

EXHIBIT 1  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS

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

THIS DECLARATION made this \_\_\_\_ day of \_\_\_\_\_,  
1987, by Colonial Heights Development, Inc., a New York corpo-  
ration having its principal offices at 5692 Pittsford-Palmyra  
Road, Pittsford, New York 14534, hereinafter referred to  
as "Sponsor".

WITNESSETH

WHEREAS, the Sponsor is the owner of certain real  
property in the Town of Perinton, Monroe County, New York,  
more particularly described in Schedule "A" annexed hereto and  
made a part hereof.

WHEREAS, the Sponsor desires to develop as a residential  
community with residential lots and dwelling units to be indi-  
vidually owned and with certain open spaces and common facili-  
ties available for the benefit of said community, and

WHEREAS, the Sponsor desires to provide for maintenance  
of said common areas and for the preservation of the values and  
amenities in said common areas by the creation of an association  
which shall be empowered to maintain and administer the commu-  
nity property and facilities and which shall administer and  
enforce the covenants and restrictions and which shall collect  
and disburse the assessments and charges all as set forth  
herein, and

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WHEREAS, the Sponsor has incorporated the Thomas Creek Homeowners Association, Inc. pursuant to the Not-for-Profit Corporation Laws of the State of New York for purposes of exercising the functions as set forth herein,

NOW, THEREFORE, the Sponsor declares that the real property described in Schedule "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions for purposes of protecting the value and desirability of said real property and which shall run with the real property and be binding on all parties having any right, title or interest in the property, their heirs, successors and assigns and shall inure to the benefit of each owner.

#### ARTICLE ONE - DEFINITIONS

##### Section 1.01 Definitions.

The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall have the following meanings:

A. Association shall mean and refer to the Thomas Creek Homeowners Association, Inc.

B. Common Areas shall mean and refer to all property owned by the Association now or hereafter for the common use and enjoyment of the owners.

C. Declaration shall mean and refer to this document of protective covenants, conditions, restrictions, easements,

charges and liens as of from time to time may be supplemented, extended or amended.

D. Eligible Mortgagee shall mean and refer to the holder, insurer or guarantor of any lien of mortgage given by a lot owner covering his lot which is 1) a purchase money mortgage or 2) any mortgage taken or acquired by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

E. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the properties with the exception of the common area, and which plot is identifiable as a separate parcel according to the Town of Perinton tax records.

F. Member shall mean and refer to each holder of a membership interest in the Thomas Creek Homeowners Association, Inc.

G. 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.

H. Property shall mean and refer to all the properties as are subject to this Declaration and such additions as may hereafter be brought within the jurisdiction of the Association.

I. Sponsor shall mean and refer to Colonial Heights Development, Inc.

J. Townhouse shall mean and refer to a single family

dwelling on the property that it is attached to at least one other townhouse by means of a party wall or otherwise.

## ARTICLE TWO - PROPERTIES SUBJECT TO THIS DECLARATION

### Section 2.01 Initial Property.

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Perinton, County of Monroe, and State of New York and is more particularly described in Schedule "A" attached hereto and incorporated by reference herein, all of which property shall be referred to as initial property.

### Section 2.02 Additional Property.

The Sponsor, its successors and assigns shall have the right to bring additional property within the scheme of this Declaration. The additions of property authorized under this article shall be made by filing and recording a Supplemental Declaration with respect to additional property and which shall extend the scheme of protective covenants, conditions, restrictions, easements, charges and liens contained in this Declaration to said additional properties and shall thereby subject such additions to assessment for the just share of Association expenses. This Supplemental Declaration may contain complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any of the added properties.

## ARTICLE THREE - PROPERTY RIGHTS

### Section 3.01 Owner's Rights

Every owner shall have a right and easement of enjoyment in and to common areas and a right of ingress and egress over the roadways of the Property which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

A. The right of the Association pursuant to its bylaws to adopt rules and regulations governing the use of the common areas and facilities, and governing the personal conduct of Association members and their guests and to establish penalties for infraction of said rules and regulations.

### Section 3.02 Sponsor's Rights

NOTWITHSTANDING any other provisions herein contained: The Sponsor reserves the right to operate a Sale Center at Patera Avenue, Town of Perinton, N.Y., and to maintain model units until the marketing and sale of all townhouses are complete, including additional phases of development. The Sponsor shall also have the right to use portions of the common elements for sales promotions including private roads, parking spaces, and to erect and maintain on the common area advertising direction and signs for Sponsor's sales and marketing.



