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DECLARATION OF CONDOMINIUM PROPERTY

FOR

FOX HILL CONDOMINIUM

I hereby certify that copies of the within Declaration, together with the drawings attached as an Exhibit thereto, have been filed in the Office of the Auditor, Montgomery County, Ohio.

Dated: MAR 21 1985

By: *Robert L. Roderer*
Montgomery County Auditor

Plat Reference: Book 124, Page 44A+4B

RECORDED
RECORDER
255 60 N
MAR 21 8 47 AM '85
MONTGOMERY COUNTY, OHIO
RECORDED

Current Plat # 458-1021

THIS INSTRUMENT PREPARED BY:

Hans H. Soltau
Attorney at Law
124 East Third Street
Dayton, Ohio 45402

1985 MAR 21 AM 8:33
ROBERT L. RODERER
MONT. COUNTY AUDITOR
TRANSFERRED

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ARTICLE I
DEFINITIONS

The following terms used herein are defined as follows:

- 1.01 Additional Property, shall mean adjacent or adjoining property which is described in Exhibit "D" of this Declaration, and which, together with improvements thereon may be added in the future to the Condominium.
- 1.02 Agent, shall mean any person who represents or acts for or on behalf of the Developer in selling or offering to sell a Condominium Ownership Interest, but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.
- 1.03 Amendment, shall mean an instrument executed with the same formalities of the Declaration and recorded with the Recorder of Montgomery County, Ohio for the purpose of amending the Declaration or any of the exhibits thereto.
- 1.04 Articles and Articles of Incorporation, shall mean the articles, filed with the Secretary of State of Ohio, incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.
- 1.05 Association, shall mean Fox Hill Condominium Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.
- 1.06 Board of Managers, shall mean those persons who, as a group, serve as the board of trustees of the Association.
- 1.07 By-Laws, shall mean the By-laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provision of Chapter 5311 of the Ohio Revised Code for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.
- 1.08 Common Areas and Facilities, shall mean all the Condominium Property except that which is specifically defined and referred to as a Unit.
- 1.09 Common Assessments, means the assessments charged proportionately on the basis of percentage of interest against all Units for common purposes.
- 1.10 Common Expenses, means those expenses designated as such by Chapter 5311 of the Ohio Revised Code, or in accordance with the provisions of the Declaration, or both.

DECLARATION OF CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth by Charles V. Simms Development Corporation, an Ohio corporation, hereinafter referred to as "Declarant".

RECITALS

A. Declarant is the Owner in fee simple of the real property hereinbelow described, and it is its desire and intention to enable said real property, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind situated thereon, and all privileges belonging or in any way appertaining thereto, to be owned under and pursuant to that certain type of ownership commonly known as "Condominium", and to subject and submit such property to the provisions of Chapter 5311 of the Ohio Revised Code.

B. Declarant is further desirous of establishing for the mutual benefit of all future Owners, mortgagees or occupants of the Condominium Property or any part thereof, which shall be known as FOX HILL CONDOMINIUM, certain easements and rights in, over and upon such Condominium Property, and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof.

C. Declarant desires and intends that the several Owners, mortgagees, occupants and other persons hereafter acquiring an interest in the Condominium Property shall at all times enjoy the benefits of, and shall hold their interests therein subject to the rights, easements, privileges and restrictions hereinafter set forth in this Declaration, and in the By-Laws of Fox Hill Condominium Association, Inc., attached hereto as Exhibit "C".

D. Declarant is also the Owner of real property adjacent and adjoining the real property submitted hereby, and contemplates submitting such property to the provisions of this Declaration, by an amendment or amendments hereto.

DECLARATIONS

NOW, THEREFORE, Declarant hereby makes the following Declaration as to the covenants, restrictions, limitations, conditions and uses to which the Condominium Property may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent Owners of all or any part of the Condominium Property, together with their respective grantees, heirs, executors, administrators, devisees, successors or assigns.

- 1.11 Common Losses, means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.
- 1.12 Common Profits, means the amount by which the total income received from assessments charged for special benefits to specific Units, rents received from rentals of equipment or space in Common Areas and Facilities, and any other fee, charge, or income other than Common Assessments exceed expenses allocable to the income, rental, fee or charge.
- 1.13 Common Surplus, means the amount by which Common Assessments collected during any period exceed Common Expenses.
- 1.14 Condominium, shall mean Fox Hill Condominium, the condominium regime for the Condominium Property created under and pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.
- 1.15 Condominium Instruments, shall mean the Declaration, the drawings and By-Laws attached as exhibits thereto, any contract pertaining to the management of the Condominium Property, and all other documents, contracts or instruments establishing ownership or exerting control over the Condominium Property or a Unit.
- 1.16 Condominium Ownership Interest, means a fee simple estate or a ninety-nine (99) year leasehold estate, renewable forever, in a Unit, together with its appurtenant undivided interest in the Common Areas and Facilities.
- 1.17 Condominium Property, means land, all buildings, improvements and structures on the land, all easements, rights and appurtenances belonging to the land, and all articles of personal property submitted to the provisions of Chapter 5311 of the Ohio Revised Code by this Declaration and any amendment thereto.
- 1.18 Declarant, shall mean Charles V. Simms Development Corporation, an Ohio corporation, its successors and assigns.
- 1.19 Declaration, shall mean the instrument by which the hereinafter described property is submitted to the provisions of Chapter 5311 of the Ohio Revised Code and any and all amendments thereto.
- 1.20 Developer, shall mean the Declarant, any successor to the Declarant who stands in the same relation to the Condominium Property as the Declarant, and any person who directly or indirectly sells or offers for sale a Condominium Ownership Interest.
- 1.21 Drawings, shall mean those drawings, as the same may be lawfully amended from time to time, which are attached as Exhibit "B" to this Declaration.

1.22 Limited Common Areas and Facilities, means and includes those Common Areas and Facilities designated in this Declaration, and any amendment thereto, as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

1.23 Person, shall mean a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

1.24 Unit, shall mean a part of the Condominium Property consisting of one (1) or more rooms on one (1) or more floors of a building which are designated a Unit by this Declaration or amendment thereto, and are delineated on the drawings in Exhibit "B" attached hereto, and in the drawings attached to an amendment of this Declaration.

1.25 Unit Owner, means a person who owns a Condominium Ownership Interest in a Unit.

ARTICLE II

NAME AND PURPOSE

2.01 Name. The Condominium Property shall be known as Fox Hill Condominium.

2.02 Purpose. The Condominium Property shall be used for single family residence purposes and common recreational purposes auxiliary thereto and for no other purpose, provided, however, that Declarant or its agents may use one or more of the Units for sales, promotional, development, construction and office purposes.

