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**BRITTANY POINT ATTACHED CLUSTER UNITS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF BRITTANY POINTE ATTACHED CLUSTER UNITS**

THIS DECLARATION is made on the date hereinafter set forth by  
BRITTANY POINTE, LTD. (the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property situated in the Village of Lakemore, County of Summit, State of Ohio (the "Property"), which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and,

WHEREAS, Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to this Declaration; and,

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property, together with all appurtenances thereunto, shall be held, sold and conveyed subject to the following covenants, easements, restrictions and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Property for and during the period of time hereinafter specified, and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs,



personal representatives, successors and assigns, and which shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I

DEFINITION

Section 1.1. "Association" shall mean and refer to Brittany Pointe Attached Cluster Units, a non-profit Ohio corporation, and its successors and assigns. "Board of Trustees" or the "Board" shall mean and refer to the Association's elected governing body under Ohio law.

Section 1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including Declarant, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.3. "Common Area" shall mean and refer to all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners.

Section 1.4. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, within or upon a Lot or structure upon a Lot, the maintenance, repair, or placement of which is the responsibility of the Association.

Section 1.5. "Restrictions" shall mean and refer to the provisions of this Declaration, and any amendments thereto, and the Regulations of the Association and any amendments thereto.



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Section 1.6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and intended for any type of independent ownership and use. Unless specifically stated otherwise, the term "Lot" includes the residential unit situated upon a Lot.

Section 1.7. "Residential Unit" shall mean a structure situated upon a Lot and intended for independent ownership and use as a residence. A garage is part of the Residential Unit.

Section 1.8. "Property" or "properties" shall mean and refer to the real property described in Exhibit A of this Declaration and such additional real property as may be added pursuant to the provisions of this Declaration.

#### ARTICLE II

##### THE PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1 The Property described in Exhibit A is owned by Declarant. Each Owner, by the act of becoming such, shall be deemed to have acknowledged and agreed (i) that the Property described in Exhibit A shall be the only property subject to these Restrictions, and (ii) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring Declarant, or any successor or assignee, to subject, to this Declaration or any other declaration or agreement, any property or land now or hereafter owned by any of them other than that described in Exhibit A attached hereto. The



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fact that terms or provisions set forth in separate or additional declarations and agreements relating to property or lands other than the Property may be similar or identical, in whole or in part, to the Restrictions set forth in Declaration shall not be construed to mean that it was the intent or purpose therein to subject any additional property or lands to this Declaration or any terms or provisions thereof.

ARTICLE III

PROPERTY RIGHTS

Section 3.1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. All such rights and easements are subject, nevertheless, to the right of the Association:

(a) To adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests, and to establish penalties for the infraction thereof; and,

(b) To borrow money for the purpose of improving the Property and in aid thereof to mortgage the same; and,

(c) To charge and collect reasonable admission and other fees for the use of any recreational facility situated upon the Property; and,

(d) To suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for a period



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not to exceed sixty (60) days for any infraction of the Restrictions or of any of the Association's published rules and regulations; and,

(e) To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of the members of the Association has been recorded.

Section 3.2. Patios. Subject to Section 3.1 above, each Owner shall have the exclusive right to use and enjoy the patio which is immediately adjacent to the dwelling on such Owner's Lot. Each Owner shall be responsible for ordinary maintenance and care of such patio, and agrees not to store or leave any property on the patio other than a reasonable amount of property designed for use on patios and in other outdoor settings (such as grills and patio furniture), and agrees to otherwise abide by any rules and regulations that the Association may adopt regarding the use of patios. In the event major repair or replacement of a patio is deemed necessary, other than due to the acts or omissions of the Owner, his or her family, guests or invitees, the Association shall bear the cost of repairing or replacing same.

Section 3.3. Use of Common Area. No person shall construct, place upon or plant anything on the surface of the Common Area without prior Board approval in writing or on the surface of any easement which is for the benefit of the Association or anyone to



whom an easement may be granted, including, but not limited to, utility easements.

