kirkdale Villas Association, Inc. owner or mortgaging under the provisions of this declaration shall be deemed to have been promptly sent when mailed, postage prepaid, to the last known address of the person who appears as a Kirkdale Villas Association, Inc., owner or mortgage and the records of the association at the time of such mailing.

Section 12.04 Rates of Association to Transfer Interest. Notwithstanding any other provisions herein to the contrary, the Association and its successor, shall at all times have the absolute right to fully transfer, convey and assign its rights, 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 their all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing for 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.

**CERTIFICATE OF INCORPORATION
OF
KIRKDALE VILLAS ASSOCIATION, INC.**

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

The undersigned, being of the age of 18 years or older, under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the Corporation is KIRKDALE VILLAS ASSOCIATION, INC.
2. The Corporation has not been formed for pecuniary profit or financial gain and no part of the assets, income or profit of the Corporation is distributable to or inures to the benefit of its members, directors, or officers. The Corporation shall be a Type A Corporation under Section 201 of the Not-for-Profit Corporation Law.
3. The purposes for which the Corporation is formed are to acquire, construct upon, manage, maintain, care for, preserve, protect, and enhance the value of that certain tract of property known as Kirk Road Villas Subdivision, Town of Greece, County of Monroe, State of New York, and such additions thereto as may hereafter be brought within the jurisdiction of this Corporation and structures, fixtures, and improvements thereon, and community facilities and rights, privileges, and easements benefiting such property (the "Property") and being initially the premises described in that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Kirkdale Villas Association, Inc. and any supplements or additions thereto (the "Declaration") and to promote the health, safety and welfare of the owners of interests in the Property.
4. In furtherance of, and not in limitation of, the purposes of the Corporation, the Corporation shall have all the powers now or hereafter granted to corporations of its type under the Not-for-Profit Corporation Law of the State of New York and any successor statute, including, without limiting the generality of the foregoing, the power to acquire, invest in, hold, sell, exchange, and dispose of real and personal property of all kinds and varieties and interests, including security interests and mortgages therein.
5. The office of the Corporation will be located in the County of Monroe, State of New York.
6. The Secretary of State is designated as the 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 PO Box 16101, Rochester, New York 14626.
7. Every person or entity who is a record owner of a fee interest in any Lot in the Property which is subject by covenants of record to assessments by the Corporation, including contract vendors and, in addition, the Kirkdale Villas Association, Inc. so long as it shall be the record

owner of a fee interest in any Lot in the Property, whether or not subject to assessments by the Corporation, shall be a member of the Corporation. No person shall be a member of the Corporation solely on account of ownership of an interest in a Lot in the Property solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot in the Property subject to assessment by the Corporation.

8. The officers and directors of the corporation at the first annual meeting are as follows:

9. Upon dissolution of the Corporation other than incident to a merger or consolidation, no part of the assets of the Corporation nor any of the proceeds thereof shall be distributed to the members, officers or directors of the Corporation as such, but all such property and proceeds shall, subject to the discharge of the Corporation's liabilities, be distributed as directed by the members of the Corporation to a public agency to be used for not-for-profit purposes similar to those for which the Corporation was created or for the general welfare of the residents of the municipality in which the Property is located or to a corporation, association, trust or other organization not organized for profit and operated exclusively for the promotion of social welfare, subject to the approval of a Justice of the Supreme Court of the State of New York.

10. Neither this Certificate of Incorporation nor the Corporation's By-Laws shall be amended in any manner that conflicts with the Declaration.

By-Laws

establishing

Kirkdale Villas Association, Inc.

Kirkdale Villas Association Inc.

P.O. Box 16101

Rochester, NY 14626

BY-LAWS
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**BY-LAWS
OF
KIRKDALE VILLAS ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION

Section 1.01 Name and Location. The name of the corporation is the KIRKDALE VILLAS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Association shall be located in the Town of Greece, County of Monroe and State of New York.

ARTICLE II

DEFINITIONS

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

Section 2.01 Association. KIRKDALE VILLAS ASSOCIATION, INC., a New York not-for-profit corporation.

