
BY-LAWS
OF
FOXBERRY COMMUNITIES ASSOCIATION, INC.

SPONSOR: THE FOXBERRY ASSOCIATES
968 Stuyvesant Avenue
P.O. Box 559
Union, New Jersey 07083

DATED: _____

LAW OFFICES OF GEORGE R. GRASSER
3350 Marine Midland Center
Buffalo, New York 14203

BY-LAWS OF FOXBERRY COMMUNITIES ASSOCIATION, INC.

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I.	NAME AND LOCATION	1
Section 1.01	Name and Location	1
ARTICLE II	DEFINITIONS	1
Section 2.01	Declaration	1
Section 2.02	Declarant	1
Section 2.03	Member	1
Section 2.04	Phase	1
Section 2.05	Projected Units	1
Section 2.06	Property	1
Section 2.07	Unit	2
ARTICLE III	MEMBERS	2
Section 3.01	Membership in the Association	2
Section 3.02	Right of Declarant to Assign	2
Section 3.03	Voting Rights	2
Section 3.04	Voting Regulations	2
Section 3.05	Corporate Members	2
Section 3.06	Joint or Common Ownership	2
Section 3.07	Absentee Ballots	2
ARTICLE IV	MEETINGS OF MEMBERS	3
Section 4.01	Annual Meeting	3
Section 4.02	Special Meetings	3
Section 4.03	Notice of Meetings	3
Section 4.04	Quorum	4
Section 4.05	Waiver and Consent	4
ARTICLE V	BOARD OF DIRECTORS	4
Section 5.01	Number of Directors	4
Section 5.02	Nominations	4
Section 5.03	Election	5
Section 5.04	Vacancies	5
Section 5.05	Removal	5
Section 5.06	Compensation	6
Section 5.07	Regular Meetings	6
Section 5.08	Special Meetings	6
Section 5.09	Quorum and Voting	6
Section 5.10	Informal Action by Directors	6
Section 5.11	Powers and Duties	6

TABLE OF CONTENTS (Continued)

		<u>Page</u>
ARTICLE VI	OFFICERS	8
Section 6.01	Officers	8
Section 6.02	Election	8
Section 6.03	Term and Vacancies	8
Section 6.04	Resignation and Removal	8
Section 6.05	President	9
Section 6.06	Vice President	9
Section 6.07	Secretary	9
Section 6.08	Treasurer	9
Section 6.09	Other Officers	9
ARTICLE VII	COMMITTEES	9
Section 7.01	Committees of Directors	9
Section 7.02	Committees of Members	10
Section 7.03	Rules	10
ARTICLE VIII	FINANCE	10
Section 8.01	Checks	10
Section 8.02	Fiscal Year	10
Section 8.03	Annual Reports	10
ARTICLE IX	BOOKS AND RECORDS	10
Section 9.01	Books and Records	10
ARTICLE X	CORPORATE SEAL	11
Section 10.01	Corporate Seal	11
ARTICLE XI	AMENDMENTS	11
Section 11.01	Alternation, Repeal or Amendment	11
Section 11.02	Conflict with Certificate of Incorporation or with Declaration	11

BY-LAWS
OF
FOXBERRY COMMUNITIES ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1.01. Name and Location. The name of the corporation is the Foxberry Communities Association, Inc. hereinafter referred to as the "Association". The principal office of the corporation shall be located in the Town of Amherst, County of Erie and State of New York.

ARTICLE II

DEFINITIONS

As used in these By-Laws, the following terms shall be defined as:

Section 2.01. Declaration. The document entitled "Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Foxberry Communities" imposed by the Declarant on the Property, as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.02. Declarant. The Foxberry Associates, a general partnership, its successors and assigns.

Section 2.03. Member. The Owner of a Unit or Projected Unit subject to the Declaration whether the holder of record title of the fee interest in the Unit or the record holder of any leasehold estate, whether or not such holder actually resides on the part of the Property.

Section 2.04. Phase. One of the two residential areas contemplated for inclusion in the Property as fully developed, Phase I being the Foxberry Village Condominium and Phase II being a 7.52 acre parcel located to the south and east of the Foxberry Village Condominium Property, said parcels being more fully described in the Declaration.

Section 2.05. Projected Units. Any dwelling unit contemplated for construction on a portion of the Property as indicated by the instrument supplemental to the Declaration which adds such portion of the Property to the Declaration or modifies the number of dwelling units contemplated for such portion of the Property.

Section 2.06. Property. All Property which is subject to the Declaration.

Section 2.07. Unit. Any dwelling Unit on the Property which has been occupied or transferred to a purchaser for occupancy.

ARTICLE III

MEMBERS

Section 3.01. Membership in the Association. The Members of the Association shall be the Owners of all Units and the Property and the Owners of all portions of the Property contemplated for development with Projected Units, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member.

Section 3.02. Right of Declarant to Assign. The Declarant 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 transferable or assignable.

Section 3.03. Voting Rights. Each Member shall have one (1) vote only. Any Member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Member's voting rights be suspended for nonpayment of assessments.

Section 3.04. Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.05. Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

Section 3.06. Joint or Common Ownership. Any one joint or common owner of a Unit shall be entitled to cast the vote with respect to the Unit so owned.

