

PART II

DECLARATION
OF
COVENANTS, RESTRICTIONS, EASEMENTS AND LIENS
OF
BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC.

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DECLARATION
of
COVENANTS, RESTRICTIONS, EASEMENTS AND LIENS
of
BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, is made this day of, 1984, by and between JOHN L. DIMARCO, LTD. a New York Corporation (hereinafter referred to as "Declarant") and is accepted and agreed to by BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC. (hereinafter called "Association").

WHEREAS, Declarant has heretofore acquired the fee simple interest in the land described below, in Article I, Section 1.11 hereof, said land in its entirety being hereinafter referred to as the "Properties"; and

WHEREAS, BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC., is a New York not-for-profit Corporation formed for the purposes described in its Certificate of Incorporation;

NOW, THEREFORE, Declarant hereby declares that all of the Properties, together with any and all improvements thereon and appurtenances thereunto, shall be held, sold and conveyed subject to the following covenants, restrictions, easements, liens, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind, the Properties for and during the period of time specified hereafter and

all parties having any right, title, lien, or interest to or in the Properties or any part thereof, their distributees, executors, administrators, successors, and assigns forever, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1.01. "Association" shall refer to the BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC. and its successors and assigns, which shall own the Common Facilities and maintain the Properties as hereafter provided.

1.02. "Commercial Vehicle" shall refer to any vehicle not intended or adapted primarily for private passenger transportation and shall include, without limitation, any pick-up truck, van, or jeep-type vehicle with lettering, markings, or insignia identifying it with a commercial enterprise or activity, or any vehicle equipped with a snowplow or other attachment adapting it to use in connection with such an enterprise or activity, whether or not it is actually being so used.

1.03. "Common Facilities" shall refer to all easements and facilities maintained by the Association for the common use and enjoyment of the Lot Owners.

1.04. "Declarant" shall refer to JOHN L. DiMARCO, LTD., and its successors and assigns if such successors or assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

1.05. "Lot" shall refer to any plot of land shown upon any filed Plat Map or subdivision map of the Properties, or any resubdivision map of all or a portion of the same.

1.06. "Note" shall refer to any note, bond, debenture or other evidence of indebtedness issued and sold by the Association.

1.07. "Note Holder" shall refer to the holder of any Note given by the Association, and all trustees or other representatives of one or more such holders.

1.08. "Occupant" shall refer to any person occupying a Townhouse for a period of twelve hours or more or overnight even if for a period of less than twelve hours, and shall include without limitation, Owners, their families, guests, or other invitees and any tenant or other renter and his or her family, guests or other invitees.

1.09. "Owner" shall refer to the record owner, whether one or more persons or entities, of the title to any Lot which is part of the Properties, but excluding those having such interest merely as security for the performance of any obligation.

1.10. "Party Wall" shall refer to any wall which is common to and separates two Townhouses.

1.11. "Properties" shall refer to the real property described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Brighton, County of Monroe, State of New York, bounded and described as follows:

Commencing at the intersection of the north line of Westfall Road and east line of Neu LacDeVille Boulevard; thence 1) N 02° 35' 30" W, a distance of 119.52 feet to a point; thence 2) N 13° 53' 38" E, a distance of 135.16 feet to a point; thence 3) N 30° 22' 45" E, a distance of 586.30 feet to a point, said courses 1, 2 and 3 also being the easterly right-of-way line of said Neu LacDeVille Boulevard; thence 4) N 87° 24' 01" E, a distance of 782.00 feet to a point; thence 5) S 21° 53' 22" W, a distance of 650.58 feet to a point; thence 6) S 87° 24' 30" W, a distance of 102.00 feet to a point; thence 7) S 20° 34' 22" W, a distance of 162.09 feet to a point in the north right-of-way line of Westfall Road; thence 8) S 87° 24' 30" W along said right-of-way line, a distance of 289.07 feet to a point; thence 9) N 21° 03' 17" E, a distance of 191.05 feet to a point; thence 10) S 87° 24' 30" W, a distance of 135.00 feet to a point; thence 11) S 21° 03' 17" W, a distance of 191.05 feet to a point in said north right-of-way line of Westfall Road; thence 12) S 87° 24' 30" W along said right-of-way line, a distance of 280.00 feet to the point of beginning.

Excepting, however, all land within the right-of-way of Montpelier Circle as laid out on a "Map of a Resubdivision - Brittany Commons being parcel I of the Neu LacDeVille Subdivision" drawn by Hershey Malone & Associates and dated May 16, 1984, filed in the Monroe County Clerk's Office, in Liber 228 of Maps at page 3.