Section 3.4. Delegation of Use. Any Owner may delegate, in accordance with the Regulations of the Association and subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, such Owner's right of enjoyment of the Common Area to the members of such Owner's family, tenants and contract purchasers who reside on the Lot owned by such Owner.

Section 3.5. Parking Rights. Ownership of each Lot shall entitle the Owner thereof to the use of the garage which is built upon a Lot and part of the Residential Unit. Visitors shall park their motor vehicle in the driveway used by the Owner of the Lot. Only currently licensed and operable motor vehicles shall be permitted upon a Lot or Common Area.

Section 3.6. Vehicles. No boat, truck, trailer, airplane, junk car, unlicensed vehicle, or recreational vehicle shall be parked on any part of the property, except that a boat, truck, trailer or recreational vehicle may be parked within the appurtenant entrance driveway of a home for the limited purpose of loading or unloading the same in an expeditious manner. In no event shall any vehicle or personal property of any kind be parked in the common drive, if any, shown on the drawing attached hereto as Exhibit A, unless authorized in advance in writing by the Board. Licensed automobiles in working condition must be parked in the confines of a home's garage or in the appurtenant entrance driveway of the home in the event the home's garage is already occupied by a motor vehicle.



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In no event shall there be more than four (4) non-visiting motor vehicles parked on the homeowner's property.

Section 3.7. Single-Family Use. Each Lot shall be used exclusively for single-family residence purposes.

Section 3.8. Noise. No noise, vibration or odor which is offensive or irritating to a person of ordinary sensibilities shall originate on and thereafter emanate from any Lot or Residential Unit.

Section 3.9. Storage. The outside storage of property (including but not limited to unlicensed motor vehicles, inoperable motor vehicles, tools, toys, lumber, wood, debris, trash, junk, paper, bottles, and cans) is prohibited. Nothing shall be construed to prohibit the reasonably necessary storage on a Lot of building materials during the course of construction of a house or garage on such Lot or during the course of adding to or remodeling a house or garage on such Lot.

Section 3.10. Exterior Lighting. No exterior lighting fixture shall be installed upon or within the Residential Unit without prior written approval of the Association or without adequate and proper shielding of the fixture. No lighting fixture shall be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent Lots.

Section 3.11. Signs. No sign of any kind shall be displayed to the public view on any Lot or the Common Area without the prior written consent of the Board, except for signs for rent, sale, political purposes, and customary name and address signs. The



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Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Common Area.

Section 3.12. Paving. Except as provided by Declarant in construction of the property, no person shall construct a patio or otherwise pave, brick or asphalt any exterior surface without obtaining the approval of the Association.

Section 3.13. Exterior Uniformity. Each Owner shall maintain the exterior of his dwelling in the manner in which other Owners in the Property maintain theirs.

Section 3.14. Pets. No animals are permitted, except pets. The only pets which are permitted are one cat and one dog per dwelling or two cats per dwelling or two dogs per dwelling and only such other pets which, by their nature, are at all times kept confined indoors. A cat or dog may occasionally be kept outdoors, provided such pet does not, by barking or otherwise, disturb the Owner or occupant of any other Lot in the Property. However, such pet may not be kept outdoors during nighttime hours. All pet owners shall be responsible for the waste of their pets and any damages to property of others or the Association. Anything in this Section 3.14 to the contrary notwithstanding, the Association has the right to provide whatever rules it deems best concerning pets.

Section 3.15. Commercial and Recreational Vehicles. No commercial truck, motor home or boat or other similar commercial or recreational vehicle shall be parked on the street or in any parking area and kept other than in the garage, except while engaged in loading or unloading and in transportation to or from a residence or



in the event that it is necessary or incidental to the construction or repair of any building.

Section 3.16. Insurance Risks. No person shall own or permit anything which will increase the rate or cause cancellation of the insurance of any other Owner.

