
DECLARATION

Establishing the Foxberry Village Condominium
Town of Amherst, New York,
Pursuant to Article 9-B of the Real Property Law of
the State of New York.

NAME: Foxberry Village Condominium

SPONSOR: The Foxberry Associates

DATED: May 20, 1987

LAW OFFICES OF GEORGE R. GRASSER

Attorneys for Sponsor
3350 Marine Midland Center
Buffalo, New York 14203

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DECLARATION OF
FOXBERRY VILLAGE CONDOMINIUM

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DECLARATION

Establishing FOXBERRY VILLAGE CONDOMINIUM

For the Premises Described on Schedule A attached hereto in the Town of Amherst, New York, pursuant to Article 9-B of the Real Property Law of the State of New York.

The Foxberry Associates, a general partnership having its office at 968 Stuyvesant Avenue, P.O. Box 559, Union, New Jersey 07083, hereinafter referred to as the "Sponsor" does hereby declare:

ARTICLE I

SUBMISSION OF PROPERTY

Section 1.01. Submission. The Sponsor hereby submits the land described on Schedule A hereto and made a part hereof, together with all improvements thereon erected (hereinafter called the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York.

ARTICLE II

NAME OF CONDOMINIUM

Section 2.01. Name. This Condominium shall be known as the Foxberry Village Condominium, sometimes hereinafter referred to as the "Condominium". The Condominium shall be comprised of the Owners of the "Units" (see below) on the Property.

ARTICLE III

BUILDINGS

Section 3.01. Buildings. The "Buildings" as hereinafter referred to are the residential structures known as Buildings 1 - 17, Foxberry Drive, Amherst, New York.

Schedule B attached hereto, and made a part hereof, contains a description of the Buildings including the number of stories and the materials of which the buildings are constructed.

ARTICLE IV
UNITS

Section 4.01. Number of Units. There are 136 Apartment Units (hereinafter sometimes together referred to as the "Units").

Section 4.02 Designations, Locations and Plans of Units. Annexed hereto, and made a part hereof as Schedule C, is a list of all Units in the Buildings, their Unit designations, tax lot numbers, approximate areas, number of rooms, percentage of interest in the "common elements" as hereinafter defined, and common elements to which each Unit has immediate access (as shown on the floor plans of the Buildings, certified by Michael B. Pratt, P.E. and filed in the Office of the Erie County Clerk simultaneously with this Declaration under Map Cover No. 2619.) Annexed hereto and made a part hereof as Schedule D is a plot plan or survey showing the designation and location of the Units within the Buildings.

Section 4.03. Dimensions of Units. Each Unit is measured horizontally from the unexposed faces of the plaster or drywall at the exterior walls of the building to the unexposed faces of the plaster or drywall at the walls dividing the Units from interior stairhalls or other Units, and vertically from the upper face of the plaster or drywall forming the ceiling of the Unit. Doors, windows and interior walls which abut a Unit are part of the Unit. All pipes, wires and conduits from the gas, electric and water meters running to the Unit and serving only such Unit are part of the Unit.

Section 4.04. Ownership of Units. Each Unit will be sold to one or more parties (hereinafter referred to as the "Unit Owners") with each Unit Owner obtaining fee ownership to the Unit acquired and the appurtenant undivided interest in the "common elements" (see Article V of this Declaration) of the Condominium, as set forth in Schedule C of this Declaration. Upon acquiring title in such manner, such purchaser(s) shall become a Unit Owner(s) in the Condominium and will remain such so long as such Unit is owned by such Owner(s).

Section 4.05. Use of Units. Each Unit shall:

- (1) be used for residential purposes only;
- (2) be resided in by not more persons (including children) than two times the number of bedrooms in the Unit, except that this shall not apply to persons who have a child after they have taken occupancy; and
- (3) if resided in by three or more persons (including children) such persons shall be members of the same family (or if the Unit Owner or lessee is a partnership, a corporation or a trust, members of the family of a partner, director, shareholder, or employee of the corporation or of the beneficiary of the trust, as the case may be). "Same

family" shall be defined as persons related to one another as husband, wife, mother, father, sister, brother, stepsister, stepbrother, daughter, son, stepdaughter, stepson; together with their children. This restriction requiring three or more residents to be members of the same family may be waived by written consent obtained from the Board of Managers prior to occupancy.