Section 3.07. Absentee Ballots. On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question, specifying the issue on which the Member intends to vote and that the Member votes for or against the same. Members unable to attend a

meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the secretary of the Association.

ARTICLE IV

MEETINGS OF MEMBERS

Section 4.01. Annual Meeting. There shall be an Annual Meeting of the Members on the fourth Tuesday in October at the hour of 8:00 p.m. or at such other date and time and at such place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the Annual Meeting shall be a legal holiday, the meeting shall be held on the first day following, which is not a legal holiday. Failure to hold an Annual Meeting at designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 4.02. Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, or at the request in writing of one-fourth (1/4) or fifty (50) of the votes entitled to be cast at the meeting.

Section 4.03. Notice of Meetings. Not less than ten (10) days or more than twenty (20) days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum. Members holding not less than the lesser of two-fifths (2/5) or fifty (50) of the total votes of the membership shall constitute a quorum at any meeting. If a quorum is not present at any meeting of Members, a majority of the Members present may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present or be represented. The act of a majority of the Members present at a meeting at which a quorum was present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration, or these By-Laws.

Section 4.05. Waiver and Consent. Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01. Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be nine (9) except that (i) an initial Board of three Directors shall be designated by the Declarant to serve until the first Annual Meeting of the Members which shall be held two (2) years from the date of closing of title to the first Unit, or until the transfer of title to Units represented 50% of the common interest of Phase I, the Foxberry Village Condominium, whichever shall first occur. Thereafter five (5) Directors shall be elected to represent Phase I (Foxberry Village Condominium) and four (4) Directors shall be elected to represent Phase II. If Phase II is not added to the Scheme of the Association Declaration, the Association shall have only five (5) Directors.

Section 5.02. Nominations. Nominations for election to the Board of Directors shall be made by a nominating committee which shall be appointed by the Board of Directors. Nominations may also be made from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its sole discretion, determine, but not less than the number of vacancies that are to be filled by the votes of members of such association or condominium as provided in Section 5.03 below and such nomination may be made from Members and non-members of the Association.

Each person nominated for Director to represent a Phase shall either be an owner of a Unit within such Phase, a resident of a Unit within such Phase, or an officer, director or employee of the Sponsor or the Sponsor's successor with respect to property within such Phase.

Section 5.03. Election. At the first Annual Meeting, which shall be held two (2) years from the date of closing of title to the first Unit, or until the transfer of title to Units representing 50% of the common interest of Phase I, whichever first occurs, the members shall elect five (5) Directors to represent Phase I. At such meeting the Declarant will cast its votes for not more than two Directors from Phase I thus permitting the Owners of the other Units to elect at least three Directors. At each Annual Meeting thereafter, the Members shall replace those Directors whose terms have expired and elect such successor Directors for a term of two (2) years. Voting shall be by secret written ballot which shall:

- (a) set forth the number of vacancies to be filled;
- (b) set forth the names of those nominated by the Nominating Committee to fill such vacancies; and thereafter five (5) Directors shall be elected to represent Phase I (Foxberry Village Condominium) and four (4) Directors shall be elected to represent Phase II. If Phase II is not added to the scheme of the Association Declaration, the Association shall have only five (5) Directors.
- (c) contain space for a write-in for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5.04. Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the Board of Directors or Board of Managers, if one exists, and if not, by the Declarant or the Declarant's successor in interest as owner of the Property comprising such Phase, and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill.

Section 5.05. Removal. At any meeting of Members, duly called at which a quorum is present, the Members of any Phase may, by the affirmative vote of not less than two-thirds of all Members of such Phase, remove any Director or Directors representing such Phase, from office with or without cause and may elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. In addition, the other Directors may, by the affirmative vote of not less than two-thirds of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three consecutive meetings.

Section 5.06. Compensation. Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. A Director who serves the Association in any other capacity, i.e. other than as a Director or officer, however, may receive compensation therefore.

Section 5.07. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, or as needed, at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday. The first meeting of the Board of Directors will be held not later than six (6) months after the first closing to a Unit in Phase I.

Section 5.08. Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any two Directors after not less than two (2) days notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver or notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of, any Special Meeting, need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

Section 5.09. Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, or by the By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

Section 5.10. Informal Action By Directors. Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting provided a written consent to such action is signed by all members of the Board of Directors or of such written consent is filed with the minutes of proceedings of the Board or committee.

Section 5.11. Powers and Duties. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of

Incorporation or the By-Laws. The powers, duties and authority of the Board of Directors shall specifically include; but shall not be limited to the following:

- (a) To determine, levy and collect the Assessments and common charges as provided for in the Declaration.
- (b) To collect, use and expend the Assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association, if any, and common open space areas of the Property (including roadways, parking areas, landscaped areas and pool area) as permitted by the Declaration.
- (c) To procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real property, if any, and personal properties and the Units as it deems appropriate and as is required by the Declaration.
- (d) As required by the Declaration, to repair, restore, or alter the properties of the Association, if any, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- (e) To adopt and publish rules and regulations governing the use of Association Property and facilities, if any, and other portions of the Property maintained by the Association, and the personal conduct of the members and other guests thereon, and establish penalties for infractions thereof.
- (f) To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- (g) To pay all taxes owing by the Association.
- (h) To suspend the voting rights of a Member during any period in which such Member shall be in default for the payment of any Assessment levied by the Association. Such voting rights may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days for infraction of published rules or regulations.
- (i) To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.