1.12. "Recreational Vehicle" shall refer, without limitation, to any motor home, camper, house trailer, tent trailer, boat, dune buggy, go-cart, snowmobile, dirt bike, or other vehicle intended, designed or adapted primarily for recreational use or purposes.

1.13 "Single or One Family Occupancy" shall refer to the residential occupancy by no more than two (2) unrelated adults or four (4) adults all related to one another as either brother, sister, stepbrother, stepsister, mother, father, husband, wife, daughter, son, stepdaughter, stepson, together with any number of their children, all of whom are related to each other as brother or sister, or stepbrother or stepsister. The foregoing shall include adopted and licensed agency approved or placed foster children.

1.14. "Townhouse" or "dwelling unit" shall refer to the improvement constructed upon any Lot, subject to this Declaration, for use as a single or one family residence.

1.15. "Brittany Commons Homeowners Association, Inc., Restrictions" shall refer to the provisions of this Declaration, and any amendments thereto and the By-Laws of the Association recorded concurrently with this Declaration and any amendments thereto.

ARTICLE II

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

2.01. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot within the properties, hereby covenants, by acceptance of a deed therefor, and whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The covenant in this Section shall not constitute a guarantee, or promise of any kind by Declarant to pay any assessment, or any other obligations, other than Declarant's obligation to the Association as set forth in the Offering Plan filed with the New York State Department of Law. The annual and special assessments, together with interest and costs, and reasonable attorney's fees incurred in the collection of same shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for

delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

2.02. Purpose of Assessments. Assessments levied by the Association shall be used exclusively (i) first, to the payment of all principal and interest, when due, on all sums borrowed by the Association to the extent required under any agreement with the Note Holders referred to in Section 2.11, and next, (ii) to operate, maintain, repair, improve, construct, reconstruct and preserve, on a non-profit basis, the Common Facilities maintained by the Association, including, without limitation, the private drives and parking areas, the master water meter and vault for the same, the street lighting system, and landscaping, all exclusively for the benefit of its members, their guests, tenants and invitees; and (iii) to maintain, repair, reconstruct, replace and preserve, on a non-profit basis, the residential Lots, and the Townhouses constructed thereon, for the purpose of preserving the exterior appearance and configuration of said Lots and Townhouses, including, but not limited to, all exterior (outside) walls, foundations, windows (excluding all glass breakage and screen repair or replacement), exterior doors (excluding storm and screen doors), party walls, roof and roof members, facia and exterior trim, exterior lights, gutters and down spouts; walks and parking areas, trees, shrubs and grasses, and other exterior improvements,

excluding, nevertheless, any patio or deck, exclusively for the benefit of the Owners thereof. Except for the structural portion of the party walls and roof members, there shall be no obligation on the part of the Association to maintain, repair, reconstruct, replace or preserve any part of the interior of any Townhouse or any fixtures or mechanical systems (including, but not limited to, heating, chimney, electrical, plumbing, or air-conditioning); (iv) to pay premiums for insurance as hereafter provided in Article III; and (v) to provide all necessary and reasonable services to Association members incidental to the foregoing and also including, but not limited to, snow and rubbish removal, management, and general overhead.

In the event that the need for maintenance or repair is caused through the willful act of the Owner, his family, tenants, guests, or invitees, and not paid for by him or his insurance, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

2.03. Maximum Annual Assessment. Until December 31, 1985, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00) per Lot. Thereafter, the maximum annual assessment may be increased as follows:

(a) From and after January 1, 1986, the maximum annual assessment may be increased without a vote of the membership in any fiscal year by five percent (5%).

(b) From and after January 1, 1986, the maximum annual assessment per Lot may be increased by a greater amount than five percent (5%) by a vote of two-thirds (2/3) of the Members, present in person or by proxy, at a meeting duly called for such purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

2.04. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly called for such purpose.

2.05. Notice and Quorum for Any Action Authorized Under Section 2.03 or 2.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 2.03 or 2.04 shall be sent to all Members not less than thirty (30) days nor more

than sixty (60) days in advance of the meeting. The presence of Members, in person or by proxy, entitled to cast two-thirds (2/3) of all the votes of the membership shall constitute a quorum.

2.06. Uniform Equal Rate of Assessment. Both annual and special assessments must be fixed at a uniform equal rate for all Lots and may be collected in monthly installments.

2.07. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the recording of this Declaration, and shall be prorated according to the number of months remaining in the fiscal year.