Notwithstanding the above, so long as the Sponsor owns one or more Units, it may use Units for sales offices, models and the storage of supplies and equipment, and shall have an easement over the common elements for ingress, egress and parking for itself and for prospective purchasers.

Section 4.06. No Partition of Units. No Unit (including the interest in the common elements appurtenant thereto) shall be subject to partition by the Unit Owner; provided, however, that the foregoing shall not be construed as prohibiting any combination of Units as provided in Section 6.01 of this Declaration or any structural alterations or changes in the number of rooms in a Unit upon approval of the Board of Managers as provided for in Article VI of this Declaration.

ARTICLE V

COMMON ELEMENTS

Section 5.01. Definition of Common Elements. The common elements consist of all the Property except the Units, including, but without limitation, the following: (i) the outside walls, roofs, basements, interior hallways and foundations of the Building; (ii) the land and improvements on the Property (including the land under the Units); (iii) all utility or other pipes, ducts, wires, cables, chutes, conduits, connections, fittings and other material which are not part of the Units and not owned by public utility companies; (iv) all radiators whether located within a Unit or elsewhere on the Property; (v) the courtyard, grass areas, side walks and fences; (vi) storage areas and mailboxes; and (vii) all other apparatus and installations on the Property for common use or which may be necessary or convenient to the existence, maintenance or safety of the Property.

Section 5.02. Interest in Common Elements. Each Unit Owner shall have such percentage interest in the common elements as is set forth on Schedule C attached hereto and shall bear such percentage of the common expenses of the Condominium. The percentage of interest of each Unit in the common elements has been determined by the Sponsor in accordance with Section 339-i of the Real Property Law on the basis of each Unit within each of the following classifications of Units having an equal percentage interest in the common elements as follows:

(a) Type I - One bedroom Units	.5800%
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- (b) Type II - Two bedroom Units containing
810 sq. ft. without cathedral ceilings .7600%
- (c) Type III - Two bedroom Units containing
810 sq. ft. with cathedral ceilings .7825%
- (d) Type IV - Two bedroom Units containing
895 sq. ft. without cathedral ceilings .8200%
- (e) Type V - Two bedroom Units containing
895 sq. ft. with cathedral ceilings .8425%

The interest in common elements as expressed herein shall have a permanent character and shall not be altered without the consent of all Unit Owners affected, as well as their mortgagees, expressed in a duly recorded amendment hereto.

The undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

Section 5.03. Eminent Domain. Notwithstanding Section 5.02 above, if a Unit or Units, or the common elements, or any portion thereof is taken by eminent domain, the following shall apply:

- (a) Action to Contest Condemnation. The Board of Managers shall have the exclusive right to contest any condemnation or eminent domain proceeding which is directed at taking any portion of the common elements or which touches upon, concerns or affects the use of the common elements. No Unit Owner or tenant of a Unit shall impair or prejudice the action of the Board of Managers in contesting such condemnation. Such restriction or prohibition shall not preclude a Unit Owner or tenant of a Unit from contesting the taking in such condemnation or eminent domain proceeding of the Unit owned or rented by such Unit owner or tenant. In any action contesting a taking by condemnation or eminent domain proceeding, the Board of Managers shall request the court to set forth the allocation of the condemnation award among the Unit Owners affected, taking into account the respective percentage interests in the common elements, the effect of the taking on each Unit affected thereby and any other relevant factors.
- (b) Partition Action in Lieu of Continuation of Condominium After Partial Taking by Condemnation. If any condemnation or eminent domain proceeding results in a partial taking of the Property, then the Property or so much thereof as shall remain shall be subject

to an action for partition as provided for by Section 339-t of the Real Property Law, as said Section may be amended from time to time, in which event the net proceeds of sale, together with the net proceeds of the award from the condemnation or eminent domain shall be considered one fund and shall be divided among all the Unit Owners in proportion to their respective common interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of such Owner's share all liens on such Owner's Unit.

- (c) Distribution of Condemnation Awards for Taking of Common Elements. Except as provided in (b) above and any award obtained by a Unit Owner for the Unit as further provided in (a) above, in the event all or part of the common elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to an insurance trustee (bank, trust company, law firm or attorney) selected by the Board of Managers if the award is more than \$50,000.00 and to the Board of Managers if the award is \$50,000.00 or less. (This \$50,000.00 limit shall automatically increase each calendar year by 5% over the limit of the previous year.) The Board of Managers or the insurance trustee, as the case may be, shall arrange for the repair, restoration or replacement of such common elements to the extent reasonably possible, and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments.