- (j) To keep complete record of the actions of the Board of Directors and the corporate affairs of the Association and to present a statement thereof to the Members at the Annual Meeting of Members, or at any special meeting of Members when such a statement is requested in writing by not less than the lesser of one-fourth (1/4) or fifty (50) of the Members entitled to vote.
- (k) To issue, or cause to be issued, upon demand by any person an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment of any Unit.
- (1) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration or by the provisions of any other condominium or homeowners' association declaration covering the Property or any portion thereof.

ARTICLE VI

OFFICERS

Section 6.01. Officers. The officers of the Association shall all be Members of the Board of Directors and shall be the President, one or more Vice Presidents, (the number thereof to be determined by the Board of Directors), the Secretary and the Treasurer. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors.

Section 6.02. Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

Section 6.03. Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.04. Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interest of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date or receipt of such notice or any later time specified therein, and unless

otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.05. President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, and if there is no Chairman of the Board, shall preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board of these By-Laws.

Section 6.06. Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

Section 6.07. Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association, shall keep records of the members of the Association and the mortgagees of dwelling Units on the Property, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

Section 6.08. Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President, the Board or these By-Laws.

Section 6.09. Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

ARTICLE VII

COMMITTEES

Section 7.01. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to the By-Laws or a plan of merger or consolidation.

Section 7.02. Committees of Members. The Association shall have such committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more Members and shall include a Member of the Board of Directors. There shall also be Nominating Committees as provided in these By-Laws. The Nominating Committees need not include a Member of the Board of Directors.

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

ARTICLE VIII

FINANCE

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

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

Section 8.03. Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members and filed within twenty (20) days thereafter at the principal office of the Association.

ARTICLE IX

BOOKS AND RECORDS

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

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

ATTORNEYS AT LAW

3400 MARINE MIDLAND CENTER, BUFFALO, NEW YORK 14203

(716) 847-8400

March 7, 1988

Foxberry II, Inc.
968 Stuyvesant Avenue
P.O. Box 559
Union, New Jersey 07083

Re: Foxberry Village Condominium II

Ladies and Gentlemen:

You have requested our opinion as to the applicable income and real property tax consequences in conjunction with the Foxberry Village Condominium II (the "Condominium"), to the Condominium, to the Foxberry Communities Association, Inc. (the "Association") and to individual unit owners.

Income Taxation of Unit Owners: Under the provisions of Sections 164 and 163 of the Internal Revenue Code of 1954 as amended and Section 615 of New York State Tax Law, each owner of a condominium unit ("Unit") will be entitled to deduct from his or her gross income for Federal and New York State income tax purposes the real estate taxes assessed against his or her Unit, and paid, and the amount paid on account of interest on any purchase money mortgage indebtedness covering such Unit used as a primary or secondary home. No opinion is expressed as to the effect of either Federal or New York State income tax laws regarding tax preference or minimum tax on the foregoing deductions or on the Unit owner's income tax liability. It is suggested that Unit owners consult their respective tax counsel for advice regarding tax preference items or minimum tax.

ARTICLE X

CORPORATE SEAL

Section 10.01. Corporate Seal. If decided by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

ARTICLE XI

AMENDMENTS

Section 11.01. Alteration, Repeal or Amendment. These By-Laws may be altered, repealed or amended and new By-Laws may be adopted at any regular or Special Meeting of the Members, by vote of a majority of Members from each Phase present in person or by proxy, or at any regular or Special Meeting of the Board of Directors by the affirmative vote of a majority of the whole Board of Directors including the votes of half or more of the Directors from each Phase, except that if no development of Phase II is undertaken within ten (10) years after the date of recording of the Declaration or if the Directors representing any Phase having only Projected Units fail to appear after notice at two consecutive meetings at votes of the Directors representing such Phase shall not be necessary for approval.

Section 11.02. Conflict with Certificate of Incorporation or With Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Page 3

Income Taxation of Condominium and Association: We call your attention to Section 2101 of the Tax Reform Act of 1976 (I.R.C. Section 528) which contains provisions exempting certain associations (including condominium associations) from federal income tax on funds retained in the association's account at the end of the association's fiscal year if:

1. 60% or more of the gross income in the fiscal year consisted of membership dues, fees or assessments from Unit owners; and
2. 90% or more of the association's expenses were for the acquisition, construction, management or maintenance of the property; and
3. except for 2 above, no part of the net earnings of the association inures to the benefit of the Unit owners; and
4. no part of the net earnings not used for the purposes set out in 2 above or rebated to the Unit owners inures to the benefit of any private individual or member; and
5. the association elects to take the exemption provided.