## ARTICLE FOUR - EASEMENTS

### Section 4.01 Easements for Utilities.

Sponsor reserves the right to grant easements, both temporary and permanent, to all public authorities and public and private utility companies over any part of the common areas described herein.

### Section 4.02 Easements for Encroachments.

If any portion of the common areas encroach upon the lot or townhouse, or if any lot or townhouse encroaches upon any other lot or townhouse or upon any portion of the common areas, as a result of the construction of any building or as a result of settling or shifting of any building, or as a result of alterations or refurbishing of the common areas, or one or more lots made by or with the consent of the Board of Directors, a valid easement for the encroachment and for the maintenance of the same so long as the building or buildings stand shall exist. In the event any building, townhouse, any adjoining townhouse or any adjoining common areas, shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceeding, and then rebuilt, encroachments of parts of the common areas upon any townhouse, or any lot or townhouse upon any other lot or townhouse, or upon any portion of the common areas, due to such rebuilding, shall be permitted, and valid easements for such encroachments and maintenance thereof shall exist so long as the

Section 6.05 Powers and Duties of the Board of Directors.

The powers and duties of the Board of Directors shall be as set forth in the by-laws of the Association.

Section 6.06 Indemnification of Officers and Directors.

Every director and officer of the Association shall be and is hereby indemnified by the Association against any expenses or liabilities, including counsel fees reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party or in which such officer or director may become involved by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time when such expenses are incurred except in the case where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties.

ARTICLE SEVEN - ASSESSMENTS

Section 7.01 Creation of a Lien and Personal Obligation of Assessment.

Each lot owner, by accepting a deed therefore, whether or not such deed or any other instrument pursuant to which title is obtained so expressly provides, shall be deemed to covenant and agree to pay to the Association:

A. Annual assessments or charges for maintenance and operation of Association property (common areas), including

payment of property tax assessments for all real property taxes on the common areas and for all casualty and liability insurance covering Association property obtained pursuant to Article 13 of this declaration. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common areas.

B. Special assessments.

C. Working Capital assessments.

The assessments shall be fixed, established and collected from time to time as hereinafter provided. Each assessment together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the lot against which the assessment is made and shall also be the personal obligation of each owner of such lot at the time the assessment falls due.

The Sponsor will be obligated for association charges including supplemental charges on all unsold townhouses or lots as more specifically set forth in Section 7.03 herein.

#### Section 7.02 Purpose of Maintenance Assessment.

The maintenance assessment shall be used to fund maintenance, preservation, operation and improvement of Association Property and for the promotion of recreation, safety and welfare of the members of the Association. The assessment funds shall be used for the payment of taxes on Association property, utility services to property which is commonly metered or

billed, refuse collection, snow removal, vehicles and equipment used in maintenance, management, legal and accounting fees, all casualty, liability and other insurance covering association property, maintenance, repair and replacement of all facilities commonly serving the Association members both on and off the lots including landscaped areas, roads and townhouse exteriors as more fully set forth in Article 10. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common area which the Association is obligated to maintain.

Section 7.03 Commencement and Notice of Assessment.

Assessments shall commence on the day in which the first lot is transferred from the Sponsor to an owner or on such other date as may be determined by the Sponsor. The Sponsor will be obligated for the difference between actual Association expenses including reserves applicable to completed improvements as provided for in the Association's budget, and the Association charges levied on owners who have closed title to their lots. The first assessment shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors. Thereafter, assessments shall be fixed on a full year basis. The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. The assessment shall be due and payable on a monthly basis unless the Board of

Directors establishes other periods for payment.

Section 7.04 Basis for Maintenance Assessment.

The annual maintenance assessment shall be calculated in the following manner:

There shall be one class of maintenance assessment applicable to each townhouse.

The following items shall be considered common expenses and shall be included in the maintenance assessment for all townhouses: Payroll and payroll taxes, maintenance and operation, including grounds maintenance-supplies, repairs, refuse collection, snow removal, reserves (including road resurfacing, parking area resurfacing, seal roads and parking areas, walks, roofs, staining and miscellaneous) vehicle and equipment, utilities, insurance, taxes, management, legal and accounting and miscellaneous.

Section 7.05 Change in Basis of Assessments.