If there shall be a surplus of such proceeds or if the Board of Managers or insurance trustee cannot reasonably repair, restore or replace the common elements taken, the proceeds shall be distributed among the Unit Owners and the percentage interests in the common elements of the Condominium reallocated among the remaining Units as the court shall have directed, or as provided in (d) below, if there was no direction by the court, taking into account the respective percentage interests in the common elements of the Units affected thereby, the effect of the taking on each Unit affected thereby after the completion of any repair, restoration or replacement by the Board of Managers or insurance trustee and any other relevant factors. Any court direction as to such distribution shall be final. Any Unit Owner or tenant who wishes to contest a determination by the Board of Managers may do so by submitting the matter to the American Arbitration Association for a determination of a fair and proper distribution, or reallocation of percentage interests in the common elements, as the case may be, which shall be binding on the Board of Managers, and on all Unit Owners and tenants. The cost of

such arbitration shall be borne solely by the Unit Owner or tenant submitting the matter for arbitration.

After any determination for reallocation of percentage interests in the common elements, the Unit Owners shall promptly prepare, execute and record an amendment to the Condominium Declaration reflecting such reallocation, which said Amendment need only be executed by Unit Owners affected and by a majority of the Board of Managers.

- (d) Partial or Total Taking of Units. Subject to the direction of any court as described in (c) above, if an entire Unit is so taken, or if part of a Unit is taken such that the remaining portion may not be practically or lawfully used for any purpose permitted by this Declaration, that Unit's entire interest in the common elements shall be automatically reallocated to the remaining Units in proportion to the respective common element interests of those Units before the taking. If part of a Unit is so taken, such that the remaining portion may be practically and lawfully used for a purpose permitted by this Declaration, that Unit's interest in the common elements shall be reduced in proportion to the reduction and size of the Unit in a manner consistent with the manner in which common element interests were originally determined under Section 5.02 above; the portion of the interest in the common elements so divested shall be automatically reallocated to that Unit and to the remaining Units in proportion to the respective common element interests of those Units before the taking, with the partially-taken Unit participating in the reallocation on the basis of its reduced interest in the common elements.
- (e) Condemnation Provisions Subject to Existing Law. All provisions of this Section 5.03 are subject to interpretation in accordance with the law in effect at the time of any condemnation or eminent domain proceeding. Should all or any portion of the provisions of this Section 5.03 be deemed illegal at such time, the distribution of proceeds, rights with respect to partition and allocation of percentage interests in the common elements after a partial taking, shall be as a court of law shall determine.

Section 5.04. Common Elements to Remain Undivided. The common elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law and unless consented to by all holders of first mortgages on the Units.

Section 5.05 Abandonment or Encumbrance of Common Elements. The common elements shall not be abandoned or encumbered without the

consent of all the Unit Owners, who shall vote upon written ballots which shall be sent to every Unit Owner not less than thirty (30) days nor more than fifty (50) days in advance of the canvass thereof. No such abandonment or encumbrance shall be made if any first mortgagee of a Unit advises the Board of Managers in writing, prior to the date set for voting on the proposed abandonment or encumbrance that it is opposed to such abandonment or encumbrance, which opposition shall not be unreasonable. Written notice of any such proposed abandonment or encumbrance shall be sent to all lending institution first mortgagees whose names appear on the records of the Condominium not less than thirty (30) days nor more than fifty (50) days prior to the date set for voting on the proposed abandonment or encumbrance.

Notwithstanding the foregoing, the Condominium Board of Managers shall have the power to grant easements, rights of way or licenses for utilities or other similar services (e.g., cable television) across the common elements, with or without consideration.