The annual assessments for the first fiscal year shall not exceed the amount set forth in Section 2.03 above, but may be fixed at a lower amount and adjusted upward or downward from time to time, as frequently as, but no more frequently than, monthly, by the Declarant based upon actual operating expenses for the preceding month or other prior equivalent period, subject always to said maximum, so that the aggregate of said monthly assessments shall not exceed the maximum for the first fiscal year. In so fixing the monthly assessments from time to time, Declarant may also take into account in its estimate of operating expenses for the period to which such assessments are to be applied any deficit from previous periods and any anticipated expense

not previously incurred. The Board of Directors shall fix the amount of subsequent annual assessments for each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and unless otherwise provided, the Association shall collect each month from the Owner of each Lot one-twelfth (1/12) of the annual assessment for such Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

2.08. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, it shall bear a late charge as provided in the By-Laws of the Association, and if not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate specified in the Association By-Laws but in no event in excess of the prevailing legal maximum rate per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien

against such Owner's Lot, or both, and late charges, interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property and such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens, as may be necessary or expedient, to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting Owner's portion of the premium for fire and other hazard insurance. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Facilities, or abandonment of his Lot, or by

renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

2.09. Subordination of the Association Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage given to any bank, savings bank, savings and loan association, pension fund, or other institutional lender or to Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage, given as above provided, and provided that the Association is made a party defendant in such foreclosure action, shall extinguish the lien of such assessments as to payments which became due prior to the foreclosure sale and transfer. No foreclosure sale or transfer shall relieve such Lots from liability for any assessments thereafter becoming due or from the lien thereof.

2.10. Exempt Property. All properties dedicated to, and accepted by, a local municipality or authority shall be exempt from the assessments created herein. However, no land or improvements devoted to single or one family occupancy use shall be exempt from said assessments.

2.11. Loans to the Association. The Board of Directors of the Association, within the limitations imposed by Section 2.03, may borrow monies from time to time, so long as the repayment of the principal borrowed and the interest thereon shall be accomplished within a term of five (5) years. Loans that shall require repayment over a longer term shall first be approved by two-thirds (2/3) of the votes of the Members present in person or by proxy at a meeting duly called for this purpose.

In order to secure the repayment of any and all sums borrowed by it from time to time, the Association is hereby granted the right and power (i) to assign and pledge revenues received, and to be received by it under any provisions of this Declaration, provided that no such assignment or pledge shall be made without the prior consent of two-thirds (2/3) of the votes held by the Members of the Association, including Declarant, cast at a meeting duly called for such purpose in accordance with the By-Laws, and (ii) to enter into agreement with Note Holders with respect to the collection and disbursement of funds, and (iii) to apply funds received by the Association first to the payment of principal and interest, when due, on such loans; and (iv) to establish such collection, payment and lien enforcement procedures as may be required by Note Holders.

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

2.13. Contractual Authority. The Association shall be entitled to contract with any corporation, firm or other entity for the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

ARTICLE III

INSURANCE

3.01. Physical Damage Insurance. The Declarant, for each Lot owned within the Properties, hereby irrevocably nominates, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to nominate irrevocably, the Association as Trustee with authority to obtain and maintain fire insurance and extended coverage for all townhouses, insuring the buildings and fixtures, in an amount sufficient to cover the full replacement cost thereof. Such policies of physical damage insurance shall be written in the name of the Association, as Trustee for each Lot Owner, and shall contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by any Lot Owner or of invalidity arising from any acts of the insureds or any Lot Owner, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including any mortgagee of any Lot.

Each policy shall contain a New York standard mortgagee clause in favor of any first mortgagee, only, of any Lot, which shall provide that the loss, if any, thereunder shall be payable to such first mortgagee as its interest may appear, subject, however, to the

loss payment provisions in favor of the Association hereinafter set forth. All such policies shall provide that adjustment of loss shall be made by the Association with the approval of the Lot Owner, and that the net proceeds thereof shall be payable to the Association.

The premiums for all such insurance obtained by the Association shall be part of the common expenses included in the annual assessment.

Lot Owners shall not be prohibited from carrying additional insurance for their own benefit, provided that such policies contain waivers of subrogation and further provided that the liability of the carrier issuing insurance procured by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Lot Owner.

In the event of damage to or destruction of any townhouse, as a result of fire or other casualty, the Owner, with the concurrence of his first mortgagee, if any, upon receipt of the insurance proceeds by the Association, shall contract to rebuild or repair such damaged or destroyed Townhouse.

Upon receipt of the insurance proceeds, and prior to making any other disbursement, the Association shall first pay the expenses incurred, if any, including the reasonable charges for the services of any public adjuster and of any attorney employed by the Association to secure payment of such proceeds.