Based on our review of the estimates of projected income and expenses which you have submitted to us and which we understand you will include in your offering plan for the sale of these Units, we are of the opinion that both the Condominium and the Association will be eligible for tax exempt status should they elect to take such exemption. We suggest, however, that specific reference be made to the actual text of Section 528 prior to making any decisions which could have an impact on the taxability or the extent of taxability of either the Condominium or the Association. We also bring to your attention that interest income earned on Condominium or Association funds and any income not received from membership dues, fees or assessments will be taxable to the Condominium or to the Association, whether or not tax exempt status under Section 528 is obtained and that a tax return must be filed even though the requirements for tax-exempt status are otherwise met. We further advise you that we are making no opinion as to the taxability or effect of any income to the Condominium or to the Association from the sale or lease of Units acquired through the foreclosure of a lien for non-payment of common charges or maintenance assessments.

Page 4

We make no warranty or representation that any of the laws upon which basis this opinion has been made, will not change, so as to disallow any deductions in whole or in part. We shall not be liable, if, for any reason, a change in law results in any of the tax deductions recited above being disallowed in whole or in part or if the facts represented to us by the Sponsor and upon which this opinion is based are not true.

Sales Tax. Provided the Condominium or the Association does not undertake to perform the maintenance, servicing or repair of the common elements or Property for which it is responsible to maintain, by using its own employees rather than independent contractors, we believe that the Condominium, the Association and the Unit Owners are not responsible for the payment of any sales tax on common charges or maintenance assessments, as the Condominium and the Association would be merely acting as a conduit for the payment of such funds to others. We caution, however, that we have been apprised of efforts by the New York State Tax Department to collect sales tax on homeowners' association and condominium association common charges or assessments paid by unit owners and, as the law is not specific and we do not know of any cases or administrative opinions on this issue, we cannot assure that efforts will not be made by the New York State Tax Department for the collection of sales tax on assessments paid by unit owners of the Condominium or member of the Association. We are not aware of any such efforts ultimately resulting in any homeowners' or condominium association, or its unit owners, being deemed liable for sales tax on assessments or charges paid to the association.

The Condominium and the Association are responsible for the payment of sales taxes on those services contracted for and which are taxable under Article 22 of the New York Tax Law including, but not limited to gas, electric, photocopying and maintenance, service and repair of common elements.

Real Property Taxation of Condominium Property. Section 339y-1 of the New York Condominium Act provides that the aggregate of the assessment on the Units in the condominium plus the common facilities may not exceed the total valuation of the property were it assessed as an individual parcel.

Page 5

In the case of Marks, Rothman and Neulander et al v. Board of Assessors, 58 A.D.2d 812, 396 N.Y.S.2d 267, condominium unit owners in Nassau County, New York alleged that their units were not being assessed pursuant to Section 339-y-1. After a lower court ruled that the Tax Law (which provides for assessment on the basis of full or market value) takes precedence over Section 339-y-1 of the Condominium Act, the Appellate Division reversed the lower court directing that the entire condominium property must be assessed in accordance with Section 339-y-1.

The Appellate Division concluded that the value, for assessment purposes, of the individual units should be fixed by ascertaining what the value of the entire condominium property would be as a rental complex (even though the property had never been a rental complex) and then dividing that value by each unit's percentage interest in the common elements. The Court of Appeals, the highest court in New York State, affirmed the Appellate Division's decision and directive (49 N.Y.2d 954). The decision in this case has been upheld in the case of South Bay v. Board of Assessors, 108 A.D. 2d 493 (2nd Dept.). We can render no opinion as to whether the Town of Amherst will in fact assess the Units in this Condominium in compliance with Section 339-y-1.

Real Property Taxation of Association Property. Pursuant to the recorded declaration of covenants (i) membership in the Association is mandatory, (ii) the right to use and enjoy the Association's property and the obligation to share in the cost of the maintenance of such property "runs with the land" and are appurtenant to each lot and (iii) the common areas and facilities exist and are to be used exclusively for the property owner members of the Association. It is an established principle of law that the value of property is reduced by the rights and easements carved out of it for the benefit of other property, and the value of the benefited property should reflect the existence of these rights. Accordingly, the property of the Association has little value for tax purposes because the beneficial rights to such property belong to the property owner members of the Association and are reflected in the value of such units, whether assessed individually or as part of the condominium parcel.

The taxes on the Association property should not be more than a nominal amount. See Crane-Berkley Corporation v. Lavis, 238 App. Div. 124, 263 N.Y.S. 556 (1933), People ex rel Poor v. O'Donnel, 139 App. Div. 83, 124 N.Y.S. 36, affirmed 200 N.Y. 519, 93 N.E. 1129 (1910), People ex rel Topping v. Purdy, 143 App. Div. 389, 128 N.Y.S. 569, affirmed 202 N.Y. 550, 95 N.E. 1137 (1911).

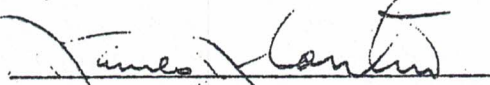
Page 6

Authorized Use of this Letter: You are authorized to use this letter in your plan offering for sale Units in the Foxberry Village Condominium II.

Very truly yours,

PHILLIPS, LYTTLE, HITCHCOCK, BLAINE & HUBER

By


James J. Contino

CERTIFICATION OF SPONSOR
AND PRINCIPALS OF SPONSOR

RE: Foxberry Village Condominium II
Foxberry Drive
Amherst, New York

FOXBERRY II, INC., by DANIEL SOLONDZ, on behalf of the Sponsor and DANIEL SOLONDZ, PHILIP J. SOLONDZ, LEONARD I SOLONDZ, MICHAEL SOLONDZ and BARRY SOLONDZ, individually, as principals of the Sponsor, depose and say that:

We are the Sponsor and the principals of the Sponsor of the condominium offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 20 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

- (vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

FOXBERRY II, INC.