Section 5.06. Restricted Common Elements. Subject to the right of the Board of Managers to enter upon any restricted area for maintenance, repair or improvement of a Unit or common element and subject to the rules of the Board of Managers (see Article VII of By-Laws attached hereto as Schedule E), the following portions of the common elements are restricted in use as specified below:

1. The portion of the patio or deck which is adjacent to a Unit is restricted in use to the Owners of the Unit so abutting the patio.
2. The halls, Unit storage areas, utility room, stairs and stairwells in the Buildings are restricted in use to the Owners of the Units within each of the Buildings, subject only to the right of the Sponsor and/or Board of Managers to use those utility room areas restricted to its use, as described below.
3. If the Board of Directors of the Foxberry Communities Association, Inc. deems the assignment of outdoor parking spaces appropriate or necessary and assigns all or a portion of the parking spaces for the use by the Owners of a particular Unit or Units, each such space shall, during the time of such assignment be limited in use to the Owner of the Unit to which such space is assigned.
4. Unit storage areas in the storage rooms of the Buildings are limited in use to the Owner(s) of the Unit to which each such area is assigned from time to time by the Board of Managers of the Condominium.
5. Each mail box is limited in use to the Owners of the Unit to which such mailbox is assigned from time to time by the Board of Managers of the Condominium.

6. The following utility room areas are restricted in use to the Board of Managers, to be used as follows: (a) the areas where the water, gas and electric meters or other equipment are located are restricted in use to the Board of Managers; and (b) the areas where water heaters and laundry equipment are located are restricted in use to the Board of Managers.
7. Upon approval by the Board of Managers, Unit Owners may utilize designated areas of the common elements for gardening or other landscaping purposes, and such designated areas shall become and remain restricted in use to the Owners of said Unit(s) for so long as the Board's license or approval shall remain in effect.

ARTICLE VI

ALTERATION OF UNITS OR COMMON ELEMENTS

Section 6.01. Increases and Decreases in Size and Number of Units. Any Unit Owner or Owners shall have the right to combine Units owned by such Unit Owner or Owners, so long as (i) the common interest appurtenant to such Units after such combination shall equal in total the common interest applicable to the Unit or Units divided or combined prior to combination; (ii) the written consent of the Board of Managers is obtained pursuant to Sections 6.04 through 6.08 of this Declaration; (iii) such proposed combination is in all respects lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the combination; and (iv) such combination is in compliance with all governmental laws, codes, ordinances and regulations. Among the factors to be considered by the Board of Managers in determining whether or not to consent to such combination are adequacy of the size, shape and location of all Units after such combination, the structural soundness of the Building during and after the performance of the necessary improvements, and any other factors which may affect the appearance or value of the Building, or which are set forth in Section 6.04 hereof. The cost of any such division or combination shall be the sole responsibility of the Owner or Owners of the Units being combined. Any such combination shall become effective upon the recording in the Erie County Clerk's Office of an amendment to this Declaration (which amendment shall include, as appropriate, any necessary changes to the text of this Declaration and any plot plan attached hereto), executed by the Board of Managers and by the Owners and mortgagees of the Units so combined, together with the filing of floor plans of the Unit as combined with the certification by tax authorities of tax lot numbers conforming to the new Unit. The provisions of this Section shall not apply to a Unit(s) owned by the Sponsor until such Unit is conveyed to a purchaser thereof (as long as any proposed improvements by the Sponsor comply fully with all governmental

laws, codes, ordinances and regulations and the proposed improvements are lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the improvement). This section shall not be amended without the written consent of the Sponsor as long as Sponsor owns any Units.

Section 6.02. No Other Additions or Structural Alterations to Units. No Unit Owner shall install any additional appliances other than replacement with like-kind appliances without the prior written consent of the Board of Managers, which consent shall not be unreasonably withheld. No structural alterations shall be made to a Unit which would impair the structural soundness of any Unit or Building or which would cause an adverse material effect on the exterior appearance or value of the Building in which the Unit is located without the written approval of the Board of Managers, obtained as provided in Sections 6.04 through 6.08 of this Declaration. This Section 6.02 shall not apply to additions or alterations made by the Sponsor (as long as any proposed improvements by the Sponsor comply fully with all governmental laws, codes, ordinances and regulations and the proposed improvements are lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the improvement), nor shall this Section be amended without the written consent of the Sponsor as long as the Sponsor owns any Units.

Section 6.03 Alteration and Improvement of Common Elements.