ARTICLE III

LEGAL DESCRIPTION OF PREMISES

3.01 The real property subject to this plan for Condominium ownership is described in Exhibit "A" attached hereto.

ARTICLE IV

DESCRIPTION AND LOCATION OF BUILDINGS

4.01 Description. Unless or until amended, the following building(s) is/are located on the Condominium Property, and is/are generally described as follows:

- (a) Building 1 is two (2) stories in height, containing four (4) townhouse Units.

4.02 General. The buildings are built on a concrete slab, with frame exterior walls, with some stone veneer, stucco and siding, windows, a wood truss roof with asphalt shingle or wood covering, wood floor joists, wall studs and drywall.

4.03 Location. The buildings face Cobblegate Drive or Orchard Run Road, both of which are public highways.

ARTICLE V

DESCRIPTION OF UNITS

5.01 General. Each of the Units within this Declaration, or any additional Units brought within the provisions of the Declaration by amendment hereto, shall consist of all of the space bounded by the undecorated surfaces of the perimeter walls, floors and ceilings of each such Unit, to constitute a complete enclosure of space, the dimensions, layouts and descriptions of each such Unit being shown on the drawings attached hereto as Exhibit "B", and in the drawings attached to any amendment hereto, and including, without limitation:

- (a) The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material(s) applied to the interior surface of such perimeter walls, floors and ceilings;
- (b) All windows, screens and doors, including the frames, sashes and jams, and the space occupied thereby;
- (c) All fixtures located within the bounds of a Unit, installed in and for the exclusive use of said Unit, commencing at the point of disconnection from the structural body of the building or from the point of disconnection of utility pipes, lines or systems serving the entire building or more than one Unit thereof, whichever may be applicable;
- (d) All control knobs, switches, thermostats and base plugs, floor plugs and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein;
- (e) All interior walls, floors and ceilings;
- (f) All plumbing, electric, heating, security, alarm, vacuum, cooling and other utility lines, pipes, wires, ducts or conduits which exclusively serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit.

But excepting therefrom all plumbing, electric, heating, cooling and other utility service lines, pipes, wires, ducts or conduits which are located within the bounds of a Unit but which do not exclusively serve such Unit.

5.02 Type of Units. Unless or until amended, there is one type of Unit which is generally described as a two (2) story town-house Unit containing approximately 1,240 square feet. The Unit contains one (1) bedroom with an additional loft area, a living room, dining area, kitchen, one and one-half (1½) baths, closets, foyer and an attached garage.

ARTICLE VI

DESCRIPTION OF COMMON AREAS AND FACILITIES

6.01 General. The entire balance of the land and improvements thereon, including but not limited to all buildings, foundations, roofs, main and supporting walls, patios, driveway, parking area, detention or retention system, trees, lawns, gardens, stoops, wires, conduits, utility lines and ducts, now or hereafter situated on the Condominium Property, are hereby declared and established as the Common Areas and Facilities.

6.02 Status. All Common Areas and Facilities included in the Condominium subjected by the Declaration and any amendment thereto are fully installed, completed and in operation for the use of the Unit Owners.

ARTICLE VII

DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

7.01 General Uses. All plumbing, electrical, heating, cooling and other utility service lines, pipes, wires, ducts and conduits which serve only one (1) Unit shall be Limited Common Areas and Facilities for the exclusive use of the Unit served thereby.

7.02 Specific Uses. The areas hereinafter described, included within the Common Areas and Facilities appurtenant to a Unit, are deemed Limited Common Areas and Facilities designated as reserved for the exclusive use of the appurtenant Unit or Units as hereinafter set forth.

- (a) The patios are designated as Limited Common Areas and Facilities for the Unit adjoining such patio.
- (b) The entranceway and stoops are designated as Limited Common Areas and Facilities for the Unit adjoining such entranceway and stoop.

- (c) The air conditioning pad, compressor, duct and conduits thereto are designated as Limited Common Areas and Facilities for the Unit being serviced by such equipment.

ARTICLE VIII

USE OF COMMON AREAS AND FACILITIES

8.01 Each Unit Owner shall own an undivided interest in the Common Areas and Facilities as a tenant in common with all other such Unit Owners and, except as otherwise limited in this Declaration and in the By-Laws attached hereto as Exhibit "C", shall have the right to use the Common Areas and Facilities for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses as permitted by this Declaration and the By-Laws, including the non-exclusive easement, together with other Unit Owners to the use and enjoyment of the Common Areas and Facilities and for ingress and egress to and from their respective Units, which right shall be appurtenant to and shall run with his Unit. The extent of such ownership in the Common Areas and Facilities is hereby deemed and expressed by the percentage amount set forth in Article IX hereof, which shall remain constant and shall not be changed except by an amendment to this Declaration pursuant to the provisions of Section 9.03 and Article XIII.

ARTICLE IX

OWNERSHIP OF COMMON AREAS AND FACILITIES

9.01 Percentage of Ownership. Unless or until amended, the percentage of ownership of the Common Areas and Facilities attributable to the Ownership Interest in each Unit and for the division of Common Profits, Common Surplus and Common Expenses, is as follows:

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP</u>
1	25%
2	25%
3	25%
4	<u>25%</u>
	100%

9.02 Computation. Each Unit's percentage of ownership as herein set forth, was determined by comparing the square footage of such Unit to the total square footage of all of the Units on the date when this Declaration is filed for record, or stated in another way, the percentage of ownership of a particular Unit is equal to a fraction, the numerator of which is the square footage of such Unit and the denominator of which is the total square footage of all of the Units.

9.03 Amendment. Except as provided for in Article XXI hereof, the percentage of ownership as herein set forth shall not be altered except by an amendment to the Declaration unanimously approved by all Unit Owners.

ARTICLE X

REGULATION OF COMMON AREAS AND FACILITIES

10.01 No person shall use the Common Areas and Facilities or any part thereof in any manner contrary or not in accordance with such rules and regulations pertaining thereto as from time to time may be adopted by the Board of Managers of the Association. Without in any manner intending to limit the generality of the foregoing, the Board of Managers shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the Common Areas and Facilities by members of the Association and their respective employees, invitees and servants.

ARTICLE XI

RESTRICTIONS ON THE USE OF CONDOMINIUM PROPERTY

11.01 Obstruction of Common Areas and Facilities. There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior consent of the Board of Managers of the Association, except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

11.02 Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance of the building or contents thereof applicable for residential use, without the prior written consent of the Board of Managers of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which will result in the cancellation of insurance on the building or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas and Facilities.

11.03 Exterior Surfaces of Buildings. Unit Owners shall not cause or permit anything to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building, and no sign, awning, canopy, shutter or radio or television antenna or receiving dish or disk shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board of Managers of the Association, other than those originally provided by Declarant.

11.04 Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats or other household pets may be kept in Units subject to the rules and regulations adopted by the Board of Managers of the Association, provided that they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions upon three (3) days written notice from the Board of Managers of the Association.

11.05 Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants.

11.06 Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the building or which would change the buildings.