The Association may change the basis of determining the maintenance assessment provided for above by obtaining the consent of not less than two thirds (2/3) of the total votes of members voting in person or by proxy in a meeting called for this purpose. Written notice of the meeting for this purpose shall be given at least thirty (30) days in advance to all voting members. No change in the basis of maintenance assessments which adversely affects the interest of the Sponsor with respect to unsold lots shall be valid except with the specific

consent of the Sponsor in writing for a period of five (5) years from the date of the first townhouse conveyance or within 120 days after the Sponsor has sold seventy-five percent (75%) or more of the lots then subject to the declaration, whichever period shall occur first. A written certification of any such change shall be executed by the Board of Directors and recorded in the Monroe County Clerk's office.

Section 7.06 Working Capital Fund.

The Sponsor shall advance to the Association TWO HUNDRED AND FIFTY DOLLARS (\$250.00) per lot for each lot in a given phase prior to conveyance of the first lot in such phase. The purchase agreement set forth as Exhibit 8 requires the initial purchaser of each lot to reimburse the Sponsor for the TWO HUNDRED AND FIFTY DOLLARS (\$250.00) per lot for purposes of working capital of the Association. Reimbursement shall be made at the time of closing title to the lot. The advance shall be used for such purposes as the Board of Directors, in its sole discretion, may determine including to meet unforeseen expenditures or to acquire additional equipment or services. Working capital fund shall be replenished from funds collected in the assessment from lot owners. While the Sponsor is in control of the Board of Directors, the working capital fund may be used to reduce projected Association charges. Neither the Department of Law nor any other Government agency has passed upon the adequacy of the working fund established by the Sponsor.

Section 7.07 Special Assessments.

In addition to the annual maintenance assessment, the Association may levy a special assessment for any purpose deemed necessary by the Board of Directors. For any special assessment in excess of twenty percent (20%) of the then current amount of annual maintenance assessment, consent of two-thirds (2/3) of the total votes of the owners shall be required. A meeting of Association members shall be called at least thirty (30) days in advance for the purpose of voting on special assessments.

Section 7.08 Nonpayment of Assessment.

If an assessment or installment is not paid on the due date, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with interest thereon and costs of collection, shall there upon become a continuing lien on the property and shall bind such property in the hands of the then owner and such owner's heirs, devisees, personal representatives, successors and assigns.

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

Any assessment not paid within thirty (30) days after

the due date shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law.

The Association may bring an action at law against the owner who is personally obligated to pay the assessment or foreclose the lien against the property including interest, costs and reasonable attorneys fees of any such action. Each lot owner, by his acceptance of the deed to a lot, hereby expressly grants Thomas Creek Homeowners Association, Inc. the right and power to bring all actions against such owner personally for the collection of each charge as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property and such owner hereby expressly grants the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all lot owners. The Association, acting on behalf of the lot owners shall have the power to bid for an interest foreclosed upon a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot. Dissatisfaction with the quantity or quality of maintenance services furnished by the Association



shall under no circumstances entitle any lot owner to withhold or fail to pay the assessments due to the Association for the lot or lots owned by such owner.

Section 7.09 Right to Maintain Surplus.

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balances remaining. The Association is not obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and achievement of the purposes of the Association.

Section 7.10 Subordination of the Lien to Mortgages.

Lien of the assessments provided for herein, and fees, late charges, fines or interest levied by the Association shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect the assessment lien, however the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7.11 Subordination of Mortgage.

The mortgage for any land or construction loan for any part of the Thomas Creek Townhouses shall be made subordinate to the Declaration or shall include a covenant insuring that the Association and/or the townhouse or lot owner's undisturbed use of the premises for the purposes described herein in the event of foreclosure. Subordination to mortgage, to the extent permitted by law, the lien of the Association for maintenance assessments or other charges, fees, late charges or fines levied by the Association on or after the date of recording of the first mortgage on any lot shall be subordinate to said first mortgage lien.

ARTICLE EIGHT - MAINTENANCE

Section 8.01 Maintenance by the Association.

The Association shall be responsible for all maintenance and/or repair and/or replacement to the improvements on the Property; all roadways, parking areas and walkways on the Property, all snow removal from roadways, parking areas and walkways on the Property, all landscape areas on the Property, all hydrants of the Property and waterlines connected therewith and all pipes, drainage facilities, wires, conduit and public utility lines owned by the Association and for which the utility company or other entities are not responsible. Such costs shall be funded from the maintenance assessments. The Association

shall not be responsible for the maintenance and/or repair and/or replacement of the storm water sewer, sanitary sewer and water service laterals between the main lines and the individual townhouses. Each townhouse owner will own and maintain said service laterals between the main line and his or her individual townhouse.