No disbursement for reconstruction or repair shall be made, nevertheless, unless the Association is first directed by a written certificate of the Owner, or his designated architect or engineer, stating that the sums to be paid are due and properly payable for such reconstruction or repair, and stating the following information as to each disbursement:

- (1) Name and mailing address of payee;
- (2) Amount of payment;
- (3) Purpose of payment.

Upon the failure or refusal of the first mortgagee and the Owner to proceed with the reconstruction or repairs within thirty (30) days after written notice and demand, such portion of the proceeds as may be necessary to discharge the interest of the first mortgagee, if any, shall be paid over by the Association to such mortgagee, upon the tender by said mortgagee of a duly executed discharge of the mortgage in recordable form.

The Association is hereby irrevocably authorized by the Owner to use the balance of insurance proceeds, remaining after discharge of any first mortgagee interest, to reconstruct the "exterior portion" of such Townhouse so damaged or destroyed, in conformance with the original plans and specifications of such Townhouse, which "exterior portion" shall include those items defined

in Section 2.02 (iii) hereof. Provided, however, the Association may also, in the discretion of the Board of Directors, restore the heating system inside the unit to the extent necessary to preserve said exterior portion.

No disbursement for reconstruction and repair of the "exterior portion" of such Townhouse shall be made unless the Association is first directed by a written certificate of an architect or engineer, employed by the Association to supervise such reconstruction or repair, stating that the sums to be paid are due and properly payable for such reconstruction or repair of the "exterior portion" and stating the following information as to each disbursement:

- (1) Name and mailing address of payee;
- (2) Amount of payment;
- (3) Purpose of payment.

In the event the cost to reconstruct the "exterior portion" of such Townhouse shall exceed the balance of insurance proceeds after the payment of expenses and the discharge of the first mortgagee's interest, the cost to reconstruct the "exterior portion" in excess of the balance shall be an expense of the specific Owner of such Townhouse and shall be paid within thirty (30) days after notice and demand therefor. In default of payment thereof, the excess cost,

together with interest, costs and reasonable attorneys' fees, shall become a charge on the land and shall become a continuing lien upon the lot against which such additional cost was incurred. Such lien may be enforced in the same manner as the lien for annual and special assessments as provided under Article II hereof.

Prior to the reconstruction or rebuilding of the "exterior portion" of such destroyed Townhouse, the Association may, but shall not be required to, employ an architect or engineer to supervise the same and, based upon the original plans and specifications for such townhouse, advertise for sealed bids and may thereafter negotiate with any contractor for the reconstruction or repair of such Townhouse's "exterior portion."

In the event the cost of reconstruction or repair of the "exterior portion" of such Townhouse, including the reasonable cost for services of any architect, engineer or attorney employed by the Association to pursue the reconstruction and repair of the "exterior portion" of such townhouse, is less than the insurance proceeds received by the Association, then, and in such event, the proceeds remaining, after payment of costs, shall be paid to the Owner upon the tender to the Association by such Owner of a duly executed release of liability and accountability for the use of such insurance proceeds.

All insurance proceeds paid on any loss claim shall be first deposited in a bank or other financial institution, in an interest bearing account insured by a Federal governmental agency, with provision that such proceeds, or any part thereof, may only be withdrawn upon the signatures of at least two members of the Board of Directors or their designee.

Notwithstanding the foregoing provisions of this Section 3.01, it is further provided that the requirement for the maintenance of insurance on a Townhouse shall not apply to any Townhouse acquired by the Veteran's Administration or Federal Housing Administration under a mortgage foreclosure during the period of ownership by either of said Veteran's Administration or Federal Housing Administration.

The initial amount of physical damage insurance allocated to a particular townhouse shall be at least in such amount as may be required by any first mortgagee of such townhouse, but in no event in an amount less than the amount of the Purchase Price, less the sum of Eighteen Thousand Dollars (\$18,000.00). Any Lot Owner may, upon written request, direct the Association to increase insurance coverage on his particular Townhouse to such amount as the carrier selected by the Association is willing to underwrite. The amount of such insurance coverage shall be increased annually to cover the increase, if any, in the replacement cost of each Townhouse.

Only the Association, as Trustee, the Lot Owner, and his first mortgagee shall be named insureds. Assignment of the policy or of the proceeds of the policy, in the event of loss, shall be prohibited.

The Association may consult with, and employ, an attorney of its choice with respect to any question relating to its duties or responsibilities hereunder and shall not be liable for any action taken or omitted by it in good faith or on advice of counsel. The Association shall be reimbursed for all expenses incurred by it in connection with its duties under this Article provided as a charge against the insurance proceeds, except for such expenses incurred as a result of bad faith or willful misconduct.