- (a) By Board of Managers: The Board of Managers shall have the right, at its option, to make or cause to be made such alterations and improvements to the common elements as, in its opinion, may be beneficial or necessary or which is requested in writing by a Unit Owner(s) and the holders of first mortgages thereon, subject, however, to the requirement that, if the alteration or improvement shall cost more than 5% of the then current estimated annual budget (including reserves), such alteration or improvement shall be approved by more than two-thirds in number and in common interest of the Unit Owners, voting at a meeting duly called pursuant to the By-Laws. Such expenses shall constitute common expenses. Alterations or improvements costing less than 5% of the Condominium's then current estimated annual budget may be made by the Board of Managers and the cost thereof shall constitute a part of the common expenses. Before undertaking such work, the Board may require the consent in writing of such Unit Owners and the holders of first mortgages thereon, whose rights, in the sole opinion of the Board, may be prejudiced by such alteration or improvement. In all cases of alteration or improvement, the Board of Managers shall comply fully with all governmental codes, laws, ordinances and regulations, including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the proposed alteration or improvement.

The Board of Managers may also elect to convert from common utility services, heat and/or hot water systems to individual utility services, furnaces and/or water heaters for each Unit, subject, however, to the requirement that such conversion shall be approved by more than two-thirds in number and in common interest of the Unit Owners, voting at a meeting duly called pursuant to the By-Laws. The expenses for such conversion shall constitute common expenses.

- (b) By Unit Owners: No Unit Owner shall install any appliance in the common elements or make any addition, alteration or improvement to the common elements (i) which would in any way violate any governmental law, code, ordinance or regulation (including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the alteration or improvement), or (ii) without the prior written consent of any Unit Owners directly affected, and of the Board of Managers, obtained pursuant to Sections 6.04 through 6.08 of this Declaration. When the alteration or improvement to the common elements is pursuant to a combination of Units requested by a Unit Owner(s) it shall be governed by Section 6.01 of this Declaration.

Notwithstanding the foregoing, the provisions of this Section 6.03(b) shall not apply to the Sponsor (as long as any proposed improvements by the Sponsor comply fully with all governmental laws, codes, ordinances and regulations and the proposed improvements are lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the improvement), nor shall this Section 6.03(b) be amended without the written consent of the Sponsor as long as the Sponsor owns any Units.

Section 6.04. Submission of Plans to Board of Managers; Approval. Any addition, alteration or improvement to the Units or common elements proposed by a Unit Owner(s) (other than the Sponsor) pursuant to Sections 6.01 through 6.03 above shall require that a plan or plans therefor, in such form as the Board of Managers may require, be submitted to, reviewed and approved by the Board of Managers. The Board of Managers may charge and collect a reasonable fee for the examination of plans submitted for approval, including any fees which may be charged by architects, engineers or attorneys retained by the Board of Managers in connection with the review of such plans.

The Board of Managers may adopt simplified review procedures for any such additions, alterations or improvements which it shall deem minor or for which the submission of plans is not necessary.

The Board of Managers may disapprove such plans for any of the following reasons:

- (a) failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration, By-Laws, Rules or Regulations;
- (b) failure to include information in such plans as requested;
- (c) objection to the exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion and style of architecture;
- (d) incompatibility of proposed improvements or use of proposed improvements with existing improvements;
- (e) failure or proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations, including the Real Property Law of the State of New York;
- (f) any other matter which in the judgment and sole discretion of the Board of Managers would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Condominium, including any possible adverse impact on the use and enjoyment of the Property by any other Unit Owner(s).

Upon approval or qualified approval by the Board of Managers of any plans submitted pursuant to this Section, the Board of Managers shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or disqualified approval. Approval of any such plans relating to the common elements or to any Unit shall be final as to such alterations, modifications or improvements and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration, By-Laws or Rules and Regulations, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance, including the Real Property Law of the State of New York. Approval of any such plans shall not be deemed a waiver of the right of the Board of Managers to disapprove similar plans or any of the features or

elements included therein if such plans, features or elements are subsequently submitted for use by other Unit Owner(s).

Section 6.05. Written Notification of Disapproval. In any case where the Board of Managers disapproves any plans submitted hereunder, the Board of Managers shall notify the applicant in writing, together with a statement of the grounds upon which such action was based. In any such case, Board of Managers shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 6.06. Failure of Board to Act. If any applicant has not received notice of the Board of Managers approving or disapproving any plans within 60 days after submission thereof, said applicant may notify the Board in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board 15 days after the date of receipt of such second notice, if no decision is rendered by the Board within said 15 day period.