11.07 Laundry or Rubbish in Common Areas and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas and Facilities. The Common Areas and Facilities shall be kept free and clear of rubbish, debris and other unsightly materials.

11.08 Lounging or Storage in Common Areas and Facilities. There shall be no playing, lounging, parking of campers or boats, inoperable vehicles, trucks, motorcycles, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Areas and Facilities except in accordance with rules and regulations therefor adopted by the Board of Managers.

11.09 Prohibited Activities. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Condominium Property. The right is reserved by the Declarant or his agent to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units. In addition, the right is hereby given the Association or its representatives to place "For Sale" or "For Rent" signs on any Unit or on the Condominium Property for the purpose of facilitating the disposal of Units by any Unit Owner, mortgagee or the Association.

11.10 Alteration of Common Areas and Facilities. Nothing shall be altered, constructed in, or removed from the Common Areas and Facilities except as hereinafter provided, and except upon the written consent of the Board of Managers. The Board of Managers may delegate their authority hereunder to an architectural review committee.

11.11 Rental of Units. The respective Unit shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (i) rental for any period less than sixty (60) days or (ii) any rental if the occupants of the Units are provided customary hotel services such as room service for food and beverage, maid service, and furnishing of laundry and linen services. Other than the foregoing obligations, and subject to such rules and regulations as adopted by the Board of Managers, the Owners of the respective Units shall have the right to lease the same provided that said lease is made subject to the covenants and restrictions in this Declaration.

11.12 Declarant. Notwithstanding the above, the Declarant may do what is reasonably necessary to complete the additional buildings on the Additional Property, including the storage of construction materials, construction office on location, and what is reasonably necessary to promote and sell the Units thereon constructed.

ARTICLE XII

UNIT OWNERS' ASSOCIATION

12.01 General. Declarant has caused to be formed an Ohio not-for-profit corporation called Fox Hill Condominium Association, Inc., which shall administer the Condominium Property. Such Association shall be governed by this Declaration and its By-Laws which are attached hereto as Exhibit "C". A Board of Managers and the officers of the Association elected as provided by the By-Laws, shall exercise the powers, discharge the duties, and be vested with the rights conferred by operation of law, by the By-Laws and by this Declaration, upon the Association, except as otherwise specifically provided; provided, however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by or vested in an officer or member of the Board of Managers, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration and the By-Laws attached hereto as Exhibit "C".

12.02 Membership in the Association. Membership in the Association is limited to Unit Owners. Each Unit Owner, upon acquisition of title to a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of Condominium Ownership Interest, at which time the new Owner of such Unit automatically shall become a member of the Association. Declarant shall be a member of such Association as long as it retains title to any Unit. Each Unit Owner shall be entitled to one (1) vote in the Association for each Unit owned.

12.03 Administration of Condominium Property. The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws of the Association, which are attached hereto as Exhibit "C". Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative(s), as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

12.04 Service of Process. The person to receive service of process for the Association shall be the President of the Association. Until such time as a President is elected, service may be made upon Hans H. Soltau, 124 East Third Street, Dayton, Ohio 45402.

12.05 First Meeting of Association. A first meeting of the Association shall be held no later than the date on which twenty-five percent (25%) of the Condominium Ownership Interests have been sold and conveyed by the Declarant. The purpose of such meeting shall be to elect two (2) members to the Board of Managers from Unit Owners, other than Declarant.

12.06 Declarant's Rights. Until such time as Declarant shall have sold and conveyed seventy-five percent (75%) of the Condominium Ownership Interests, or for a period of five (5) years from the date on which this Declaration is filed for record, whichever first occurs, the powers, rights, duties and functions of the Association shall be exercised by a Board of Managers selected by the Declarant; provided, however, that no later than the date on which twenty-five percent (25%) of the Condominium Ownership Interests have been sold and conveyed by Declarant, two (2) members shall be elected by the Unit Owners, other than Declarant, pursuant to Section 12.05.

12.07 Computation. For purposes of Sections 12.05 and 12.06, the percentages of Condominium Ownership Interests sold and conveyed by Declarant shall be determined by comparing the Condominium Ownership Interests sold and conveyed to the total number of Condominium Ownership Interests created and which may be created pursuant to Article XXI.

12.08 Turnover. Within thirty (30) days after the expiration of any period during which the Developer exercises control over the Association pursuant to Section 12.06, the Association shall meet and elect all members of the Board of Managers and all other officers of the Association. The persons so elected shall take office immediately from such election. After said meeting, the Declarant shall deliver to such Board of Managers or officers, correct and complete books and records of account as provided by the By-Laws and Section 5311.09(A) of the Ohio Revised Code.

ARTICLE XIII

AMENDMENT OF DECLARATION AND BY-LAWS

13.01 General. Unless otherwise specifically provided for herein, this Declaration and the By-Laws attached hereto as Exhibit "C", may be amended only upon the affirmative vote of the Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association. Any amendment of this Declaration or the By-Laws attached hereto as Exhibit "C", must be filed for record with the Recorder of Montgomery County, Ohio. Such amendment must be executed with the same formalities as this instrument and must refer to the microfiche number in which this instrument and its attached exhibits are recorded.

13.02 Mortgage or Mortgagee. Any amendment which adversely affects the value, or priority, or the security of any mortgagee of record shall require the written consent of such mortgagee of record. Any amendment affecting the underwriting requirements of any mortgagee shall require the written consent of such mortgagee and also F.H.L.M.C. or F.N.M.A., if required by such mortgagee. Any amendment of language specifically referring to mortgages shall require the written consent of all mortgagees of record.

13.03 Declarant's Rights. Any amendment affecting any rights granted or reserved to the Declarant by the Declaration or By-Laws, shall require the written consent of the Declarant.

ARTICLE XIV

MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

14.01 Association. Except as otherwise provided herein, management, maintenance, repairs, alterations and improvements of the Common Areas and Facilities shall be the responsibility of the Association.

14.02 Delegation to Managing Agent. The Association may delegate all or any portion of its authority to discharge its responsibility pursuant to Section 14.01 to a Manager or Managing Agent; subject to the limitations that:

- (a) Any such delegation be by a written contract with a term of no longer than one (1) year in duration;
- (b) That any such contract be terminable by either party without cause, upon sixty (60) days written notice without any termination charges or other penalties;

- (c) That any such contract entered into by the Declarant prior to the time it releases or relinquishes control of the Association shall terminate when the Declarant releases or relinquishes such control unless such contract is renewed by a vote of the Unit Owners at the meeting called for purposes of turning over control of the Association.

14.03 Mortgagee. A Manager or Managing Agent may be required by any lending institution holding mortgages on over fifty-one percent (51%) of the Units, or by any group of lending institutions who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units. The Association shall provide such mortgagee or mortgagees, as the case may be, with a copy of any management agreement entered into by the Association and such Manager or management company.