3.02. Public Liability Insurance. The Association shall obtain broad form public liability insurance covering the Common Facilities and all of the Lots, excluding, nevertheless, liability coverage for the interior of any townhouse or private patio or deck area, in a single limit amount of not less than One Million Dollars (\$1,000,000.00) covering claims for bodily injury or death and Two Hundred Fifty Thousand Dollars (\$250,000.00) covering all claims for property damage arising out of any one occurrence. Premiums for public liability insurance shall be part of the common expense payable out of annual assessments provided under Article II hereof.

3.03. Other Insurance. The Association may secure such other forms of insurance coverage as its Board of Directors may, from time to time, direct, to be paid for as a common expense.

ARTICLE IV

PROPERTY RIGHTS

4.01. Every Member shall have a right and easement of enjoyment in and to the Common Facilities and such easement shall be appurtenant to and shall pass with the transfer of title to any Lot. All such rights and easements are subject, nevertheless, to the rights of the Association:

(a) To limit the number of Members' guests or invitees using the Common Facilities; and

(b) To borrow money for the purpose of improving the Common Facilities and in aid thereof to mortgage or grant security interests in Association property, provided that no such mortgage or security interest shall be granted without the prior consent of two-thirds (2/3) of the votes held by the Members of the Association, including Declarant, cast at a meeting duly called for such purpose in accordance with the By-Laws; and

(c) To grant easements or rights of way to the Town of Brighton or any of its districts or to any public utility corporation or public or municipal agency.

ARTICLE V

MEMBERSHIP - VOTING RIGHTS

5.01. The Association shall have as Members only Owners of Lots. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no other qualification for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

5.02. Declarant, as an Owner of one or more lots, shall be a Member of the Association.

5.03. All Members, so long as the same shall qualify under this Article V, and under the By-Laws of the Association, shall be entitled to vote on each matter submitted to a vote at a meeting of Members, subject to the following exceptions and conditions:

(a) As long as Declarant owns or holds twenty-five (25) or more Lots, or until three (3) years from the date Declarant transfers the first Lot to an Owner, whichever period expires first, Declarant shall be entitled to elect a majority of the directors of the Association.

(b) When any Lot is owned by more than one person or entity, as tenants by the entirety, or in joint tenancy, or tenancy in common, or any other manner of joint or common ownership or interest, such persons or entities, as Owners of a single Lot shall collectively constitute a member of the Association and be entitled to cast only one vote as such. If such person or entities cannot jointly agree as to how such vote should be cast, no vote shall be allowed with respect to such Member.

(c) In no event, after three (3) years from the date of recording this Declaration, may Declarant, its successors or assigns, cast a majority of the votes for the election of any member of the Board of Directors of the Association; nevertheless, so long as Declarant, its successors or assigns, shall own twelve (12) or more Lots within the period of ten (10) years from the date of recording this Declaration, then and in such event, it shall have the right to designate one member of the Board of Directors.

ARTICLE VI

EASEMENTS

6.01. Each Townhouse Lot shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed, which easement shall continue as long as said encroachments exist. In the event any building containing two or more townhouses is partially or totally destroyed and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse Units due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

6.02. There is hereby created a blanket easement upon, across, over and under all of said Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water lines, storm and sanitary sewers, cable television, gas, telephone and electric lines, and a master water meter and vault for the same. By virtue of this easement, it shall be expressly permissible for the Declarant or the Association or utility or other entity responsible for the providing of electrical, telephone, water, sewer, gas, or cable television, service to erect and maintain the necessary underground pipes, vaults, conduits and other necessary equipment at or below grade on said Properties and to

affix and maintain electric, cable television, and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhouses. An easement is further granted to all police, fire protection and ambulance personnel and all similar emergency service personnel to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Properties, and to enter any townhouse, during reasonable hours, and upon request when occupied except in an emergency, to inspect and to perform the duties of maintenance and repair of the townhouses or Common Facilities as provided for herein.

Notwithstanding anything to the contrary contained in this paragraph, no sewers, water lines, cable television, telephone, gas or electric lines, or other utilities may be installed or relocated on said Properties except as initially designed, laid out and approved by the Declarant or thereafter approved by Declarant or the Board of Directors of the Association. If any public utility or municipal department or district furnishing a service covered by the general easement herein requests a specific easement in the form of a separate recordable document, Declarant shall have the right to grant such easement on said Properties without conflicting with the terms hereof.

6.03. Easements and rights-of-way are hereby expressly reserved to Declarant, its successors and assigns, in, on, over, and under the "easement area," as hereinafter defined, of each lot submitted to this Declaration for the following purposes:

(a) For the erection, installation, construction and maintenance of (i) wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone, television cables and other utilities and other similar facilities, and (ii) storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public utility facility, service or function, whether above ground or underground; and

(b) For slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with the slope ratios approved by Declarant, its successors and assigns, or which might create erosion or sliding problems, or change, obstruct or retard drainage flow.