Section 6.07. Board of Managers' Right to Promulgate Rules and Regulations. The Board of Managers may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, modifications or improvements to the common elements or Units; provided, however, that no such rule or regulation shall be deemed to bind the Board to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board's discretion as to such plans; and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration, By-Laws or any applicable governmental law, code, ordinance, rule or regulation.

Section 6.08. Applications for Permits; Insurance. Any application to any governmental authority to make installation, addition, alteration or improvement to the common elements or any Unit shall be executed by the Board of Managers only; provided, however, that applications for any such installation, addition, alteration or improvement proposed by a Unit Owner pursuant to Sections 6.01 through 6.03 above shall be at the sole cost and expense of such Unit Owner; and provided further that this Article VI shall in no case be construed to result in the Board of Managers incurring any liability whatsoever to any Unit Owner, contractor, subcontractor, materialmen, architect or engineer on account of such installation, addition, alteration or improvement proposed by a Unit Owner, or to any person having any claim for injury to person or property arising therefrom, and such Unit Owner agrees to indemnify and forever hold the Board harmless for any liability or expenses incurred by the Board in connection therewith, including reasonable attorneys' fees.

In connection with any installation or work done by a Unit Owner, the Board of Managers may require that the Unit Owner obtain such insurance coverages, and in such amounts, as the Board of Managers deems proper.

Section 6.09. Liability of Board of Managers. No action taken by the Board of Managers or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Building or other portion of the Property. Neither the Condominium, nor the Board of Managers, nor any member, subcommittee, employee or agent thereof shall be liable to anyone submitting plans to them for approval or to any Unit Owner, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Board of Managers agrees, by submission of such plans, that no action or suit will be brought against the Condominium or the Board of Managers (or any member, subcommittee, employee or agent thereof) in connection with such submission.

ARTICLE VII

EASEMENTS

Section 7.01. Utilities, Pipes and Conduits. Each Unit Owner shall have such easement of access to other Units and to the common elements, and each Unit shall be subject to such easement, as is reasonably necessary for such Unit Owner to maintain, repair and replace, as necessary, such Owner's Unit including, if any, the pipes, ducts, wires, cables, chutes, conduits, connections and fittings running from the meters or equipment servicing such Unit to the Unit. Each Unit Owner shall also have an easement in common with the Owners of all other Units to use, in accordance with present use and present available facilities, all pipes, ducts, wires, cables, chutes, conduits, connections, fittings, public utility lines, and other common elements located in any of the other Units and serving the Unit or Units of such Unit Owner. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use in accordance with present use and present available facilities the pipes, ducts, wires, cables, chutes, conduits, connections, fittings, public utility lines and other common elements serving such other Units and located in such Unit.

Section 7.02. Access of Board of Managers. The Board of Managers, its agents, contractors and employees, shall have an easement and right of access to each Unit to inspect the same, to remove violations therefrom and for installation, maintenance, repair or improvements to any pipes, ducts,

wires, cables, chutes, conduits, connections, fittings and public utility lines located or to be located in any Unit and servicing any other Unit, or to make repairs to the Unit to prevent damage to the common elements or to any other Unit. Said easement and right of access shall be exercised (unless in an emergency) at reasonable hours and upon reasonable notice to the Unit Owner involved. The cost of such maintenance, repairs, improvements or replacements shall be a common expense, except as provided in Section 7.02 of the By-Laws. The Board of Managers shall have a right of access to all common elements (irrespective of the restricted nature of such common elements) to remove violations and for inspection, maintenance, repair or improvement.