14.04 Unit Owner. The responsibility of each Unit Owner shall be as follows:

- (a) To maintain, repair and replace at his expense all portions of his Unit and all internal installations of such Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and which exclusively serve such Unit.
- (b) To maintain the patios, entranceways and stoops which are designated by this Declaration as Limited Common Areas and Facilities for the exclusive use of such Unit Owner.
- (c) To maintain the air conditioning pad, compressor, duct and conduits thereto which are designated by this Declaration as Limited Common Areas and Facilities for the exclusive use of such Unit Owner.
- (d) To maintain, repair and replace at his expense all portions of the Common Areas and Facilities which may be damaged or destroyed by reason of the willful or uninsured negligent act or neglect of himself, or by the willful or uninsured negligent act or neglect of any invitee, licensee or guest of such Owner.
- (e) To maintain and repair all windows and doors of his Unit and of all associated structures and fixtures therein which are appurtenances to his Unit. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

- (f) To maintain, repair and replace the springs, tracks or any other mechanism relating to the garage doors, including without limitation any garage door opener and the mechanisms associated thereto, whether installed by the Developer or the Unit Owner.
- (g) To perform his responsibilities in such a manner so as not to unreasonably disturb other persons residing within the building.
- (h) Not to paint or otherwise decorate so as to change the appearance of any portion of the building not within the walls of the Unit unless the written consent of the Board of Managers of the Association is obtained.
- (i) To promptly report to the Association or its Agent any defect or need for repairs, the responsibility of which is with the Association.
- (j) Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Association or remove any portion thereof or make any addition thereto, or do anything which would or might jeopardize or impair the safety or soundness of the building, without first obtaining the written consent of the Board of Managers of the Association and of the Owner or Owners of whose benefit such easement exists.

14.05 Construction Defects. The obligation of the Association and of the unit Owners to repair, maintain and replace the portions of the property for which they are respectively responsible, shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the property. The undertaking of repair, maintenance or replacement by the Association or the Unit Owners, shall not constitute a waiver of any rights against any warrantor, but such rights shall be specifically reserved.

14.06 Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Unit Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of a construction guarantee or insurance coverage shall not excuse any delay by the Association or any Unit Owner in performing his obligation hereunder.

ARTICLE XV

EASEMENTS

15.01 Encroachments. In the event that by reason of the construction, settlement or shifting of the building, or by reason of the partial or total destruction and rebuilding of the building, any part of the Common Areas and Facilities presently encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities, or if by reason of the design or construction of any Unit it shall be necessary or advantageous to an Owner to use or occupy for formal uses and purposes any portions of the Common Areas and Facilities consisting of unoccupied space within the building and adjoining his Unit, or if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving either any other Unit or more than one (1) Unit, presently encroaches or shall hereafter encroach upon any part of any Unit, then valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that no valid easement for any encroachment shall be created in favor of the Owner of any Unit or in favor of the Common Areas and Facilities, if such encroachment is caused by the willful conduct of said Owner.

15.02 Easements for Repair, Maintenance and Restoration. The Association shall have a right of access and an easement to, over and through all of the Condominium Property, including each Unit, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair and restoration, provided that exercise of this easement, as it affects the individual Units, shall be at reasonable times with reasonable notice to the individual Unit Owners. Any damage resulting to a particular Unit through the provisions of this Article, shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.

15.03 Easements Through Walls Within Units. Easements are hereby declared and granted to the Association to install, lay, maintain, repair and replace the pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the Units, whether or not such walls be in whole or in part within the Unit boundaries. The Owner of each Unit shall have the permanent right and easement to and through the Common Areas and Facilities and walls for the use of water, sewer, power, television antenna and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of the Unit. Any damage resulting to a particular Unit as a result of the easement herein granted to the Association, shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.

15.04 Easements for Certain Utilities and Cable Television. The Association may hereafter grant easements on behalf of Unit Owners to entities for utility and cable television purposes for the benefit of the Condominium Property. Each Unit Owner hereby grants, and the transfer of title to a Unit Owner shall be deemed to grant, the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing.

15.05 Easements For Construction. Declarant hereby reserves, for itself, a right and easement to enter upon the Common Areas and Facilities to do all things necessary to complete construction and to complete development of the Condominium Property, including the Additional Property.

15.06 Tie-In Easements. Declarant reserves the right and easement over, on and under the Common Areas and Facilities, to use, tie into and extend all existing utility lines for purposes of serving the Additional Property and any other adjoining property which it may own or acquire during the period in which it has the right to add the Additional Property.

15.07 Service Easements. An easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons, and to the local governmental authorities, but not the public in general, to enter upon the Common Areas and Facilities in the performance of their duties.

15.08 Water Easement. The Association shall have a right and easement to the exterior water taps or faucets of any Unit for the purpose of watering any Common Areas and Facilities landscaping; provided, however, that such use shall be reasonable and the Association shall reimburse the Unit Owner for any excessive use of water.

15.09 Additional Property Easement. Declarant hereby reserves, for itself, a right to grant and/or reserve an easement for ingress and egress over and through the Common Areas and Facilities for itself and for the benefit of any subsequent owner or owners of part or all of the Additional Property.

15.10 Adjoining Property Easement. Declarant has a right to acquire certain property adjoining the Condominium Property and the Additional Property, and does hereby reserve for itself, in the event it acquires such property, the right to grant and/or reserve an easement for ingress and egress over and through the Common Areas and Facilities for itself and for the benefit of any subsequent owner or owners of such property. Such right and reservation shall continue and survive for the period of time in which Declarant has the right to add the Additional Property.

15.11 Consent to Easements. Each Unit Owner hereby grants, and the transfer of title to a Unit Owner shall be deemed to grant, the Declarant an irrevocable power of attorney to execute, acknowledge and record, for an in the name of such Unit Owner, and his mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved by the Declarant in this Article.

15.12 Easements Shall Run With Land. All easements and rights herein described are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns and any Owner, purchaser, mortgagee and any other person having an interest in said land, or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation, shall not defeat or fail to reserve said easements, but same shall be deemed conveyed or encumbered along with the Unit.

ARTICLE XVI
HAZARD INSURANCE

16.01 Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of all Owners and mortgagees, insurance on all buildings, structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage", with no coinsurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains coinsurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of and the proceeds thereof shall be payable to, the Association for each of the Unit Owners and mortgagees for the purpose set forth in Article XVI in accordance with the percentage ownership in the Common Areas and Facilities set forth in Section 9.01. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Said policy shall also provide that despite any clause that gives the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in case the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code pursuant to the provisions of this Declaration. Such policy shall provide coverage for built-in installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof, and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Unit Owner as hereinafter permitted.

No Unit Owner may purchase an individual policy of fire and extended coverage insurance for his Unit or his interest in the Common Areas and Facilities as real property. If irrespective of this prohibition, a Unit Owner purchases an individual policy insuring such Unit or interest, said Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance, and such amount of loss shall be a lien on his Unit and enforced in the manner provided for in Section 20.04.

Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice, not less than ten (10) days prior to any expiration or cancellation of such coverage, to any mortgagee or mortgagees of any Unit.

Such policy shall also provide for the release by the issuer thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owner, member of his family, his tenant or other occupant of the Condominium Property, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

If the required insurance coverage under this Section 16.01 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Condominium Property; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by a special assessment against all Unit Owners under Article XX of this Declaration and shall not require a vote of the members of the Association, anything to the contrary in this Declaration notwithstanding.

16.02 Sufficient Insurance. In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril insured against, and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided, however, that in the event, within thirty (30) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Section 16.07, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

16.03 Insufficient Insurance. In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction thereof, unless the Unit Owners shall, within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to Section 16.07, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the Units so damaged or destroyed shall be undertaken by the Association at the expense of all the Owners of Units in the same proportions in which they shall own the Common Areas and Facilities. Should any Unit Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the Association shall be assessed to such Owner and such assessments shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

16.04 Procedure for Reconstruction or Repair. Immediately after a casualty causing damage to any portion of the Condominium Property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Managers deems necessary.

The insurance proceeds and the sums received by the Association from the collection of special assessments against Unit Owners on account of such casualty shall be considered a special construction fund to be disbursed by the Association to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance funds.

Each Unit Owner shall be deemed to have delegated to the Board of Managers his right to adjust with insurance companies all losses under the insurance policies referred to in Section 16.01.

16.05 Insurance Trustee. At the option of the Declarant, or upon the written request by any lending institution holding mortgages on over fifty-one percent (51%) of the Units, or by any group of lending institutions who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units, the Association shall select an Insurance Trustee for the purposes herein set forth.

The Trustee shall be selected by the Association from any bank located in Dayton, Ohio, with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000.00). If such selection is prior to any loss the Association shall make

all insurance policies under Section 16.01 payable to such Insurance Trustee, for and on behalf of each of the Unit Owners and mortgagees for the purpose set forth in Article XVI in accordance with the percentage of ownership in the Common Areas and Facilities set forth in Section 9.01. All insurance policies shall be deposited with the Insurance Trustee who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

If such selection of an Insurance Trustee is after a loss, the Association shall pay over to the Insurance Trustee any funds received under such insurance policies and resulting from any special assessments against the Unit Owners. Said funds to be held by the Insurance Trustee in accordance with the provisions hereof.

The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal of the policies, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Association, the Unit Owners and their respective mortgagees.

16.06 Procedure for Reconstruction or Repair if an Insurance Trustee Has Been Selected. The insurance proceeds and the sums deposited with the Insurance Trustee by the Association from collections of special assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied by the Insurance Trustee to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses, but not more frequently than once in any calendar month. Said Trustee shall make such payments upon the written request of the Association, accompanied by a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work who shall be selected by the Association, setting forth (1) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work; and (3) that the cost, as estimated by the person signing such certificate, of the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment

of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association.

The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

16.07 Non-Restoration of Damage or Destruction. In the event of substantial damage to or destruction of two-thirds (2/3) or more of the Units, the Unit Owners, by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, may elect not to repair or restore such damage or destruction. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owners. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Areas and Facilities. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

ARTICLE XVII

LIABILITY AND OTHER INSURANCE

17.01 Liability Insurance. The Association as a Common Expense shall insure itself, the Board of Managers, all Unit Owners and members of their respective families and other persons residing with them in the Condominium Property, their tenants, and all persons lawfully in the possession or control of any part of the Condominium Property, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from destruction of property occurring upon, in or about, or arising from the Common Areas and Facilities, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident.

Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units, or Limited Common Areas appertaining thereto.

17.02 Other Insurance. The Association as a Common Expense shall also obtain such additional insurance as the Board of Managers considers necessary, including without limitation, fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association.

The amount of such fidelity bond shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal the sum of 3 months assessments on the Units in the Condominium together with the reserve funds, if any.

17.03 Notice of Cancellation or Substantial Changes. Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change of coverage at least 10 days prior to such cancellation or substantial change.

17.04 Annual Review. The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually.

ARTICLE XVIII

REHABILITATION AND RENEWAL OF OBSOLETE PROPERTY

18.01 The Association may, by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power, determine that the Condominium Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board of Managers of the Association shall thereupon proceed with such renewal and rehabilitation, and the cost thereof shall be a Common Expense. Any Unit Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his Unit, less the amount of any liens and encumbrances thereon as of the date such vote is taken, in return for a conveyance of his Unit, subject to such liens and encumbrances, to the President of the Association as trustee for all other Unit Owners. In the event of such election, such conveyance and payment of the consideration therefor, which shall be a Common Expense to the Unit Owners who have not so elected, shall be made within ten (10) days thereafter, and, if such Owner and a majority of the Board of Managers of the Association cannot agree upon the fair market value of such Unit, such determination shall be made by the majority vote of three (3) appraisers; one of which shall be appointed by such Unit Owner, one of which shall be appointed by the Board of Managers, and the third of which shall be appointed by the first two (2) appraisers.

ARTICLE XIX

REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

19.01 Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Board of Managers of the Association, or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit "C", shall give the Board of Managers the right, in addition to the rights hereinafter set forth in this section: (i) to enter upon the land or Unit portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration and the By-Laws of the Association, and the Board of Managers, or its Agents, shall not be thereby deemed guilty in any manner of trespass; or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

19.02 Involuntary Sale. If any Owner, either by his own conduct or by the conduct of any other occupant of his Unit, shall violate any of the covenants or restrictions or provisions of this Declaration, or of the By-Laws of the Association attached hereto as Exhibit "C", or the regulations adopted by the Board of Managers of the Association, and such violation shall continue for thirty (30) days after notice in writing from the Board of Managers, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Managers to cure such violation, then the Board of Managers shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the Board of Managers against the defaulting Owner for a decree of mandatory injunction against the Owner or occupant or, subject to the prior consent in writing of any mortgagee having a security interest in the Unit ownership of the defaulting Owner, which consent shall not be unreasonably withheld, in the alternative a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, and all other expenses of the proceedings, and all such items shall be taxes against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, other than that of the first mortgage, may be paid to the Owner.

Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration.

19.03 Civil Action. Declarant, Developer, Agent, Unit Owner, or any person entitled to occupy a Unit of a Condominium Property is liable in a civil action for damages caused to any person by his failure to comply with any lawful provision of the Condominium instruments. Any interested person may commence an action for a declaratory judgment to determine his legal relations under the Condominium instruments or to obtain an injunction against a Declarant, Developer, Agent, Unit Owner, or person entitled to occupy a Unit who refuses to comply, or threatens to refuse to comply, with a provision of the instruments. One or more Unit Owners may bring a class action on behalf of all Unit Owners. The lawful provisions of the Condominium instruments may, if necessary to carry out their purposes, be enforced against the Condominium Property or any person who owns or has previously owned any interest in the Condominium Property.