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

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

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

Section 2.05 Property. All property within Kirkdale Villas.

Section 2.06 Villa. A single-family dwelling on the property that is attached to at least one (1) or more Villas by means of a party wall or otherwise.

ARTICLE III

MEMBERS

Section 3.01 Membership in the Association. The Members of the Association shall be the Owners of Lots within the Property, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member.

ARTICLE IV

MEETINGS OF MEMBERS; VOTING

Section 4.01 Annual Meeting. There shall be an Annual Meeting of the Members within 90 days from the beginning of the fiscal year which begins on June 1st, or at such other date and time and at such other place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. Failure to hold an Annual Meeting at the designated date or time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors. and shall be called by the Secretary of the Association at the request in writing of Members of the Association holding not less than the ten percent (100%) of the votes entitled to be cast at the meeting.

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

Section 4.04 Voting Rights. Class A membership shall have full voting rights. and each Member shall have one vote, regardless of the number of Lots owned.

Section 4.05 Quorum and Vote. The presence in person or by proxy of Members having not less than the lesser of one-half (1/2) of the total votes of the Membership entitled to vote, shall constitute a quorum at any meeting. However, if a meeting cannot be held because a

quorum is not present, the majority of the Members present, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours later, until a quorum shall be present in person or by proxy, with the quorum required for each reconvened meeting being one-half (1/2) of the total votes of the Membership entitled to vote. Directors shall be elected by the affirmative vote of Members entitled to vote and casting a plurality of the vote cast at a meeting of Members. With respect to all acts other than the election of Directors, the act of Members casting a majority of the votes cast at a meeting shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

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

Section 4.07 Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

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

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

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

ARTICLE V

OFFICERS

Section 5.01 Officers. The officers of the Association shall be the President (who shall be a member of the Board of Directors), one (1) or more Vice Presidents (the number to be determined by the Board of Directors), the Secretary and the Treasurer and shall be appointed by the Board of Directors. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Two (2) or more offices may not be held by the same person.

Section 5.02 Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

Section 5.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors, and each shall hold offices until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5.04 Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.05 President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall preside at all meetings of Directors and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

Section 5.06 Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

Section 5.07 Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes, and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

Section 5.08 Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association and shall perform all other duties that are assigned to him or her by the President, the Board or these By- Laws.

Section 5.09 Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

Section 5.10 Compensation. No executive officers of the Association shall receive any stated salary for their services, provided that nothing herein contained shall preclude any executive officer from serving the Association in any other capacity and receiving compensation therefor.

Compensation for recording and maintaining all financial records is allow whether it be an outside bookkeeper, member of the board or a member of the association.

ARTICLE VI

BOARD OF DIRECTORS

Section 6.01 The Board of Directors. The Board of Directors shall consist of the President, Vice-President, Secretary, Treasurer, and the directors.

Section 6.02 Number of Directors. The business and affairs of the Association shall be managed by the Kirkdale Villas Homeowners' Association Board. The number of Directors of the Association shall be five (5).

Section 6.03 Nominations. Each year the Board of Directors should reach out to the Association members to inquire whether there is interest in obtaining a position on the Board of Directors for the Association. All inquiries will be submitted to the Board of Directors thirty (30) days prior to the annual meeting of the Association members. Voting will be held at the annual meeting of the members of the Association and the results will be tallied and announced within ten (10) days of such elections.

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

Section 6.04 Election. At the first Annual Meeting after the Kirkdale Villas Association, Inc. relinquishes control of the Board of Directors, that is when it no longer has an ownership interest in a Lot then subject to the Declaration, the Members shall elect three (3) Directors for a term of two (2) years and two (2) Directors for a term of one (1) year. At each Annual Meeting thereafter, the Members shall replace those Directors whose terms have expired and elect such

successor Directors for a term of two (2) years. Voting shall be by secret written ballot which shall:

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

Section 6.05 Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors (although less than a quorum) or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

Section 6.06 Removal. At any meeting of Members, duly called at which a quorum is present, the Members may, by the affirmative vote of not less than two-thirds (2/3) of the Members entitled to vote, remove any Director or Directors from office with or without cause and may by plurality vote elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. In addition, the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings. This paragraph shall not apply to board members appointed by Kirkdale Villas Association, Inc..