Section 3.17. Ethical Behavior. No immoral or unlawful use shall be made of any Lot.

Section 3.18. Commercial Activities. No trade, business or occupation of any kind shall be conducted on any Lot except that a homeowner may make use of a room in his home as a home office for clerical, communication or computer use.

Section 3.19. Minimum Rental Period. No Lot shall be rented for a period of less than ninety (90) days.

Section 3.20. Insurance for Common Area. Insurance, taxes, and assessments incidental to the ownership of the Common Area shall be paid for by the Association.

Section 3.21. Aerials and Antennas. No radio or television or other aerial, antenna, dish (other than an 18" satellite dish), tower, or other transmitting or receiving structure or support thereof shall be erected, installed, placed or maintained upon any portion of the Property without the prior written consent of the Board of Trustees. The Association may erect an aerial for a master antenna system, should any master system or systems be utilized by the Association and require any such exterior antenna.

Section 3.22. Rules and Regulations. The Association through its Board of Trustees may make and enforce reasonable rules and regulations governing the use of the Common Area, the facilities



located thereon, and the individual Lots and Residential Units. Such rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 3.23. Easement Reserved to Declarant.

Notwithstanding any provision contained in this Declaration to the contrary, Declarant hereby reserves unto itself and its successors and assigns the non-exclusive, perpetual right, privilege and easement with respect to the Property for the benefit of Declarant, its successors and assigns, over, under, in and/or on the Property, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Property and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as the "Additional Property"). The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property, and the right to tie into any portion of the Property with driveways, parking areas and walkways, and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; and,



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(b) The right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as may be required, convenient or incidental to the construction and sale by Declarant of residences in the Property or in any portion of the Additional Property; and,

(c) No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Property, but shall be held independent of such title, and no such rights, privileges or easements shall be surrendered, conveyed or released except by delivery of a quit-claim deed from Declarant releasing such right, privilege or easement by express reference thereto; and,

(d) If these reserved easements are exercised without annexing any Additional Property to the Property, the Owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities with the Owners of the Property in the proportion that the number of completed dwellings on the affected Additional Property bears to the total number of completed dwellings upon the affected Additional Property and the Property. The costs of maintenance and repair of the Property's roads and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Property. For the purposes of this provision, a dwelling on the affected Additional Property shall be



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considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly, or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Property, from the time of annexation the sharing of costs and expenses in the use of any Property so added shall be governed by this Declaration; and,

(e) This Section 3.23 may not be amended without the written consent of Declarant.

#### ARTICLE IV

#### MAINTENANCE

##### Section 4.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Common Area, which shall include the maintenance and repair of such utility lines, pipes, wires, glass, conduits and systems which are a part of the Common Area. The maintenance of the Common Area shall be deemed to include, but shall not be limited to, maintenance, repair and replacements, subject to insurance and casualty loss provisions contained herein, at the Association's cost and expense, of all trees, fences, shrubs, grass, streets, parking spaces, walks and other improvements situated upon the Common Area.

(b) The Association shall provide for the maintenance and upkeep of all drives, driveways, walkways, snow removal and salting of the same, lawn mowing, leaf removal and trash collection situated on either the Common Area or the Owner's property.



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Section 4.2. **Owner's Responsibility.** Except as provided in Section 4.1, all maintenance of the Residential Unit shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair such property and improvements.

Section 4.3. Responsibility for Certain Repairs. In the event that the Board of Trustees of the Association, by a two-thirds vote, determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair or replacement of items for which he or she is responsible hereunder; or (ii) that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees and is not covered or paid for by insurance, in whole or in part, then, in that event and to the extent not covered or paid for by insurance, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have fifteen (15) days within which to complete the maintenance, repair or replacement or, in the event that such maintenance, repair or replacement is not capable of completion within the 15-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost



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and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against such Owner's Lot.