An action by the Unit Owners' Association under this Article may be commenced by the Association in its own name or in the name of its Board of Managers or in the name of its Managing Agent.

ARTICLE XX

ASSESSMENTS AND LIEN OF ASSOCIATION

20.01 General. Assessments for the maintenance, repair and insurance of the Common Areas and Facilities and for the insurance of the Units, together with the payment of the Common Expenses, shall be made in the manner provided herein, and in the manner provided in the By-Laws.

20.02 Division of Common Profits and Common Expenses. The proportionate shares of the separate Unit Owners of the respective Units in the Common Profits and Common Expenses of the operation of the Condominium Property shall be in accordance with the percentages of interest appurtenant to their respective Units as set forth in Section 9.01.

20.03 Non-Use of Facilities. No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by the abandonment of his Unit.

20.04 Acceleration and Late Charges. If any monthly or other assessment is not paid within ten (10) days after the same has become due, the Board of Managers, at its option, without demand or notice may (i) declare the assessment and if a monthly assessment, such monthly assessment plus all monthly assessments remaining on the then current budget, immediately due and payable, and (ii) charge a late charge not to exceed \$20.00 and/or interest on any unpaid balance, at a rate equal to two percent (2%) above prime, as being charged by Bank One, Dayton, N.A., or any successor thereof.

20.05 Lien of Association. The Association shall have a lien upon the estate or interest in any unit of the owner thereof and its percentage of interest in the common areas and facilities for the payment of any delinquent assessments chargeable against such unit. At any time after such delinquency, a certificate of lien for all or any part of the unpaid assessments, including late charges, interest, and if monthly assessments are delinquent then the remaining unpaid monthly assessments under the then current budget, may be filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Managers. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the delinquency, and shall be signed by the President of the Association.

The lien provided for herein shall remain valid for a period of five (5) years from the date of filing, unless sooner released or satisfied in the same manner provided by law in the state of Ohio for the release and satisfaction of mortgages or real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

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20.06 Priority of Association's Lien. The lien provided for in Section 20.05 is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages that have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by its President, pursuant to authority given to him by the Board of Managers. In the foreclosure action, the Owner of the Unit affected shall be required to pay a reasonable rental for the Unit during the pendency of the action, and the plaintiff in the action is entitled to the appointment of a receiver to collect the rental. In the foreclosure action, the Association, duly authorized by action of its Board of Managers, is entitled to become a purchaser at the foreclosure sale.

20.07 Special Individual Unit Assessment. Notwithstanding anything to the contrary herein, if the Association shall incur any cost or expense, including without limitation filing fees and/or attorney's fees, for or on account of any item of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or

omission or failure to pay assessments or comply with the provisions of the Declaration or rules and regulations of and by any Owner or his invitees or lessees, such cost of expense shall be borne by such Owner and not by the Association, and if paid by the Association, shall be paid or reimbursed to the Association by such Owner as a special individual Unit assessment forthwith upon the Association's demand.

20.08 Dispute as to Common Expenses. Any Unit Owner who believes that the portion of Common Expenses chargeable to his Unit, for which a certificate of lien has been filed by the Association, has been improperly charged against him or his Unit, may commence an action for the discharge of such lien in the Court of Common Pleas for Montgomery County, Ohio.

20.09 Non-Liability of Foreclosure Sale Purchaser or an Acquirer of Title in Lieu of Foreclosure for Past Due Common Expenses. Where the mortgagee of a first mortgage of record, or other purchaser of a Unit, acquires title to the Unit as a result of a foreclosure of any lien or a deed in lieu of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or other assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units, including that of such acquirer, his successors or assigns.

20.10 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit other than a conveyance in lieu of foreclosure, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Unit for his share of Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request, any such grantee and his mortgagee shall be entitled to a statement from the Board of Managers of the Association, setting forth the amount of all unpaid and current assessments against the grantor due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed by subject to, a lien for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

ARTICLE XXI

ADDITIONAL PROPERTY

21.01 Contemplated Annexation by Declarant. Declarant is the Owner in fee simple of certain real property adjacent to the Condominium Property, said property being hereinafter referred to as the "Additional Property". It is the desire of the Declarant to submit the Additional Property, together with the buildings

and other improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311 of the Ohio Revised Code, so that the same will become in all respects part of the Condominium Property.

21.02 Reservation of Option to Expand. Declarant hereby expressly reserves the option at any time within a period of seven (7) years, commencing on the date this Declaration is filed for record, to take the action so contemplated in submitting all or any part of the Additional Property, which is more particularly described in the metes and bounds description set forth in Section 21.12, together with the buildings and other improvements to be built thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311 of the Ohio Revised Code, so that the same will become in all respects part of the Condominium Property.

21.03 Limitations on Declarant's Option. Unless otherwise specified in this Article, there are no limitations on Declarant's option to annex or add the Additional Property to the Condominium Property. The consent of Unit Owners to annex or add such Additional Property is not required.

21.04 Additional Property. Declarant, in its absolute discretion, may annex or add all or any part of the Additional Property in whatever quantity, amount, sequence or order that it may determine. There are no limitations on Declarant as to the amount of the Additional Property to be added, the sequencing or order of such additions, nor as to the boundaries or size of such additions.

21.05 Location and Type of Improvements. Unless otherwise specified in this Article, there are no limitations imposed on Declarant as to the location of any improvements that may be made to any portion of the Additional Property, nor any restrictions as to the type and amount of improvements which must or may be made on the Additional Property by Declarant.

21.06 Structures. The structures to be constructed on the Additional Property shall be compatible with the existing structures on the Condominium Property in terms of quality of construction. The structures to be constructed on the Additional Property need not be compatible with the existing structures on the Condominium Property in terms of principal materials used, architectural style, size or elevation.

21.07 Units. There will be a maximum of sixty eight (68) Units constructed on the Additional Property, with a density not to exceed sixteen (16) Units per acre. Such Units need not be substantially identical to the Units constructed on the Condominium Property. Unless otherwise specified in this Article, there are no limitations imposed on Declarant as to the types of Units that may be created on the Additional Property.

21.08 Limited Common Areas and Facilities. Declarant reserves the right to designate any portion of the Additional Property as Limited Common Areas and Facilities for the use and enjoyment of any Unit or Units to be constructed thereon.

21.09 Reservation of Right to Amend Declaration. Declarant hereby reserves the right to amend this Declaration, in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, the right to amend this Declaration so as (1) to include any or all of the Additional Property and the improvements which may be constructed thereon as part of the Condominium Property, (2) to include descriptions of buildings constructed on said real estate and to add drawings thereof to the appropriate exhibits hereto, and (3) to provide that the Owners of Units in the buildings will have an interest in the Common Areas and Facilities of the Condominium Property, and to amend Article IX so as to establish percentages of interest in the Common Areas and Facilities which the Owners of all Units within the buildings on the Condominium Property will have at the time of such amendment, which percentage shall be, with respect to each Unit, in the proportion that the square footage of each Unit at the date said amendment is filed for record bears to the then aggregate square footage of all of the Units within the Condominium Property, which determination shall be made by Declarant and shall be conclusive and binding upon all Unit Owners.