Declarant and its respective agents, successors and assigns, shall have the right to enter upon all parts of the easement area of each Lot for any of the purposes for which said easement and rights-of-way are reserved.

Declarant shall also have the right, at the time of, or after grading any street, road or drive, or any part thereof, to enter upon any adjoining Townhouse Lot and grade the portion of such Lot adjacent to the street, road or drive to a slope of 2 to 1, but there shall be no obligation on Declarant to do such grading or to maintain the slope.

6.04. The term "easement area," as used herein, shall mean and refer to (i) those areas on each Lot with respect to which easements are shown on the recorded subdivision plat relating thereto, or (ii) if no easements are shown on any such plat, to all of the land within the lot lines of each Lot at the front and rear of the Lot which is not covered by any portion of the Townhouse or appurtenant structure.

ARTICLE VII

PARTY WALLS

7.01. Each wall which is built as a part of the original construction of the Townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to willful acts or omissions shall apply thereto.

7.02. The cost of repair and maintenance of the structural portion of a party wall shall be a common expense to be paid for out of the general funds of the Association derived from annual assessments. If a party wall is so extensively damaged or deteriorated, however, so that all or a substantial portion thereof has to be reconstructed, and there are no insurance proceeds, or insufficient insurance proceeds, to cover the cost of reconstruction, then to that extent the cost shall be deemed a capital improvement which may be paid for out of the general funds of the Association or from the proceeds of a special assessment, or a combination of both.

ARTICLE VIII

GENERAL COVENANTS - USE RESTRICTIONS

8.01. Each Lot, improved with a Townhouse, shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof, and shall be used for single family residential purposes only.

8.02. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant or the builder of the Townhouses to maintain during the period of construction and sale of said Townhouses, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction and sale of said Townhouses, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

8.03. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon said Properties except as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors of the Association or their designated representative. No trimming, cutting, watering, fertilizing, or modifying of plantings, trees, foliage, or shrubs planted around the

dwellings or elsewhere upon the Properties shall be done by anyone other than employees of the Managing Agent or of the Association, or persons duly authorized by the Board of Directors to perform such work. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Properties outside the exterior building lines, and front and rear yard areas, except as may be allowed by this Declaration or by the Board of Directors of the Association. It is expressly acknowledged and agreed by all parties concerned that this Paragraph is for the mutual benefit of all Owners of Lots included in the Properties subject to this Declaration.

8.04. Modification of any kind to the exterior of the Townhouse, either to the structure or the appearance thereof, including, but not limited to, color of exterior siding and trim, awnings, lights, doors, windows, mechanical devices, T. V. antennas, chimneys, flower boxes, flags, bunting, storage structures, or other exterior features, shall not be made without the express written consent of the Board of Directors of the Association.

8.05. Each Owner shall maintain, clean and keep free from unsightly objects, the entry or entries to his unit, the patio, and the front and rear yards of his Townhouse and Lot.

8.06. There shall be no organized sports activities on the Properties and no picnicking or fires except in the private enclosed patio areas.

8.07. No animals or reptiles of any kind shall be raised, bred, or kept on the properties, except owners may keep household pets inside their townhouse units. No more than one dog or cat shall be kept in any one townhouse, however, and any dog or cat must be kept on a leash at all times when outside of a townhouse on the Properties. No dog, cat, or other animal may be kept or left unattended on the grounds, in the garages or patios at any time, whether or not chained, caged, or tethered. Any pet waste shall be properly disposed of by the owner of the townhouse in which the pet is kept. No pet waste shall be deposited or left anywhere on the grounds. The Board of Directors may, in their sole discretion, require that any animal which a majority of the Directors deem to be a nuisance, or which has been kept in violation of any of these restrictions, or the owner of which has repeatedly failed to observe and comply with these restrictions or any rules promulgated by the Directors in connection therewith, be permanently removed from the Properties upon three (3) days written notice to the owner or occupant harboring the same. Any dog, cat, or other animal found on the properties outside of a townhouse which is not on a leash or in a cage or similar restraint, or which has been

left unattended, may be summarily removed by the Association or the Managing Agent, or their employees, and delivered to the custody of any local or municipal authority with power to impound the same, without any liability on the part of the Association, its directors, agents, or employees, for such removal.

8.08. The maximum speed limit for all vehicles within the Properties shall be fifteen (15) MPH.

8.09. No commercial vehicles shall be parked or stored on any portion of the Properties, except for vehicles temporarily on the premises for the purpose of making deliveries or providing services to the dwelling units or in connection with the maintenance of the common facilities.