ARTICLE V

PARTY WALLS

Section 5.1. General Rules of Law to Apply. Each wall which is built as part of the original construction of a Residential Unit whose purpose is to serve and separate any two adjoining Residential Units and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of these Restrictions, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to such party walls.

Section 5.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 5.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, such Owner shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rules of law regarding liability for negligent or willful acts or omissions.

Section 5.4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear



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the whole cost of furnishing the necessary protection against such elements.

Section 5.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 5.6. Arbitration. Any dispute arising under the provisions of this Article concerning a party wall shall be resolved by arbitration. Each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator. The decision of the arbitrators, which shall be by a majority of all the arbitrators, shall be final and binding upon all parties.

#### ARTICLE VI

##### MEMBERSHIP AND VOTING RIGHTS

Section 6.1. Each Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 6.2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot, Parcel, or Living Unit owned by them.

Class B. Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot, Parcel, or Living Unit owned by it, provided that the



Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When (but not before May 1, 2001) the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership as computed upon the basis set forth above; or,

(b) On May 1, 2008.

From and after the happening of the earlier of these events, the Class B Member shall be deemed to be a Class A Member and entitled to one (1) vote for each Lot, Parcel, or Living Unit owned by it.

For purposes of determining the votes allowed under this Section, when a Lot is occupied by a Living Unit or Living Units, only such Living Unit or Living Units shall be counted and the Lot shall not be counted.

#### ARTICLE VII

##### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 7.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, 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 covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and emergencies, such assessments to be established and collected as hereinafter provided. The covenant in this Section 7.1 shall not constitute or be construed as a guarantee or promise of



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any kind by Declarant to pay any assessment or any other obligation of any Owner, other than Declarant. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person or persons who was or were the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association, to repay all principal and interest on all funds borrowed by the Association in accordance with this Declaration, and to operate, maintain, repair, improve and preserve the Area of Common Responsibility exclusively for the benefit of the Association's members, their guests, tenants and invitees.

Section 7.3. Annual Assessments. The Association shall levy annual assessments on all Lots, including all Lots in the Property, in accordance with the Regulations of the Association, as the same may be amended from time to time, subject, however, to the following limitations:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be \$58 per Lot plus the following additional

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monthly charges: \$3 if there is a front porch with railing on the Owner's Residential Unit; and \$3 if the Owner's Residential Unit has a deck or screened porch.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10 percent above the assessment for the previous year without a vote of the membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by more than 10 percent above the assessment for the previous year by a vote of two-thirds of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose.

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

Section 7.4. Creation of Sinking Fund. In order to carry out its duties with regard to the operation, maintenance, repair, improvement, and preservation of the Area of Common Responsibility, the Association through its Board of Trustees shall create a sinking fund or other fund designated for such purpose. Such fund shall be funded from the Owners' assessments on a year-to-year basis or at such times which the Board of Trustees shall designate, and in amounts as may be determined in the discretion of the Board of Trustees. In no case may this fund be used for any purpose other than the purposes set out in Section 7.2 of this Article.



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Section 7.5. Special Assessments for Capital Improvements and Emergencies. In addition to annual assessments, 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 upon the Area of Common Responsibility, including fixtures and personal property related thereto, and any other special or emergency assessment, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting to be called for such purpose.

Section 7.6. Notice and Quorum for Any Action Authorized Under Sections 7.3, 7.4, or 7.5 Above. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3, 7.4 or 7.5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60 percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly or monthly basis at the discretion of the Board of Trustees of the Association.



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Section 7.8. Date of Commencement of Annual Assessments and Due Dates. Assessments for a Lot shall be first payable starting with the completion of a dwelling or other structure constructed upon the Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees of the Association shall fix, subject to Section 7.3 above, the amount of the annual assessment against each Lot subject to assessment at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject to the assessment. The due dates shall be established by the Board of Trustees of the Association. 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. A properly executed certificate of the Association as to the status of assessments on a Lot shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7.9. Effect of Non-Payment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the maximum prevailing legal rate per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or may foreclose the lien of such assessment against such Owner's Lot, and interest, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a

  
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deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions 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 7.9 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 Area, abandonment of his Lot or renunciation of membership in the Association. Notwithstanding the foregoing, an Owner may give to the Association, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

Section 7.10. Subordination of the Association's Lien to First Mortgages. The lien of 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

  
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institutional lender. Sale or transfer of any Lot shall not affect the assessment lien.