21.10 Consent and Approval for Annexation Amendments. Declarant, on its own behalf as the Owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves, and each Unit Owner and his mortgagees by acceptance of a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article, including, without limiting the generality of the foregoing, the amendment of this Declaration by Declarant in the manner provided in Section 21.11, and all such Unit Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

21.11 Power of Attorney, Coupled With an Interest. Each Unit Owner and his respective mortgagees, by the acceptance of a deed conveying such ownership or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney in the event that the Declarant exercises the rights reserved above, to add to the Condominium Property additional property to execute, acknowledge and record for and in the name of such Unit Owner an amendment of this Declaration for such purpose and for and in the name of such respective mortgagees, a consent to such amendment.

21.12 Description. The Additional Property is described in Exhibit "D" attached hereto.

ARTICLE XXII

LIMITED WARRANTIES BY DECLARANT

22.01 The Declarant does hereby give and grant a two (2) year limited warranty covering the full cost of labor and materials for any repair or replacement of the roof and structural components and mechanical, electrical, plumbing and common elements serving the Condominium Property, occasioned or necessitated by a defect in material or workmanship.

22.02 The Declarant does hereby give and grant a one (1) year limited warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical or other elements pertaining to each Unit, occasioned or necessitated by a defect in material or workmanship performed by or for the Declarant.

22.03 The one (1) year limited warranty shall commence on the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest to a purchaser in good faith for value.

22.04 The two (2) year limited warranty shall commence for the property submitted by this Declaration on the date the deed is filed for record following the sale of the first Unit, and for any additional property submitted by amendment to this Declaration on the date the deed is filed for record following the sale of the first Unit; in either case to a purchaser in good faith for value.

22.05 In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters and other similar appliances installed and furnished as a part of the Unit by the Declarant, the valid assignment by the Declarant of the express and implied warranty of the manufacturer satisfies the Declarant's obligation with respect to such appliances and the Declarant's warranty is limited to the installation of the appliances.

22.06 All warranties made to the Declarant that exceed the time periods specified above, with respect to any part of the Units or Common Areas and Facilities, shall be assigned to the Owner or Association.

ARTICLE XXIII

MISCELLANEOUS PROVISIONS

23.01 Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character

hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

23.02 Upon the removal of the Condominium Property from the provisions of Chapter 5311 of the Ohio Revised Code, all easements, covenants and other rights, benefits, privileges, impositions and obligations declared herein to run with the land or any Unit, shall terminate and be of no further force nor effect.

23.03 No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

23.04 The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

23.05 Upon written request to the Board of Managers, the holder of any duly recorded mortgage or trust deed against any Unit Ownership, shall be given a copy of any and all notices and other documents permitted or required by the Declaration or these By-Laws, to be given to the Owner or Owners whose Unit Ownership is subject to such mortgage or trust deed, and a copy of any lien filed by the Association.

23.06 That so long as said Declarant, his successor and assigns, owns one or more of the units established and described herein, said Declarant, his successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A", "B", "C" and "D" attached hereto; and said Declarant covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association by reason of the establishment of the Condominium.

23.07 Unless otherwise provided in this Declaration or by statute, neither Declarant nor his representatives, successors or assigns shall be liable for any claim whatsoever arising out of, or by reason of, any actions performed pursuant to any authorities granted or delegated to it by, or pursuant to, this Declaration or the By-Laws attached hereto as Exhibit "C" or in Declarant's capacity as Developer, contractor, Owner, Manager or seller of the Condominium Property, whether or not such claim (1) shall be asserted by any Unit Owner, occupant, the Association, or by any person or entity claiming through any of them; or (2) shall be on account of injury to person or damage to or loss of property

wherever located and however caused; or (3) shall arise ex contractu or, except in the case of gross negligence, ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, occupant, the Association and their respective Agents, employees, guests, invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services.

23.08 The heading of each Article and to each Section hereof is inserted only as a matter of convenience and for reference, and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

23.09 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class Condominium Development.

23.10 Any deposit or down-payment made in connection with the sale of a Condominium Ownership Interest will be held in trust or escrow until delivered at settlement, or returned to or otherwise credited to the purchaser, or forfeited to the Developer, and that if a deposit or down-payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of at least four percent (4%) per annum for any period exceeding ninety (90) days, shall be credited to the purchaser at settlement or upon return or other credit made to the purchaser or added to any forfeiture to the Developer.

23.11 Except in its capacity as a Unit Owner of unsold Condominium Ownership Interests, the Developer will not retain a property interest in any of the Common Areas and Facilities after control of the Condominium is assumed by the Unit Owner's Association.

23.12 The Developer will assume the rights and obligations of a Unit Owner in its capacity as Owner of Condominium Ownership Interests not yet sold, including without limitation the obligation to pay Common Expenses, including reserves, attaching to such interests from the date the Declaration was filed for record.

23.13 Notwithstanding any provision of this Declaration or the By-Laws which are attached hereto as Exhibit "C", the Declarant hereby reserves the right and power, and each Unit Owner by acceptance of a deed is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with title to the Unit and is irrevocable for a period of two (2) years from the filing date hereof, to amend this Declaration and any of its exhibits and to execute any and all documents deemed necessary or desirable by Declarant to conform to requirements of any lending institution in order to issue a mortgage loan, or to correct scrivener or typographical mistakes.

23.14 Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

23.15 The Condominium has been created and is existing in full compliance with the requirements of Chapter 5311 of the Ohio Revised Code, and all other applicable law.

23.16 Any reference to Unit or Units, or to Building or Buildings herein shall refer to those included in the Declaration or in any amendment thereto.

IN WITNESS WHEREOF, Charles V. Simms Development Corporation, an Ohio corporation, by its duly authorized officers, has caused the execution of this instrument this 19th day of March, 1985.

Signed and acknowledged
in the presence of:

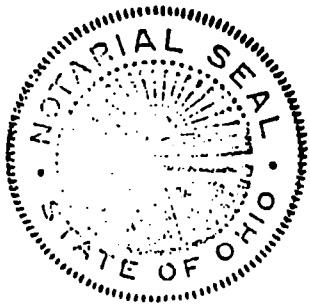
**CHARLES V. SIMMS
DEVELOPMENT CORPORATION**

By: Charles V. Simms
Charles V. Simms, President

By: Hans H. Soltau
Hans H. Soltau, Vice President

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 19th day of March, 1985, by Charles V. Simms, President and Hans H. Soltau, Vice President of CHARLES V. SIMMS DEVELOPMENT CORPORATION, an Ohio corporation, on behalf of the corporation.