Section 8.02 Maintenance of Townhouses with Respect to the Townhouses.

The Association shall repair, replace any exterior siding, gutters, downspouts, roofs, and paint the exterior trim, windows and doors, but the Association shall not repair or replace broken window panes or doors. The Association shall paint and repair or replace all fences or railings installed by the Sponsor and shall maintain, replace and repair all roadways, walkways and parking areas. Costs of all maintenance performed by the Association shall be funded from the maintenance assessments.

Section 8.03 Quality and Frequency of Maintenance and Repairs.

All maintenance, repairs and replacements whether or not performed by the Association shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and values of the property. The Association may establish reasonable schedules and regulations for maintenance repair or replacement which schedules and regulations shall take into account the useful life of any painting and exterior

materials in the enhancement and preservation of the appearance and value of the property.

Section 8.04 Access for Repairs.

The Association, its employees, contractors and agents shall upon reasonable notice to owners have the right to enter upon any portion of the owner's property and into and upon any townhouse at a reasonable hour to carry on its functions, as provided for in this Article except that in an emergency the Association shall have the right without notice to enter upon any portion of the property or enter into any townhouse to make necessary repairs and to prevent damage to any unit or any portion of the property. Repair of any damage caused from gaining access shall be the expense of the Association.

ARTICLE NINE - EXTERIOR MAINTENANCE

Section 9.01 Exterior Maintenance.

In addition to maintaining the common areas the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder. Maintenance shall include painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces or doors, screens or screen doors, exterior door and window fixtures. Any maintenance or repair necessitated by the willful or negligent acts of

an owner, his family, guests or invitees shall be added to and become a part of the assessment to which said owner's lot is subject.

## ARTICLE TEN - ARCHITECTURAL CONTROL

### Section 10.01 Architectural Control.

An architectural committee consisting of three or more representatives shall be appointed by the Board of Directors of the Thomas Creek Homeowners Association, Inc. to establish and enforce the architectural standards for Thomas Creek Townhouses. These standards shall include prohibitions against the erection of any buildings, fences, walls or structures upon the properties or the exterior addition, change or alteration of any building or lot unless such alteration has been first submitted and approved in writing by the architectural committee. The committee shall be obligated to respond within thirty (30) days of receipt of any plan and if the committee fails to approve or disapprove such design and location within sixty (60) days after receipt of same, this article will have been deemed to be fully complied with and committee approval will not be required. This prohibition is established to maintain the harmony of the external design, perspective and location of structures in Thomas Creek Townhouses.

### Section 10.02 Liability of Architectural Committee.

No action taken by the architectural committee or

any member, employee or agent thereon shall entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances or with respect to physical or other conditions of any lot or other portion of the property. Neither the Association nor the architectural committee or any agent thereon shall be liable to anyone submitting plans to them for approval or to any owner, member, or other person, in connection with the submission of plans or the approval or disapproval thereof including without limitation mistakes in judgment, negligence or nonfeasance. Every person submitting plans to the architectural committee agrees by submission of such plans that no action or suit will be brought against the Association or the architectural committee or any members, subcommittee, employee or agent thereof in connection with such submission.

#### ARTICLE ELEVEN - USE RESTRICTION

##### Section 11.01 Use Restriction.

No commercial or business activity shall be permitted upon the properties and all owners shall be bound by the by-laws and rules and regulations a copy of which is annexed hereto and made a part hereof. No owner shall be entitled to rent any part less than his entire townhouse or rent his townhouse for a period of less than thirty (30) days without the prior written approval of the Board of Directors.

## ARTICLE TWELVE - INSURANCE AND CASUALTY DAMAGE

### Section 12.01 Insurance.

The Board of Directors of the Association shall obtain and maintain in force and effect a policy of insurance in an amount determined by the Board of Directors to be appropriate or relevant to cover fire and casualty insurance on the Property, liability insurance on Common Areas, directors and officers liability insurance, insurance to cover the full replacement cost of any repair or reconstruction work on all Townhouses, and any additional umbrella coverage as may be deemed necessary or desirable.