Section 7.11. Exempt Property. The Common Area and all properties dedicated to, and accepted by, a local public municipality or authority shall be exempt from the assessments created herein.

Section 7.12. Loans to the Association.

(a) The Association's Board of Trustees may borrow monies from time to time.

(b) 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 provision of this Declaration; (ii) to enter into agreement with the lender with respect to the collection and disbursement of funds; (iii) to apply funds received by the Association first to the payment of principal and interest, when due, on such loans; (iv) to pledge, mortgage or encumber any property of the Association, including the Common Area; and (v) to establish such collection, payment and lien enforcement procedures as may be required by the lender.

Section 7.13. Reserves and Surplus. The Association's Board of Trustees 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



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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.

Section 7.14. 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 VIII

##### INSURANCE ASSESSMENTS

Section 8.1. Public Liability Insurance. The Association shall obtain broad form public liability insurance covering the Common Area in a combined single limit amount of not less than \$500,000 covering claims for bodily injury, death and property damage arising out of any one occurrence. Payment for public liability insurance shall be part of the common expense payable out of annual assessments provided under Article VII above.

Section 8.2. Other Insurance. The Association shall also obtain fire and extended coverage for the benefit of each individual Owner and covering each Owner's residential Unit for the full insurable replacement value thereof, exclusive of excavation and foundations. The proceeds thereof shall be payable to the Association, a trustee for each of the Unit Owners, their respective mortgagees, and the Association. Such policy shall not provide insurance against loss or damage to built-in or installed



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improvements, interior walls, wall coverings, floor coverings, ceilings, fixtures and equipment.

Section 8.3. Limitation on Hazards. Under no circumstances shall an Owner permit or suffer anything to be done or left on or about his Lot which will increase the insurance rates on the Common Area.

**ARTICLE IX**

**EASEMENTS**

Sections 9.1. Each Lot, the Residential Unit thereon, and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs of any dwellings or other improvements. Valid easements for such encroachments and for the maintenance of same shall exist as long as the encroachments exist.

Section 9.2. An easement is further granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency service to enter upon the Lots and Common Area 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 Common Area and the Lots to inspect and to perform the duties of maintenance and repair of the Area of Common Responsibility.

**ARTICLE X**

**ARCHITECTURAL CONTROL**

Section 10.1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor



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shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section 10.1 shall be deemed to have been fully complied with.

Section 10.2. Each Lot, the Residential Unit thereon, and the Common Area are subject to ordinances of the Village of Lakemore and shall at all times conform to them.

Section 10.3. No building or structure shall be erected, constructed, placed, situated or permitted to remain on any Lot except a Residential Unit which may be joined to other Residential Units on an adjoining Lot by means of a party wall. Without intending to limit the foregoing, tents, sheds, dog houses, swing sets and other houses, shelters, or enclosures for animals, pets or storage are prohibited. Nothing shall be construed to limit the authority of the Association to permit the construction of any building, fence, shed, swimming pool, swing sets or other similar building or structure which in its option is aesthetically



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beneficial to the Common Area and the other Lots in the Property as permitted by the Village of Lakemore.

Section 10.4. The exterior surface and dimensions of each Residential Unit shall not be altered in appearance, building materials or color from that which presently exists on the Lot without approval of the Association. In the event that an Owner undertakes repair or rebuilding of a Residential Unit which is destroyed in whole or in part, the repair or rebuilding shall be in accordance with these standards.