Section 7.03. Easements Reserved for Benefit of Adjacent Lands. The Sponsor reserves to itself, for the development, construction, sale, marketing and benefit of dwelling units on 7.52 acres of land owned by it lying south and east of the Property and described on Parcels A through D on Schedule B to a declaration known as the Foxberry Communities Association Declaration, made by the Sponsor and intended to be recorded simultaneously herewith, easements (i) to use the roadways on the Property for the ingress and egress of itself and for purchasers, prospective purchasers, occupants and prospective occupants (and their guests and invitees) of dwelling units; (ii) for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits on the Property and which service said 7.52 acres of land; (iii) to connect with and make use of utility lines, wires, pipes, conduits and related facilities on the Property to service the improvements on said 7.52 acres of land; (iv) to erect and maintain at the entrance to the Property from Campbell Boulevard, and in such other locations as the Sponsor deems appropriate or desirable and which do not unreasonably interfere with the appearance or use of the Property; signs identifying (and for advertising the sale and rental of) dwelling units on said 7.52 acre parcel; and (v) for the use of the swimming pool and pool area on the Property by the occupants of said 7.52 acres of land and an easement over the roadways and walkways on the Property for ingress and egress to the swimming pool and pool area from said 7.52 acre parcel, subject to the payment of a proportionate share by the owners of the Units whose occupants are entitled to use such swimming pool and pool area, of the cost of maintaining, operating, replacing and repairing such swimming pool and pool area and the appurtenant facilities and equipment, which share shall be based on the number of completed (as evidenced by a certificate of occupancy or actual occupancy) dwelling units on such 7.52 acre area divided by the number of dwelling units on the Property plus the number of dwelling units on such 7.52 acre area. With respect to such rights, any damages to the Property shall be repaired by the person or entity causing such damages within a reasonable time after the completion of development of the entire 7.52 acre area and thereafter, within a reasonable time after such damages occurred.

Section 7.04. Easement for Encroachments. The Unit Owners agree that if any portion of a Unit or the common elements (whether restricted in use to an individual Unit Owner or not) encroaches or shall hereinafter

encroach upon another Unit or the common elements as a result of: (i) the original construction or settling or shifting of the Building or (ii) any repair or restoration by the Board of Managers of the Building, any Unit or the common elements, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall and does exist. Such easements as provided in this Section shall exist so long as the Building in which any such encroachment exists shall stand.

Section 7.05. Easement of Necessity. Each Unit shall have and each Unit shall be subject to all easements of necessity in favor of such Unit or in favor of other Units and the common elements.

ARTICLE VIII

VOTING RIGHTS

Section 8.01. Voting Rights. For all voting purposes except for amendment to this Declaration as provided below, at any meeting of the Unit Owners, the Owners of Units shall have one (1) vote for each Unit owned.

ARTICLE IX

COMMON CHARGES - ALLOCATION, LIEN AND LIABILITY

Section 9.01. Allocation and Commencement of Common Charges. Except as otherwise permitted in this Section or the By-Laws, the common expenses shall be charged by the Board of Managers to the Unit Owners, according to their respective percentage interests in the common elements. The common profits of the Property, after offsetting the common expenses relating to the common elements and making due allowance for the retention of a reserve or reserves to cover future common expenses, shall be distributed among the Unit Owners in the same manner. Common charges shall commence the date of recording of the first deed transferring title to a Unit.

Section 9.02. Common Charges Are Lien on Unit and Personal Obligation of Unit Owner. The common charges shall be paid when due. No Unit Owner may exempt himself from liability for payment of common charges assessed against such Owner's Unit by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Unit. All sums assessed as common charges by the Board of Managers of the Condominium, but unpaid, together with any accelerated installments, late charges and interest thereon as may be provided or adopted pursuant to the By-Laws, and reasonable attorneys' fees and other costs and expenses incurred in efforts to

collect such past due assessments, shall be the personal obligation of the Unit Owner and to the extent permitted by law shall constitute a lien upon the Unit prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to State, County and City taxing agencies and (b) all sums unpaid on any first mortgage of record encumbering any Unit.

A purchaser of a Unit shall be liable for the payment of unpaid common charges assessed against such Unit prior to such Purchaser's acquisition, except that an institutional mortgagee or other purchaser who acquires title at a foreclosure sale, or an institutional mortgagee who acquires title to a Unit by a deed in lieu of foreclosure, shall not be liable for, and such Unit shall not be subject to a lien for, the payment of common charges assessed against such Unit, and which became due prior to such acquisition of title. In such event, the unpaid balance of common charges shall be charged to all other Unit Owners as a common expense. The term "institutional mortgagee" as used in this Section and elsewhere in this Declaration shall mean a first mortgage granted by the Sponsor, a bank, savings and loan association, life insurance company, pension fund, trust company or other institutional lender.

Except as provided above, in any conveyance of a Unit either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the grantee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid common charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former Unit Owner the amounts paid by the grantee therefor. "Grantee" as used herein shall not include either the holder of an institutional mortgage of record or a purchaser of a Unit at a foreclosure sale of an institutional mortgage.