### Section 12.02 Deductible.

The deductible, if any, on any insurance policy purchased by the Association shall be a common expense provided that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wanton malicious act of any owner against such owner. The Association may pay the deductible portion for which the owner is responsible, and the amounts so paid together with interest and cost of collection, including attorney's fees, shall be a charge and continuing lien upon the lot involved and shall constitute the personal obligation of such owner and shall be collectible in the same manner as assessments pursuant to this Declaration.

Section 12.03 Restoration or Reconstruction After Fire or Other Casualty.

In the event of damage to or destruction of any townhouse, insured through insurance obtained by the Board of Directors as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors or the insurance trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair or restoration in appropriate progress payments. If the owners of seventy-five percent (75%) or more of all townhouses do not duly and promptly resolve to proceed with the repair and restoration, the net proceeds of the insurance policy, if any, shall be divided among the townhouses in proportion to the damage to the insured property in relation to the total damage to all the insured property, provided that no payment shall be made to a townhouse owner until there has first been paid out of such townhouse owner's share all liens on such owner's lot. In the event that insurance proceeds are insufficient to pay all the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiencies against all owners of the damaged townhouses in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhouse and any negligence which in the opinion of the Board contributed to the damage or loss. In the event that



insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to their respective mortgagees and townhouse owners in such proportion as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhouse and provided that no part of the distribution that results from an assessment paid by a townhouse owner shall be made to all townhouse owners and the mortgagees as their interest may appear.

Section 12.04 Condemnation.

In the event of a loss or of condemnation rewards for losses to, or a taking of, common property a distribution cannot be made by the Association in any way which conflicts with the rights of any Eligible Mortgagee of any lot pursuant to the mortgage on said lot.

The Association shall represent, or appoint any Agent to represent, townhouse and/or lot owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for the acquisition of the common areas, or parts thereof.

Proceeds or awards of settlement shall be payable to the Association or trustee of the Association for the use and benefit of Association members and their mortgagees as their interests may appear.

## ARTICLE THIRTEEN - GENERAL COVENANTS AND RESTRICTIONS

### Section 13.01 Enforcement.

The Association or any owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### 13.02 Severability.

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect the other provisions which shall remain in full force and effect.

### 13.03 Declaration Runs With the Land.

Each person or entity acquiring an interest in a lot or other portions of the Property, whether by deed, lease or any other instrument, covenants and agrees for himself, his heirs, successors and assigns to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof and also covenants to incorporate this Declaration by reference of any deed, lease or other instrument for the transferring and interest in such lot or other portion of the property.

Section 13.04 Amendment.

Unless otherwise specifically provided, this declaration may be amended or rescinded upon the consent, in writing, of the owners of not less than two-thirds (2/3) of all the lots which are subject to this declaration. In addition, the approval of Eligible Mortgagees holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to Eligible Mortgagee mortgages, shall be required to add or amend any material provisions of the Declaration of the project, which establish, provide for, govern or regulate any of the following:

- A. Voting;
- B. Assessments, assessment liens or subordination of such liens;
- C. Reserves for maintenance, repair and replacement of the common areas;
- D. Insurance or Fidelity Bonds;
- E. Rights to use of the common areas;
- F. Responsibility for maintenance and repair of the several portions of the project;
- G. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project, other than Phases I through II of Thomas Creek Townhouses.
- H. Boundaries of any lot;
- I. The interests in the general common areas;
- J. Convertibility of lots into common areas or of common areas into lots;

K. Leasing of lots;

L. Imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer or otherwise convey his or her lot;

M. Any provisions which are for the express benefit of Eligible Mortgagees.

Until five (5) years from the date of the first town-house conveyance or within 120 days after the Sponsor has sold seventy-five percent (75%) or more of the lots subject to this Declaration, whichever period occurs first, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor. The owner of every lot shall receive written notice of every proposed amendment or rescission to this Declaration at least thirty (30) days prior to the date set for voting on said amendment or rescission. Any amendment to the declaration must be recorded in the Monroe County Clerk's office and shall not become effective until the date of recording. The provisions of this Declaration shall unless amended or rescinded continue with full force and effect against both the property and the owners for a period of not less than twenty (20) years from the date this Declaration is recorded and shall then be automatically and without further notice extended for successive periods of ten (10) years.

Section 13.05 Inspection and Right of Entry.

Any agent of the Association or architectural committee

may at any reasonable time or times upon not less than twenty-four (24) hours notice to the owner, enter upon a lot or other portion of the property and inspect improvements thereon for the purpose of ascertaining whether maintenance construction or alteration of structure or other improvements comply with the declaration or other rules and regulations issued pursuant thereto. In case of emergencies, right of entry shall be immediate, and shall exist whether the owner is present at the time or not. Neither the Association or such agents shall be deemed to have committed a trespass or other wrongful act by reason of such enter inspection.