By Daniel Solondz
Daniel Solondz

STATE OF New Jersey)
COUNTY OF Union) SS:

On this 10th day of February, 1988, before me personally came DANIEL SOLONDZ, to me personally known, who, being by me duly sworn, did depose and say that he resides in 968 Stuyvesant Avenue, Union, N. J.; that he is the President of FOXBERRY II, INC., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Mary E. Benigno
Notary Public

MARY E. BENIGNO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 1, 1990

Subscribed and sworn to
before me this 10th day
of February, 1988.

Mary E. Benigno
Notary Public
MARY E. BENIGNO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 1, 1990

Subscribed and sworn to
before me this 17th day
of February, 1988.

Christine Stelljes
Notary Public
CHRISTINE STELLJES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 20, 1991

Subscribed and sworn to
before me this 17th day
of February, 1988.

Christine Stelljes
Notary Public
CHRISTINE STELLJES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 20, 1991

Subscribed and sworn to
before me this 10th day
of February, 1988.

Mary E. Benigno
Notary Public
MARY E. BENIGNO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 1, 1990

Subscribed and sworn to
before me this 10th day
of February, 1988.

Mary E. Benigno
Notary Public
MARY E. BENIGNO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 1, 1990

Daniel Solondz
Daniel Solondz

Philip J. Solondz
Philip J. Solondz

Leonard I. Solondz
Leonard I. Solondz

Michael Solondz
Michael Solondz

Barry Solondz
Barry Solondz

CERTIFICATION OF SPONSOR'S ENGINEER

RE: Foxberry Village Condominium II
Foxberry Drive
Amherst, New York

Michael B. Pratt, P.E., being duly sworn, deposes and says as follows:

The Sponsor of the offering plan for condominium ownership of the captioned property retained me to prepare a report describing the property when constructed (the "Report"). I examined the building plans and specifications that were prepared by Pratt&Huth Associates, dated 2/23/88 and prepared the Report dated 3/15/88, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

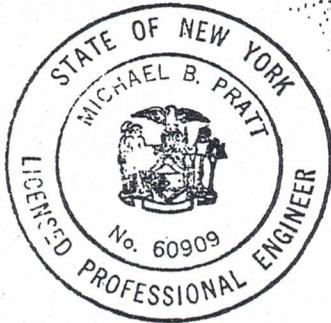
I understand that I am responsible for complying with Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 20 insofar as they are applicable to this Report.

I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. I certify the Report does:

- (i) set forth in detail the conditions of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;

- (v) not contain any fraud, deception, concealment, or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where I: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.



Michael B. Pratt

Dated: 3/15/88

Subscribed and sworn to before me this 5th day of MARCH, 1988.

Clifford D. Krumm, Jr.
Notary Public

CLIFFORD D. KRUMM, JR.
Notary Public, State of New York
Qualified in Erie County 8-31-89
My Commission Expires March 31, 1989



"... DOING MORE TO BRING YOU MORE"

- Income Property Management
- Community Association Management
- Commercial Sales & Leasing
- Lender Services

CERTIFICATION RE ADEQUACY OF BUDGET
MARCH 15, 1988

RE: FOXBERRY VILLAGE CONDOMINIUM II

The Sponsor of the Condominium Offering Plan for the above captioned property has retained our firm to review Schedule B containing projections of income vs. expenses for the first full year of Condominium operations, and Schedule B-1 containing individual unit owner utility estimates. The experience of Edward J. Zabel, Jr., Vice President of the Community Association Management Division of Sibley Real Estate Services, Inc. (formerly Edward J. Zabel, Jr., Inc.) includes:

Former Purchasing Agent for the Ransom Oaks Planned Community in Amherst, New York, responsible for the preparation of construction cost estimates and project operating budgets, and former Property Manager for 289 Units in the Oakbrook Condominium in Williamsville, New York.

Currently the Sibley Services Community Association Management Division manages the following residential and commercial condominium and property owners associations: 188 Units in Charlesgate Village Association, Inc.; 82 Units in Forest Edge Cluster Association; 86 Units in the Evergreens Homeowners Association; 80 Units in Georgian Village Condominium; 98 Units in Harrogate Square Condominium; 20 Units in Hidden Ridge Common Homeowners Association; 64 Units in Parks Edge Cottages Condominium; 24 Units in Park Lane Court Condominium; 104 Units in Park Place Condominium; 52 Units in Stoneledge Condominium Board of Managers, Inc.; 52 Units in Williamsville Towers Condominium; 14 Units in Briarwoods Townhome Association, Inc.; 40 Units in Condos On The Boardwalk; 8 Units in Forest Medical Professional Condominium; 99 Units in Wedgewood Commons Homeowners Association, Inc.; 54 Units in Wellington Village Condominium; 63 Units in Woodgate Village, located in Amherst, New York; 48 Units in Symphony Circle Condominium; 30 Units in West Ferry Village Townhouses Association, Inc.; 58 Units in 800 West Ferry Condominium Board of Managers, Inc.; 30 Units in Harbour Pointe Village Homeowners Association, Inc.; 30 Units in St. Mary's Square Condominium; 21 Units in Melton Manor Condominium; 10 Units in Marina Park Condominium, located in Buffalo, New York; 24 Units in Snyder Court Condominium; 16 Units in Villa Park Condominium; 30 Units in Wellington Square Condominium; 40 Units in Pebble Creek Condominium, located in Cheektowaga, New York; 92 Units in Belltower Village Condominium; 94 Units in Parkview Court Homeowners Association, Inc., located in Lancaster, New York; 96 Units in Colonial Manor Condominium; 70 Units in Wimbledon Village Homeowners Association, Inc., located in West Seneca, New York; 22 Units in Dover Station Homeowners Association, Inc.; 23 Units in River Edge Homeowners Association, Inc., located in Tonawanda, New York and 87 Units in Stonegate Condominium in East Aurora, New York.