Section 10.5. All existing streets, sidewalks, and driveways shall be maintained in their original conditions and in a manner in conformity with the standard of maintenance of other Lots in the Property and no change of color shall be permitted on any exterior surface, the intent being to maintain uniformity of the exterior appearance of each building as in its original condition except with the approval of the Association.

Section 10.6. No Lot shall be graded or changed, no tree killed, destroyed or removed from any Lot, no building, garage wall or other structure shall be erected, constructed, placed, situated or permitted to remain on any Lot, nor shall the exterior of any such building, garage, wall or other structure be added to, deleted from, changed or remodeled, except in strict accordance with plans, specifications and drawings previously approved, in writing, by the Association.

Section 10.7. Failure to pay any charge, dues or assessment within thirty (30) days from the date it is due shall result in its drawing interest at the maximum legal rate per annum beginning at

  
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the expiration of such 30-day period. The Association shall be entitled to collect from each delinquent Owner all reasonable collection expenses, including, but not limited to, court costs and reasonable attorney fees. In addition thereof, the Association shall have the right to enter upon any Lot and Residential Unit thereon and to correct any violation of the Restrictions contained in this Declaration or any duly promulgated rules or regulations. It shall assess the costs of all such corrections or repairs or any related expense, including attorney fees, against the Owner of the Lot containing one or more violations. Such expenses and costs shall be added to any other assessment and interest thereon at the maximum legal rate per annum shall accrue beginning with the date the Association notifies such Owner that such expenses and costs are due. All such assessments, charges, dues, expenses and costs shall be chargeable as a lien against the ownership of the Lot obligated to pay the same; and in addition thereto, the Association shall have the right to go into any court of equity and, in addition to any claims for damages, require the correction of any violations.

ARTICLE XI

DURATION AND AMENDMENT

Section 11.1. Duration and Amendment by Owners. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Declarant, the Association and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be



automatically extended for successive periods of ten (10) years. This Declaration may not be amended in any respect, except by the execution of an instrument signed by not less than 70 percent of the Lot Owners during the first 20-year period and thereafter by an instrument signed by not less than 67 percent of the Lot Owners. No amendment of these Restrictions which is contrary to the Village of Lakemore Zoning Resolution now in effect or as hereafter amended shall be permitted. No amendment shall be effective until recorded in the office of the Recorder of Summit County, Ohio, or in such other place of recording as may be appropriate at the time of the execution of this instrument.

Section 11.2. Amendment by Declarant. Declarant may: (a) annex to the Property any additional land; (b) amend the Regulations of the Association to permit Owners of Lots in the annexed areas to become members of the Association; (c) grant easements on any Property or any additions to it or the Common Area within five (5) years from the date of this instrument, provided the Village of Lakemore has given its approval; and (d) amend this Declaration for a period of five (5) years from the date of its filing, provided that any such amendment must be submitted to and approved by the Village of Lakemore. Once Declarant amends and adds to this Declaration Additional Land, then all easements, common property, voting and membership shall be for the benefit of the Lot Owners in the adjacent plats and their rights and duties shall be the same as the Lot Owners in this plat, and this Declaration and the Regulations of the Association shall apply to the Lot Owners in the adjacent plats.



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ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Rights of Entry. Violation or breach of any Restriction herein contained shall give the Association, its successors and assigns, in addition to all other remedies, the right to enter upon the land upon or as to which such violation 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 Property to enforce these Restrictions by appropriate judicial proceedings.

Section 12.2. Non-Waiver of Rights. The failure of Declarant, the Association or the Owner of any Lot included in the Property, their respective legal representatives, heirs, 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.

Section 12.3. No Condition Subsequent. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 12.4. Equitable Remedies Included. Damages shall not be deemed adequate relief for any breach or violation of any provision hereof. Any person or entity entitled to enforce any



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provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

Section 12.5. Construction and Sale. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Residential Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole option of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 12 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

Section 12.6. Attorney Fees Recoverable. 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.

Section 12.7. Interpretation and Adoption of Rules.