Debra A. Key
Notary Public
DEBRA A. KEY, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 31, 1987

THIS INSTRUMENT PREPARED BY:

Hans H. Soltau
Attorney at Law
124 East Third Street
Dayton, Ohio 45402

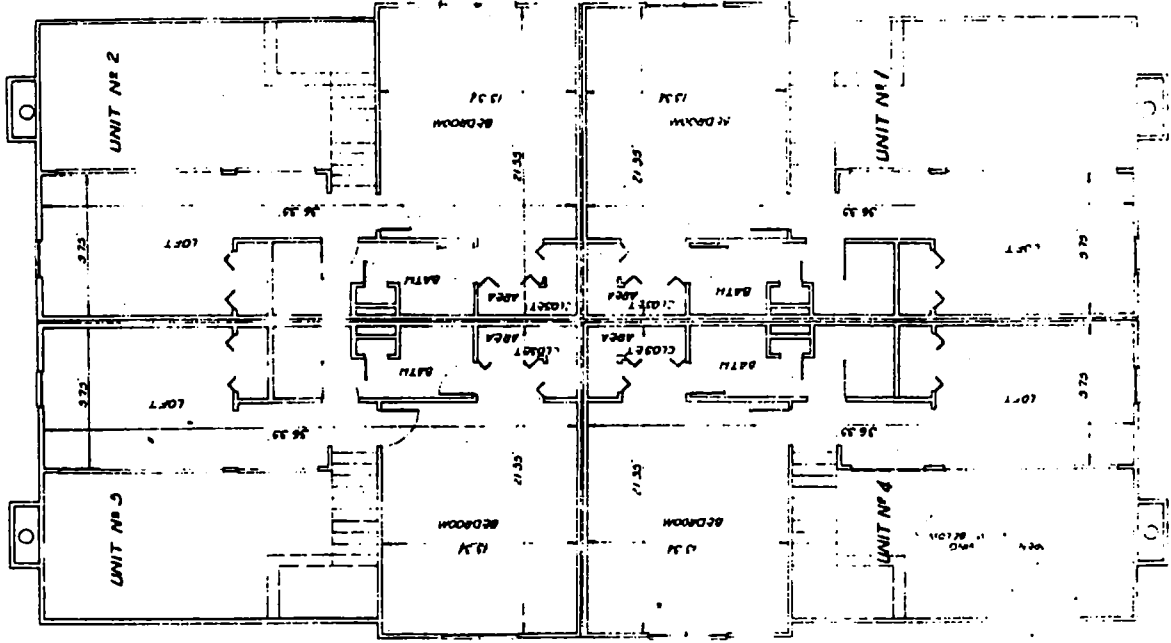
1985 MAR 21 AM 8:34

TRANFERRED
ROBERT L. RODEKER
MONT. COUNTY AUDITOR

EXHIBIT "A"

LEGAL DESCRIPTION - PHASE ONE

Situate in the Township of Miami, County of Montgomery, State of Ohio and being Lot 81 of Timberline Section One-A as recorded in Plat Book 123, Page 23 of the Plat Records of Montgomery County, Ohio.



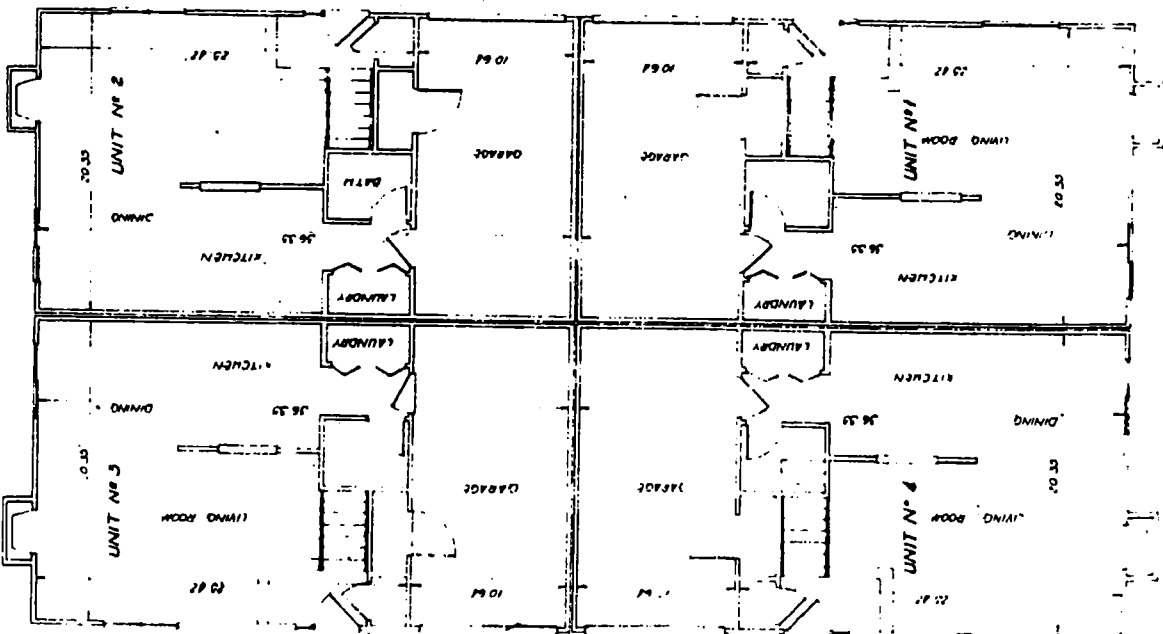
BUILDING A
SECOND FLOOR PLAN

**RECORD PLAN
FOX HILL CONDOMINIUMS SECTION ONE**
BEING ALL OF LOT 81 OF THE MERIDIAN SECTION ONE-A, RECORDED IN PLAT BOOK 123, PAGE 23 IN THE PLAT RECORDS OF MONTGOMERY COUNTY, OHIO

LOCATED IN SECTION 9, TOWN 1, RANGE 6, M.R.S. MIAMI TOWNSHIP MONTGOMERY COUNTY, OHIO
CONDOMINIUMS DEVELOPED BY WOLPERT CONSULTANTS, INC. JANUARY 1985. SCALE 1/4" = 1'-0"

GRAPHIC SCALE IN FEET
PREPARED BY:
WOLPERT CONSULTANTS
WOLPERT CONSULTANTS

- UNIT No 1**
1025 30 FT LIVING AREA
215 30 FT GARAGE AREA
1240 50 FT TOTAL
- UNIT No 2**
1025 30 FT LIVING AREA
215 30 FT GARAGE AREA
1240 50 FT TOTAL
- UNIT No 3**
1025 30 FT LIVING AREA
215 30 FT GARAGE AREA
1240 50 FT TOTAL
- UNIT No 4**
1025 30 FT LIVING AREA
215 30 FT GARAGE AREA
1240 50 FT TOTAL



BUILDING A
FIRST FLOOR PLAN