Sibley Real Estate Services, Inc.

9880 Transit Road • P.O. Box 100 • East Amherst, New York 14051-0100 • (716) 688-2780

Corporate Office: 2 State Street • 200 Crossroads Building • Rochester, New York 14614 • (716) 454-4940



Mr. Zabel is a member of the Community Association Institute (CAI) and has served as President and Treasurer of the Board of Directors of the Western New York Chapter.

He is a member and formerly served on the Board of Directors of the Niagara Frontier Builders Association (NFBA) affiliated with the New York State Builders Association and the National Association of Home Builders.

He has been designated by the National Association of Home Builders, as a Registered Apartment Manager (RAM).

He is licensed to sell real estate in the State of New York, having held such a license for 20 years.

He has also been engaged in the residential and light commercial contracting business.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 20 insofar as they are applicable to Schedules B and B-1.

We have reviewed the Schedules and investigated the facts set forth in the Schedules and the facts underlying them with due diligence in order to form a basis for this Certification.

We certify that the projections in Schedules B and B-1 appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated).

We certify that this Certification and all documents prepared by us hereafter that concern the Schedules do;

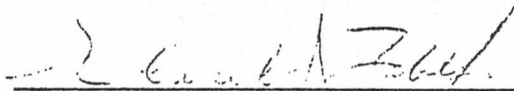
- (i) set forth in detail the terms of the transaction as it relates to the Schedules and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgement;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of material fact;

- (v) not contain any fraud, deception, concealment or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where the undersigned:
 - (a) knew the truth;
 - (b) with reasonable effort, could have known the truth;
 - (c) made no reasonable effort to ascertain the truth;
 - or
 - (d) did not have knowledge concerning the representation or statement made.

The undersigned further certifies that it is not owned or controlled by and has no beneficial interest in the Sponsor and that its compensation for preparing this certification is not contingent on the conversion of the property to a condominium or on the profitability or price of the offering. The undersigned understands that a copy of this Certification is intended to be incorporated into the Offering Plan so that proposed purchasers may rely on it.

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. The undersigned understands that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

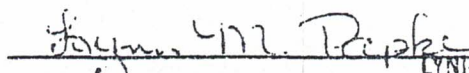
SIBLEY REAL ESTATE SERVICES, INC.



 Edward J. Zabel, Jr., Vice President
 Community Association Management Division

STATE OF NEW YORK)
 COUNTY OF ERIE)SS:

On the 15th day of March 1988, before me personally came EDWARD J. ZABEL, JR., to me known, who, being by me duly sworn, did depose and say that he resides at 381 Bauman Road, Williamsville, New York; that he is the Vice President of SIBLEY REAL ESTATE SERVICES, INC., the corporation 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; that he signed his name thereto by like order; that he had the authority to sign the same on behalf of said corporation; and that he executed the same as the act and deed of said corporation.



 LYNN M. PAPKE
 NOTARY PUBLIC, STATE OF NEW YORK
 ERIE COUNTY #4815174
 My Commission Expires 12/31, 1989