Section 13.06 Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. Any notice required to be sent to the Sponsor, owner, or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address to the person who appears as the Sponsor, owner or mortgagee on the records of the Association at the time of such mailing period.

Section 13.07 The Right to Impose Additional Protective Covenants.

The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of

any lands encumbered by this Declaration.

Section 13.08 Provisions Relating to Mortgagees.

Any Eligible Mortgagee of any lot mortgage at its request is entitled to timely written notification of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held, insured or guaranteed by such Eligible Mortgagee.

B. Any delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days.

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as follows:

1. Any restoration or repair of project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgagees holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to Eligible Mortgagee mortgages.

2. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of Eligible Mortgagees holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to Eligible Mortgagee mortgages.

3. Unless the formula for reallocation of interests in the common areas after a partial condemnation or partial destruction of the Thomas Creek Townhouses is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a project may be effected without the prior approval of Eligible Mortgagees holding mortgages on all remaining lots whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining lots subject to Eligible Mortgagee mortgages.

4. When professional management has been previously required by any Eligible Mortgagee, whether such entity became an Eligible Mortgagee at that time or later, any decision to establish self-management by the Association shall require the prior consent of owners of lots to which at least two-thirds ( $2/3$ ) of the votes in the Association are allocated and the approval of Eligible Mortgagees holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to Eligible Mortgagee mortgages.

Section 13.09 First Mortgagees.

First Mortgagees of lots in Thomas Creek Townhouses may pay taxes or other charges which are in default and which may or have become a charge against any of the common areas and pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of policy for such property. Any first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

IN WITNESS WHEREOF, the undersigned being the Sponsor herein has hereunto set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Sponsor  
COLONIAL HEIGHTS DEVELOPMENT, INC.

By: \_\_\_\_\_  
David Christa, President

STATE OF NEW YORK)  
COUNTY OF MONROE ) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 1987, before me personally came David Christa, to me personally known, who, being by me duly sworn, did depose and say that he resides in Perinton, New York, that he is the President of Colonial Heights Development, Inc., the corporation described in, and which executed, the within 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



EXHIBIT 2

CERTIFICATE OF INCORPORATION

CERTIFICATE OF INCORPORATION

OF

THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

Under Section 402 of the Not-for-Profit Corporation

The undersigned, being of the age of eighteen years or over, for the purpose of forming a corporation pursuant to the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is Thomas Creek Homeowners Association, Inc., hereinafter called the Association.

2. The corporation is a Type A corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

The corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers except to the extent permitted under the Not-for-Profit Corporation Law.

3. The purposes for which the Association is formed are to provide management, care, improvement, and preservation of the residence lots and common facilities within that certain tract of property located on Patera Road in the Town of Perinton, Monroe County, New York, known as Thomas Creek Townhouse Subdivision and being the premises described in that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens recorded in the Monroe County Clerk's office and any supplements or additions thereto, and to promote the health, safety and welfare of the residents within the above property and any additions thereto as may hereafter be brought within the jurisdiction of this Association and for these purposes:

A. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens hereinafter called the Declaration, applicable to the property and recorded in the Office of the Monroe County Clerk, and as the same may be amended from time to time as therein provided;

B. To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed upon the Association;

C. To acquire, by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Association;

D. To borrow money, and, with the assent of two-thirds of the voting members, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

E. To dedicate, sell or transfer all or any part of the common facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; no such dedication or transfer shall be effective unless an instrument has been signed by two-thirds of the voting members, agreeing to such dedication, sale or transfer;

F. To participate in mergers and consolidations with other non-profit corporations organized for the same purposes, or annex additional residential property and common area, provided that any such merger or consolidation shall have the assent of two-thirds of the voting members;

G. To have and exercise any and all other powers, rights and privileges which a corporation organized under the Not-for-Profit Corporation Law of the State of New York, by law may now or hereafter have or exercise.

4. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including the Sponsor shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of the 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. The affairs of this association shall be managed by a board of directors, who need not be members of the Association. The number of directors of the Association shall be not

less than three nor more than nine. The number of directors may be changed by amendment to the By-Laws of the Association.