8.10. No abandoned or unregistered vehicle shall be parked, left, or stored upon the Properties or any portion thereof.

8.11. No recreational vehicle shall be operated, driven, parked or stored on any portion of the Properties, except that vehicles such as motor homes (but not mobile homes), campers, and trailers may be parked for durations of no more than four (4) hours and then not more than once in any twenty-four (24) hour period, the intention being that such vehicles may be brought onto the Properties only temporarily for purposes such as loading or unloading but not for off-road use, overnight parking or for parking or storage for longer

periods. Specifically, no dune buggies, dirt bikes, go-carts, snowmobiles, or similar recreational vehicles may be operated or driven at any time on any portion of the Properties.

8.12 No advertising signs, except one "For Rent" or "For Sale" sign not to exceed six square feet in size, shall be placed or permitted to remain on any dwelling unit or Lot. Provided, however, Declarant shall have the right during the construction and sales period to place such signs as its officers or directors may elect in connection with and for the purposes of offering the dwelling units to the public for sale or for rent, and further provided that Declarant shall have the right (but not the obligation) to design, fabricate and install one or more permanent signs in locations of its choice identifying the development. Maintenance of the latter sign(s) shall be the responsibility and at the expense of the Association excepting only repairs or replacements thereof during the first year after erection of such sign(s) necessitated by reason of defective materials or workmanship in the original installation.

8.13. All trash, rubbish and refuse shall be placed only in proper receptacles therefor, and all trash or garbage cans shall be kept inside the garages except on pick-up days.

8.14. No occupant of a dwelling unit shall create or make any noise or disturbance which shall unreasonably interfere with the use and enjoyment of any other unit or so as to constitute a nuisance. No occupant or other person shall play any musical instrument or sound reproduction equipment either inside a dwelling unit or elsewhere on the properties between the hours of 11 p.m. and 8 a.m.

8.15. The Board of Directors may, from time to time, adopt additional rules and regulations governing the use of the Common Facilities and the conduct of all residents and guests on the Properties. No action shall be taken by the Association or its Board which in any manner would discriminate against any Owner or Owners in favor of other Owners.

ARTICLE IX

ZONING AND SPECIFIC RESTRICTIONS

9.01. This Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions of record. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, restrictions of record, or this Declaration shall be taken to govern and control.

ARTICLE X

DURATION AND AMENDMENT

10.01. The Restrictions contained in this Declaration shall run with and bind the Properties, shall inure to the benefit of and shall be enforceable by Declarant, the Association and the Owner of any Lot included in the Properties, their respective legal representatives, distributees, successors and assigns until the 31st day of December in the year 2015, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may not be amended in any respect except by a vote of not less than sixty-six percent (66%) of the Lot Owners, present in person or by proxy at a meeting duly called for such purpose at which a quorum is present and acting throughout. For

purposes of this Section only, such a quorum shall be eighty percent (80%) of the votes entitled to be cast by members of the Association as defined in Article V hereof. No amendment shall be effective until recorded in the form of a duly executed Certificate of Amendment in the Office of the Clerk of Monroe County, New York, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2015, this Declaration may be amended or terminated in its entirety at a meeting duly called for such purpose by a vote of not less than a majority of all of the votes of the Lot Owners as defined in Article V hereof. Such amendment or termination shall not become effective until recorded in the form of a duly executed Certificate of Amendment or Termination in the Clerk's Office of Monroe County, New York, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

ARTICLE XI

GENERAL

11.01. Violation or breach of any Restriction herein contained shall give Declarant, or the Association, their respective legal representatives, distributees, successors and assigns, in addition to all other remedies, the right to enter the land upon or as to which such violations or breach exist and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. Nothing herein contained shall be deemed to affect or limit the rights of the Owners of the Lots within the Properties to enforce these Restrictions by appropriate judicial proceeding.

11.02. The failure of Declarant, the Association, or the Owner, of any Lot included in the Properties, their respective legal representatives, distributees, successors and assigns, to enforce any Restriction herein contained shall, in no event, be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

11.03. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.04. The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.05. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

11.06. Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Lot Owner may be awarded a reasonable attorney's fee against such Lot Owner.

11.07. The Board of Directors of the Association where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and of the By-Laws, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by such provisions. Any conflict between any construction or

interpretation made by the Board of Directors and any other person or entity to enforce the provisions hereof and of the By-Laws shall be resolved in favor of the construction or interpretation by the Board.

The Board of Directors, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration and of the By-Laws. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Board shall take into consideration the best interests of the Owners and of the Properties to the end that the Properties shall be preserved and maintained as a high quality community.