Section 6.07 Compensation. Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. A Director who serves the Association in any capacity other than as a Director or officer, however, may receive compensation therefor.

Section 6.08 Regular Meetings. Regular Meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.09 Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any two (2) Directors after not less than two-(2) days' notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special

Meeting. Any Director may, in writing signed by such Director before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting without objection to lack or deficiency of notice prior to the conclusion of such meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of any Special Meeting need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

Section 6.10 Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, except as otherwise required by law, by the Certificate of Incorporation of the Association or by these By-Laws. Except in cases in which it is provided otherwise by law, by the Certificate of Incorporation or by these By-Laws, a vote of a majority of Directors present at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

Section 6.11 Informal Action by Directors. Any action required or permitted to be taken by a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be. Such written consent shall be filed with the minutes of proceedings of the Board or committee.

Section 6.12 Powers of the Board. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or these By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to, the following:

- a. To determine, levy and collect the assessments and common charges as provided for in the Declaration.
- b. To collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association as permitted by the Declaration.
- c. To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents, and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Villas as it deems appropriate.
- d. To repair, restore or alter the properties of the Association or such other improvements for which the Association may now or hereafter have such responsibility under the Declaration, as amended, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

e. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce penalties for infractions thereof.

f. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.

g. To pay all expenses incurred by the Association and all taxes owing by the Association.

h. To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors, unless approved by the Board of Directors.

i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.

j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.

k. To grant easements or rights of way to any public or private utility corporation, governmental agency, or political subdivision with or without consideration.

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

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

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

Section 6.13 Duties of the Board. It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.
- b. Supervise all officers, agents, and employees of the Association and to see that their duties are properly performed.
- c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:
 - (1) Fix the amount of Special Assessments and Maintenance Assessments and other assessments to be assessed and levied against each Lot at the time or times and in the manner provided in the Declaration.
 - (2) Send written notice of each assessment to every owner of a Lot subject thereto at the time and in the manner provided in the Declaration.
 - (3) Foreclose the lien against any Lot for which assessments are not paid within 30 days after their due date, and to bring an action at law against the Member thereof personally obligated to pay the same.
- d. Issue, or cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a Certificate states an assessment has been paid, such Certificate shall be conclusive evidence of such payment.
- e. Procure and maintain adequate liability and hazard insurance for the Association Property, and if it so opts for the Villas.
- f. Cause the Association Property, and on the default of the Lot Owner, the exteriors of the Villas to be maintained.
- g. Cause all officers or employees having fiscal responsibilities to be bonded, as the Board of Directors may deem appropriate.
- h. Prepare annual budget statements of the Association which are to be mailed or emailed to each Member by May 1st of each year.

Section 6.14 Performance of Duties: Conflict of Interests. The Directors and Officers of the Association may freely make contracts, enter transactions or otherwise act for and in behalf of the Association relating to or incidental to its operations, notwithstanding the fact that they may also be acting as individuals or as Directors of the Association and as agents for other persons or business concerns or may be interested therein as stockholders of said corporations or

business concerns or otherwise, provided, however, that all such dealings shall at all times be at arm's length for and in the best interests of the Association and otherwise lawful.

ARTICLE VII

COMMITTEES

Section 7.01 Committees. The Board of Directors may designate one (1) or more committees. No such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to these By-Laws or a plan of merger or consolidation.

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

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

ARTICLE VIII

FINANCE

Section 8.01 Checks. All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer.

Section 8.02 Fiscal Year. The fiscal year of the Association shall be the twelve-(12) calendar months, beginning June 1st and ending May 31st of each year, unless otherwise provided by the Board of Directors.

Section 8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members.