(a) The Association's Board of Trustees, where authorized in this Declaration to act, shall have the right to construe and interpret the provisions of this Declaration, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final





and binding as to all persons or property benefitted or bound by the provisions hereof. Any conflict between any construction or interpretation of the Association's Board 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's Board.

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

(c) In granting any permit, authorization, or approval, as herein provided, the Association's 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 Section 12.7(b) above.

Section 12.8. Captions. The captions and headings of the Articles or any Section herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

Section 12.9. Lien of First Mortgage and Building Loan. No violation of any of these Restrictions shall defeat or render



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invalid the lien of any first mortgage or building loan made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' foreclosure shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

Section 12.10. Grantee's Acceptance of Restrictions. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot, whether or not the same incorporates or refers to these Restrictions, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by these Restrictions 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.

Section 12.11. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration and Agreement and the Regulations of the Association shall not affect the validity of the remaining portions thereof.

Section 12.12. Applicable Laws. This Declaration shall be governed by and construed in accordance with the laws of the State of Ohio.

#### ARTICLE XIII

Section 13.1. Dedication of Common Area. The Common Area is hereby dedicated to the common use and enjoyment of the homeowners in Brittany Pointe Attached Cluster Units as more fully provided herein and is not dedicated for use by the general public. Upon the



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organization of the Association as a non-profit Ohio corporation, Declarant shall convey to the Association the real property described on Exhibit A hereto (but excepting therefrom the Lots which are now or hereafter situated on the property presently described in Exhibit A).

IN WITNESS WHEREOF, the parties have set their hands at \_\_\_\_\_ Medina, Ohio, this 21st day of October, 1997.

Witnesses:

BRITTANY POINTE, LTD.:

Eva M. Espinoza  
Eva M. Espinoza  
Donna Stuver  
Donna Stuver

BY: [Signature]  
Douglas C. Leohr, Partner

and

Eva M. Espinoza  
Eva M. Espinoza  
Donna Stuver  
Donna Stuver

BY: [Signature]  
Jerome E. [Name], Partner

STATE OF OHIO )  
Medina COUNTY) ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Partners of BRITTANY POINTE, LTD., who acknowledged the making and signing of the above instrument to be their free act and deed and the free act and deed of BRITTANY POINTE, LTD., which authorized their signing this instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Medina, Ohio, this 21st day of October, 1997.

Patricia E. Telus  
Notary Public

This Instrument Prepared By:  
Jeffrey L. Bramley  
Williams and Batchelder  
105 West Liberty Street  
Medina, Ohio 44256  
(330) 723-5400  
Attorney at Law

Patricia E. Telus  
Notary Public  
State of Ohio, Medina County  
My Commission Expires 4-24-99

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July 18, 1997

Consulting Engineers and Land Surveyors

1923 Bailey Road, Suite A  
Cuyahoga Falls, OH 44221  
(330) 945-4117  
FAX (330) 945-4140

Description of a 7.558 acre tract (attached cluster, Brittany Point).

Situated in the State of Ohio, County of Summit, Village of Lakemore, and being part of Original Lot 24, Tract 8, formerly Springfield Township, and further known as being tracts of land conveyed to Pride One, Inc. by O. R. 2326, Pg. 856 and O. R. 2053, Pg. 1485 of the Summit County Recorder's Office described as follows:

Beginning at a 5/8 inch rebar with cap set at the intersection of the Northerly right-of-way line of Sanitarium Road, C.H. 136, a 60 foot public right-of-way, and the easterly right-of-way line of Akron-Canton Road, also now known as State Route 91, an 80 foot public-right-of-way with the centerline of said Canton Road being 33 feet at right angles to said easterly right-of-way line; thence North 89 degrees 18 minutes 00 seconds East along the northerly right-of-way line of said Sanitarium Road 579.38 feet to a 5/8 inch rebar with cap set at the p.c. of a curve and the true place of beginning:

thence the following 14 courses;