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

11.08. The headings of the Articles or any Section herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

11.09. No violation of any of these Restrictions shall defeat or render invalid the lien of any first mortgage or building loan made in good faith and for value upon any portion of the Properties; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagee's foreclosure sale shall be bound and subject to these Restrictions as fully as any other Owner of any portion of the Properties.

11.10. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself, his distributees, successors and assigns to observe, perform and be bound by this Declaration and the By-Laws and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

IN WITNESS WHEREOF, the parties have set their hands and
respective seals as of the day and year first above written.

JOHN L. DIMARCO, LTD.

BY: _____

BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC.

BY: _____

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this day of, 1984, before me, the subscriber, personally appeared JOHN L. DiMARCO, to me known, who, being by me duly sworn, did depose and say: That he resides at; that he is the President of JOHN L. DiMARCO, LTD., the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this day of, 1984, before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say: That he resides at; that he is the of BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC. the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Notary Public

CERTIFICATE OF INCORPORATION
of
BRITTANY COMMONS HOMEOWNERS ASSOCIATION, INC.

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

The undersigned, for the purpose of forming a corporation pursuant to the Not-for-Profit Law of the State of New York, hereby certifies:

1. The name of the corporation is Brittany Commons Homeowners Association, Inc.

2. The corporation has not been formed for any 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, except to the extent permitted under the Not-for-Profit Corporation Law.

3. The purposes for which the corporation is to be formed are:

(a) To provide maintenance, preservation and architectural control of the residences, lots and common facilities within that certain tract of property located in the Town of Brighton, Monroe

County, New York, and known as the Brittany Commons Development.

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the corporation as set forth in that certain Declaration of Covenants, Restrictions, Easements and Liens (hereinafter called the "Declaration") applicable to said property and to be recorded in the Monroe County Clerk's Office, and as the same may be amended from time to time as therein provided.

(c) To fix, levy, collect and enforce payments by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses incident to the business of the corporation, including all licenses, taxes or charges levied or imposed against the property of the corporation. Provided that any funds collected for the purpose of providing, operating, and maintaining domestic water supply and sewage disposal systems or sanitary sewer assessments, dues or service charges shall be disbursed only in payment for expenses of such systems.

(d) To do any other act or thing incidental to or connected with the foregoing purposes or an advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers, except as permitted under Article V of the Not-for-Profit Corporation Law.

(e) To acquire by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of, real or personal property in connection with the affairs of the corporation.

(f) To borrow money, mortgage, pledge, deed in trust or hypothecate, any or all of its real or personal property as security for money borrowed or debts incurred.

(g) To do any and all lawful acts and things which may be necessary, desirable, useful, suitable or proper for the furtherance, accomplishment or attainment of, any or all the purposes or powers of the corporation, either alone or in cooperation with other persons, entities, or other organizations, including, without limitation, all powers enumerated in Section 202 of the Not-for-Profit Corporation Law, and any amendments thereto.

4. The corporation is a corporation as defined in sub-paragraph (A)(5) of Section 102 of the Not-for-Profit Corporation Law and a Type A Corporation.

5. The town and county in which the office is to be located are the Town of Brighton, County of Monroe.

6. The territory in which the corporation's activities are principally to be conducted are, the Town of Brighton, County of Monroe, State of New York.

7. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served, and the Secretary of State shall mail a copy of any such process served upon him to the corporation in care of Redmond and Parrinello, 36 West Main Street, Rochester, New York 14614.

8. Subscriber is of the age of nineteen (19) years or older.

9. Every person or entity who is a record owner of a fee or undivided fractional fee interest in any lot which is subject by covenants of record to assessment by the corporation, including contract sellers, shall be a member of the corporation.

The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of any lot which is subject to assessment by the corporation.

10. The affairs of the corporation shall be managed by a board of directors, who need not be members of the corporation. The number of directors shall be as set by the By-Laws of the corporation.

11. Any action required or permitted to be taken by the board of directors may be taken without a meeting if all members of the board consent in writing to the adoption of a resolution authorizing such action.

IN WITNESS WHEREOF, I have made, subscribed and acknowledged this Certificate of Incorporation, this 31st day of July, 1984.

S/John F. Redmond
John F. Redmond, Esq.
36 West Main Street
Rochester, New York 14614

STATE OF NEW YORK)
COUNTY OF MONROE)

On this 31st day of July, 1984, before me, the subscriber,
personally appeared John F. Redmond, Esq., to me personally known
and known to be to be the same person described in and who executed
the foregoing instrument and he duly acknowledged to me that he
executed the same.

S/Duncan R. Farney
Notary Public