At the first annual meeting the members shall elect one-third of the directors for a term of one year, one-third of the directors for a term of two years and one-third of the directors for a term of three years; at each annual meeting thereafter the members shall elect one-third of the directors for a term of three years.

6. The names and street addresses of the initial directors are as follows:

<u>Name</u>	<u>Street Address</u>
David Christa	19 Foxboro Lane Fairport, New York 14450
Kathleen Christa	29 Foxboro Lane Fairport, New York 14450
Robert L. Teamerson	220 Basket Road Webster, New York 14580

7. The Association may be dissolved with the assent given in writing and signed by not less than three-fourths of the voting members. Upon dissolution of the Association, other than incident to a merger or a consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created, or for general welfare of the residents of the town in which the property is located. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to similar purposes.

8. Amendment of this certificate of incorporation shall require the assent of two-thirds of the entire voting membership.

9. The office of the corporation is to be located in Monroe County, New York.

10. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is: Sutton, DeLeeuw, Clark & Darcy, 31 East Main Street, Rochester, New York 14614, Attn: Robert L. Teamerson.

IN WITNESS WHEREOF, I have executed this Certificate of Incorporation this 20<sup>th</sup> day of January, 1987, and affirm that the statements made herein are true under the penalties of perjury.

*Donald E. Snyder* Incorporator  
Donald E. Snyder  
31 East Main Street  
Rochester, New York 14614

NYS DEPARTMENT OF STATE

FILING RECEIPT

INCORPORATION (NOT FOR PROFIT)

CORPORATION NAME

THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

<u>DATE FILED</u> 01/27/87	<u>DURATION &amp; COUNTY CODE</u> P MDNR	<u>FILM NUMBER</u> B450275-5	<u>CASH NUMBER</u> 873777
<u>NUMBER AND KIND OF SHARES</u>		<u>LOCATION OF PRINCIPAL OFFICE</u>	

TYPE A  
\$DC

ADDRESS FOR PROCESS

S/S SUTTON DELEEUW CLARK &  
DARCY; ROBERT TEAMERSON  
31 EAST MAIN STREET  
ROCHESTER NY 14614

REGISTERED AGENT

FEES AND/OR TAX PAID AS FOLLOWS:

AMOUNT OF CHECK \$ 00060.00	AMOUNT OF MONEY ORDER \$	AMOUNT OF CASH \$
\$ 6.00 DOLLAR FEE TO COUNTY	\$ 050.00 FILING	
	\$ TAX	
	\$ CERTIFIED COPY	
	\$ CERTIFICATE	
	010.00 MISCELLANEOUS	
	TOTAL PAYMENT \$ 000060.00	
	REFUND OF \$	

SENDER NAME AND ADDRESS

SUTTON DELEEUW CLARK & DARCY  
31 EAST MAIN STREET

ROCHESTER NY 14614

TO FOLLOW

BY-LAWS OF THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLE ONE

PLAN OF TOWNHOUSE OWNERSHIP

Section 1-01. Townhouse Lot Ownership.

The property of the THOMAS CREEK HOMEOWNERS ASSOCIATION, INC., Town of Perinton, Monroe County, State of New York has been submitted to the provisions of a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") recorded in the Office of the County Clerk, Monroe County, simultaneously herewith. "THOMAS CREEK HOMEOWNERS ASSOCIATION, INC." shall hereinafter be referred to as the "Association".

Section 1-02. Applicability of By-laws.

The provisions of these By-laws are applicable to the Property and to the use and occupancy thereof. The term "PROPERTY" as used herein shall include the land, the buildings and all other improvements thereon owned in fee simple absolute, and all easements, rights, and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of the said Declaration.

Section 1-03. Applicability to Persons.

All present and future owners, lessees, and mortgagees, their employees, and any other person who may use the facilities of the Property in any manner shall be subject to these By-laws, the Declaration, and rules and regulations pertaining to the use and operation of the Property.

Acquisition, rental or occupancy of any lot on the Property shall be sufficient to signify acceptance and ratification of the provisions of the aforementioned instruments, and an agreement to comply therewith.

Section 1-04. Membership in the Association.

The members of the Association shall be the record owners of a fee or undivided fee interest in any of the lots within the Property, provided that any person or entity holding such interest merely as security for the performance of any obligation shall not be a member. The Association shall have one (1) class of members.

Colonial Heights Development, Inc. (hereinafter called "Sponsor"), may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferrable or assignable.

Section 1-05. Office.

The office of the Association and of the Board of