- 1.)northeasterly 39.27 feet along the arc of a curve to the left having a radius of 25.00 feet, a delta angle of 90 degrees 00 minutes 00 seconds, a chord bearing North 44 degrees 18 minutes 00 seconds East, and a chord distance of 35.36 feet to a 5/8 inch rebar with cap set at the p.t. of this curve;
- 2.)North 00 degrees 42 minutes 00 seconds West 284.83 feet to a 5/8 inch rebar with cap set at the p.c. of a curve;
- 3.)northeasterly 65.69 feet along the arc of a curve to the right having a radius of 330.23 feet, a delta angle of 11 degrees 23 minutes 48 seconds, a chord bearing North 04 degrees 59 minutes 54 seconds East, and a chord distance of 65.58 feet to a point of reverse curve;
- 4.)northwesterly 30.55 feet along an arc of a curve to the left having a radius of 25.00 feet, a delta angle of 70 degrees 01 minutes 32 seconds, a chord bearing North 24 degrees 18 minutes 58 seconds West, and a chord distance of 28.69 feet to a 5/8 inch rebar with cap set at the p.t. of this curve;
- 5.)North 59 degrees 19 minutes 44 seconds West 94.47 feet to a 5/8 inch rebar found;
- 6.)South 77 degrees 02 minutes 25 seconds West 273.77 feet to a 1/2 inch pipe found at the southeasterly corner of land conveyed to D. R. Eckard by O. R. 287, page 905 of the Summit County Recorder's Office;

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7.) North 37 degrees 17 minutes 05 seconds West along the easterly line of Eckard 291.19 feet to a 5/8 inch rebar with cap set;

8.) North 16 degrees 10 minutes 16 seconds East 404.53 feet to a 5/8 inch rebar with cap set at the centerline of Brittany Boulevard, now proposed as a 50 foot public right-of-way;

9.) South 37 degrees 17 minutes 05 seconds East along the centerline of said Brittany Blvd. proposed 240.06 feet to a 5/8 inch rebar with cap set at the p.c. of a curve;

10.) southeasterly continuing along the centerline of said Brittany Blvd. proposed 115.42 feet along the arc of a curve deflecting to the left having a radius of 300.00 feet, a delta angle of 22 degrees 02 minutes 39 seconds, a chord bearing South 48 degrees 18 minutes 25 seconds East and a chord distance of 114.71 feet to a 5/8 inch rebar with cap set;

11.) South 59 degrees 19 minutes 44 seconds East continuing along the centerline of said Brittany Blvd. proposed 372.09 feet to a 5/8 inch rebar with cap set;

12.) Southeasterly continuing along the centerline of said Brittany Blvd. proposed, now blending from 50 foot wide to 80 foot wide, 306.98 feet along the arc of a curve deflecting to the right having a radius of 300.00 feet, a delta angle of 58 degrees 37 minutes 44 seconds, a chord bearing South 30 degrees 00 minutes 52 seconds East, and a chord distance of 293.76 feet to a 5/8 inch rebar with cap set;

13.) South 00 degrees 42 minutes 00 seconds East continuing along the centerline of said Brittany Blvd. proposed 80 feet wide 293.40 feet to a point in the northerly right-of-way line of said Sanitarium Road;

14.) South 89 degrees 18 minutes 00 seconds West along the northerly right-of-way line of said Sanitarium Road 305.00 feet to the true place of beginning.

The above described tract of land contains a total of 7.558 acres as surveyed under the direction of Vaughn R. Kuchenbecker, P.S. no. 7797, Campbell & Associates, Inc., Cuyahoga Falls, Ohio in April of 1997. Basis of bearings is South 89 degrees 18 minutes 00 seconds West, the northerly right-of-way line of Sanitarium Road per O.R. Volume 2053, Page 1485 of the Summit County Recorder's Office. Subject to all easements and right-of-ways of public record or as otherwise legally established. 5/8 inch rebar with cap set at corners or will be set at completion of construction unless noted.