EXHIBIT B

103
SITE PLAN

JOHN FAVATA
L' 8623, P-40
SOL-41-07-2-27

GARY B. NANCY PAPA
L' 8654, P-435
SOL-41-07-2-28

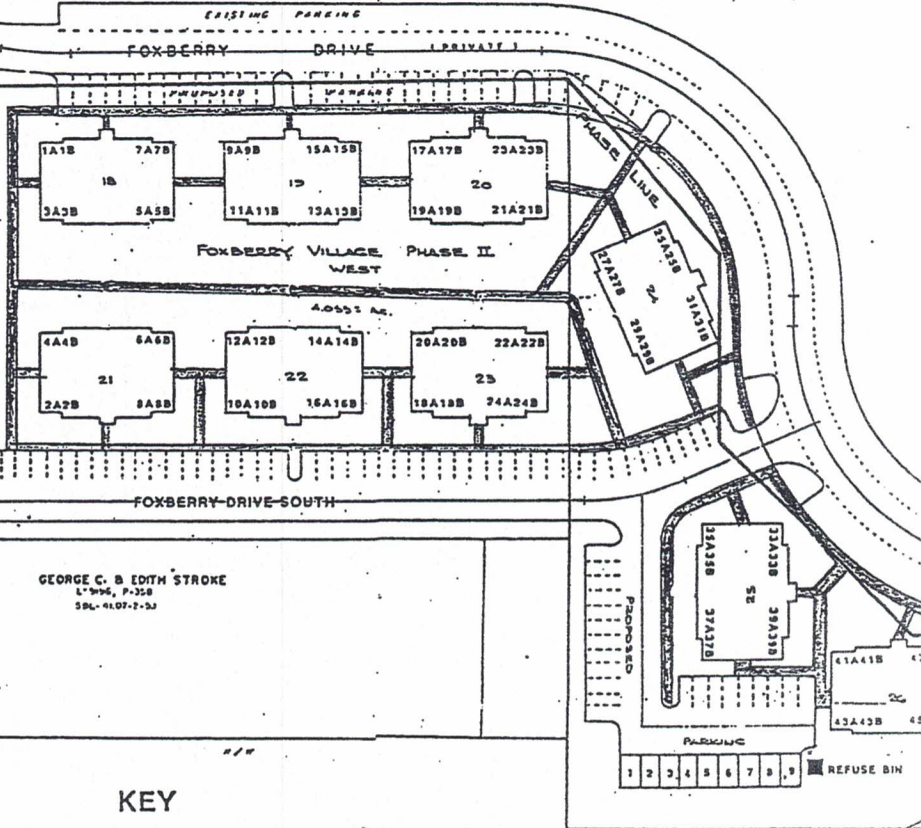


BOULEVARD

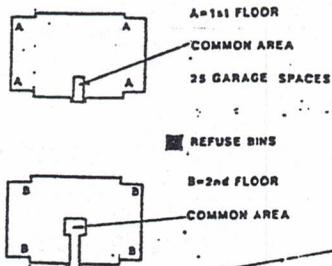
CAMPBELL

FOXBERRY VILLAGE,

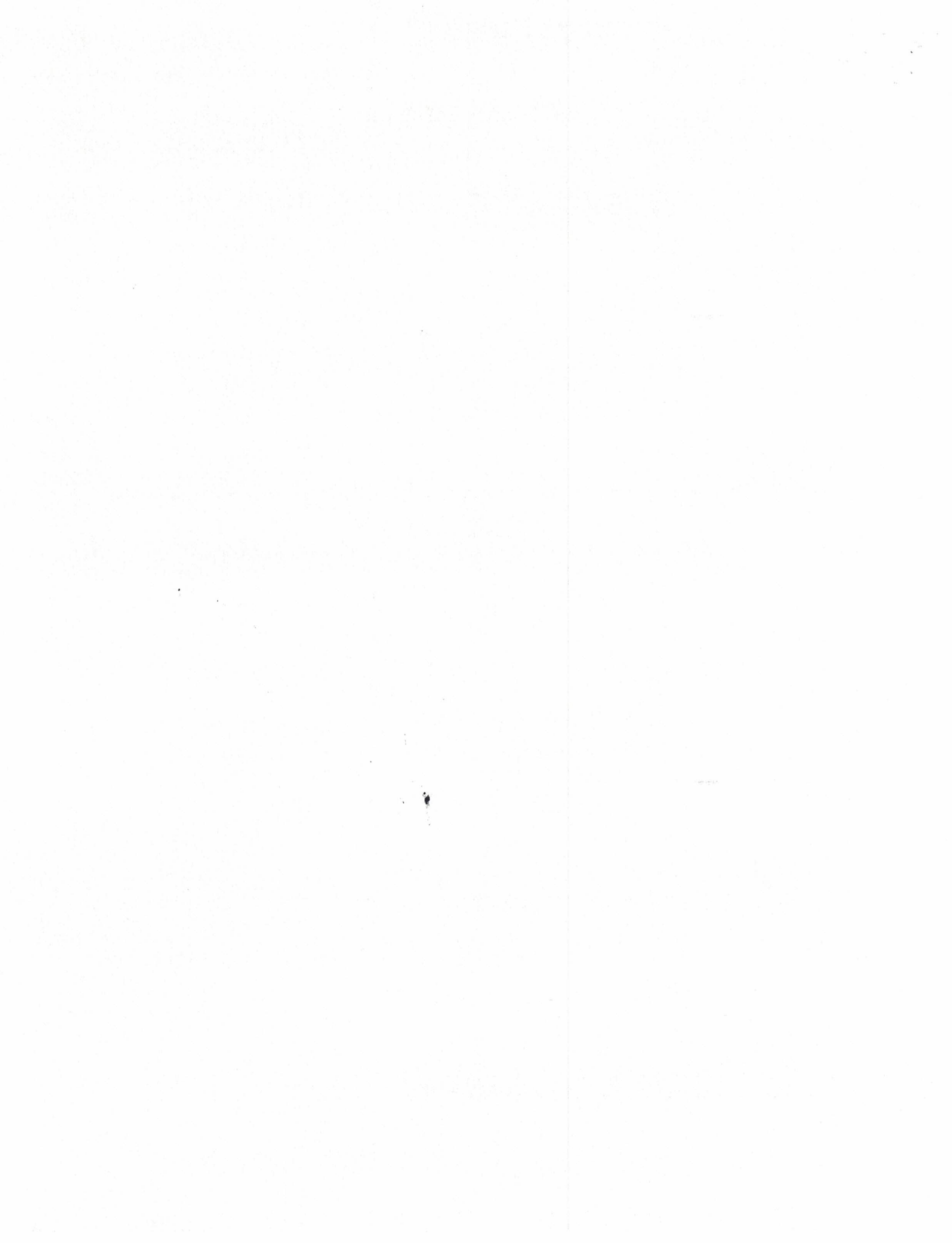
PHASE I

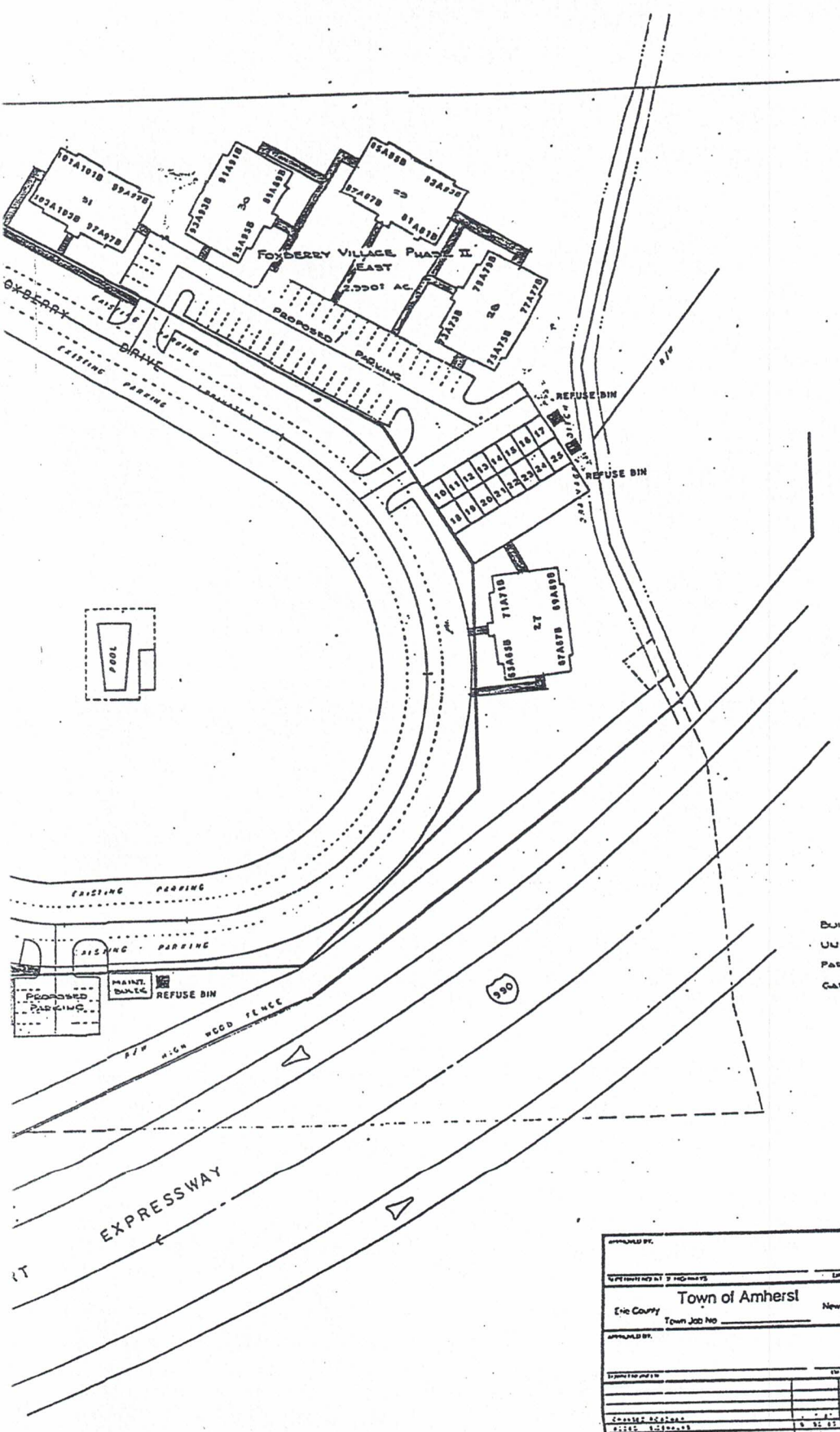


KEY



LOCK





SITE DATA

PROPOSED PHASE II	
BUILDINGS	14
UNITS	112
PARKING SPACES	255
GARAGE SPACES	25

APPROVED BY: _____ DATE: _____

Town of Amherst
Erie County New York
Town Job No. _____

APPROVED BY: _____ DATE: _____

DATE: _____

SCALE: _____

BY: _____



FOXBERRY VILLAGE PHASE I

LOCATION PLAN

Pratt & Huth Associates
Engineers - Surveyors - Planners
60 Eastman Drive • Williamsport, New York 14221 • (716) 633-6844

DATE: _____ DRAWN BY: _____ CHECKED BY: _____

1 of 11