ARTICLE IX

BOOKS AND RECORDS

Section 9.01 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

ARTICLE X

AMENDMENTS

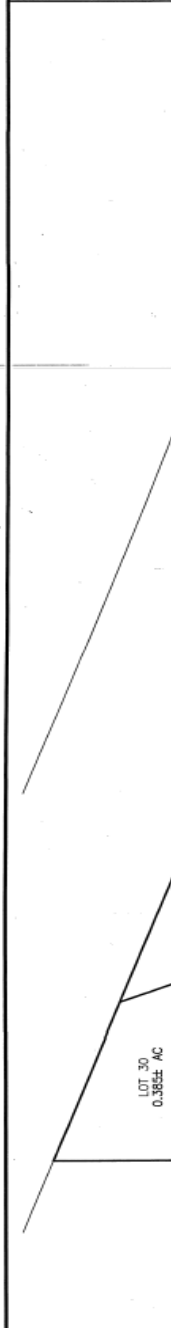
Section 10.01 Alteration, Repeal or Amendment. These By-Laws may be altered, repealed, or amended and new By-Laws may be adopted at any regular or special meeting, of the Members, by vote of a majority of Members entitled to vote present in person or by proxy or {except as to any matter affecting membership qualifications or voting rights) at any regular or special meeting of the Board of Directors or by the affirmative vote of a majority of the whole Board of Directors.

Section 10.02 Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By- Laws, the Declaration shall control.

ARTICLE XI

INDEMNIFICATION

Section 11.01 Indemnification. To the extent permitted by law, the Association shall indemnify and hold harmless any person made a party to any proceeding by reason of the fact that such person is or was a Director or officer of the Association against any loss or expense incurred by said person by reason of such proceeding, including the settlement thereof, except in relation to matters which such person is adjudicated to be liable for gross misconduct in the performance of that person's duties.



AS BUILT
KIRK ROAD VILLAS
HOME OWNER'S ASSOCIATION
SECTIONS ONE AND TWO
OF THE KIRK ROAD VILLAS SUBDIVISION, SECTIONS 1 & 2
LIBER 325, PAGE 81 AND LIBER 327, PAGE 63

OF TOWN LOTS 27 & 34 OF THE FIRST DIVISION OF LOTS, TOWNSHIP 2,
SHORT RANGE, OF PHELPS AND GORHAM PURCHASE,
TOWN OF GREECE, COUNTY OF MONROE, STATE OF NEW YORK

HOA - AS BUILT

SCALE: 1"=30'

DATE: MAY 6, 2022

SHEET No.: 2 of 2



SCHULTZ
ASSOCIATES

ENGINEERS & LAND SURVEYORS, P.C.
29 South Union Street, PO Box 89
Cincinnati, N.Y. 14660

585-349-3750
SPRINGFIELD, NEW YORK 14539



CERTIFICATION

THE SCALES ATTORNEY, PLAINTIFFS AND DEFENDERS P.C. HEREBY CERTIFY THAT ANY AND ALL INFORMATION CONTAINED HEREIN WAS OBTAINED FROM AN INDIVIDUAL WHOSE IDENTIFICATION DOCUMENT WAS VALID THROUGH APRIL 21, 2022. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 70(2)(b) OF THE NEW YORK STATE EDUCATION LAW, ANY ALTERATIONS ARE A VIOLATION OF ARTICLE 145, SECTION 7020 OF THE NEW YORK STATE EDUCATION LAW.

[Signature]

JOSEPH E. SCALES, P.E., L.S.
JOHN B. WATSON, L.S.

NO. 491023
NO. 502432

NOTES

- (1) WELL LOCATIONS WERE NOT AVAILABLE FROM STATE CONTRACTORS. LATERAL AND WATER SERVICE CONNECTIONS SHOWN ARE APPROXIMATE ONLY. CURED CEMENT AND CLEAN-OUTS LOCATIONS WERE NOT AVAILABLE FROM THE CITY OF CHICAGO.
- (2) ELECTRIC, TELEPHONE, AND CABLE UTILITIES ARE NOT SHOWN BECAUSE THE DATA LOCATED DURING THE COURSE OF THE FIELD SURVEY ARE SHOWN, BUT MAY NOT REPRESENT THE ACTUAL LOCATIONS OF UTILITIES.
- (3) ELEVATIONS REPORTED HEREIN FOR PARTS OF SECTIONS 1 AND 2, (S. 325 OF MAPS, P. 8) AND L. 327 OF MAPS, P. 12).