A purchaser of a Unit shall be liable for the payment of common charges assessed against such Unit prior to such Purchaser's acquisition, except that an institutional mortgagee or other purchaser who acquires title to a Unit at a foreclosure sale, or an institutional mortgagee who acquires title to a Unit by a deed in lieu of foreclosure, shall not be liable for and such Unit shall not be subject to a lien for, the payment of common charges assessed against such Unit prior to the foreclosure sale. Dissatisfaction with the quantity or quality of maintenance furnished to the Property shall not be grounds for the withholding or failure to pay any common charge or special assessment. No Unit Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer or other conveyance by him of such Unit made in accordance with applicable law or the provisions of this Declaration and the By-Laws.

ARTICLE X
BOARD OF MANAGERS

Section 10.01. Board of Managers. The affairs of the Condominium shall be governed and controlled pursuant to the Condominium By-Laws (attached hereto as Schedule E and made a part hereof) by a Board of Managers who shall be elected and serve and shall have the duties and powers as provided in the By-Laws.

Section 10.02 Administration. The administration of the Condominium, the Building and parcel of land (the Property) described herein shall be in accordance with the provisions of this Declaration and with the provisions of the Condominium By-Laws.

Section 10.03 Power of Attorney to Board of Managers. Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose owner desires to surrender, sell or lease the same, or which may be the subject of a foreclosure or other judicial sale, or any other Unit, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, vote the votes appurtenant thereto or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Board of Managers.

Section 10.04. Acquisition of Units By Board of Managers. In the event any Unit Owner shall surrender such Unit Owner's Unit, together with (i) the undivided interest in the common elements appurtenant thereto; (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale, or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium (hereafter collectively called the "Appurtenant Interests") pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or in the event the Board of Managers shall purchase at a foreclosure or other judicial sale, or in any other manner acquire, a Unit together with the Appurtenant Interests, title to any such Unit, together with the Appurtenant Interests shall be held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective common interests. The lease covering any Unit leased by the Board of Managers, or its designees, on behalf of all Unit Owners, shall be held by the Board, or its designee, on behalf of all Unit Owners in proportion to their respective common interests.

Section 10.05. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Managers. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor shall continue to own 25% or more of the Units, but in no event later than three (3) years from the date of recording this Declaration, the Board of Managers may not, without the Sponsor's written consent, (i) except for necessary repairs, make any addition, alteration or improvement to the common elements or to any

Unit owned by the Condominium or (ii) assess any common charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the condominium bears to the total amount of such initial budget of estimated expenses or, (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Condominium, except as may be necessary to maintain the quantity or quality of services or maintenance, or (iv) enter into any maintenance or service contract for work not provided for in the initial budget of the Condominium, or (v) borrow money on behalf of the Condominium or (vi) reduce the quantity or quality of services or maintenance of the Property. This Section shall not be amended without the written consent of the Sponsor as long as the Sponsor owns 25% or more of the Units.

ARTICLE XI

OBLIGATIONS, RESPONSIBILITIES, COVENANTS, AND RESTRICTIONS

Section 11.01. All Owners, Tenants and Occupants Subject to Condominium Documents Which Run With the Land. All present or future Unit Owners, tenants, occupants or any other person that might use the Units or the facilities of the Property in any manner, are subject to the provisions of the Declaration, the By-Laws and Rules and Regulations of the Condominium as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into of occupancy of any Unit shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified by such Owner, tenant or occupant, and all of such provisions 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 such Units, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

Section 11.02. Units to be Properly Maintained. Unit Owners shall maintain their Units and any storage area restricted in use to such Unit Owner or Owners in good repair and overall appearance.

Section 11.03. Mortgages on Units. Any Unit Owner who mortgages his Unit shall promptly provide the Board of Managers with the name and address of the mortgagee.

Section 11.04. Notice to Mortgagees. The Board of Managers shall give written notice to the holders of mortgages encumbering Units which notice is required by various provisions of this Declaration and the Condominium By-Laws to those mortgagees which have notified the Board of Managers of their name and address or who have caused the mortgagor/Unit Owner to give such notice.

Section 11.05. No Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents.

Section 11.06. No Immoral or Unlawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 11.07. Obligation to Maintain Utility Service. Regardless of whether the Unit is occupied, the owner thereof shall be obligated to maintain sufficient utility service to prevent damage to other Units or to the common elements. If such service is not maintained by the Owner, the Board of Managers shall have the right to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances and without notice in emergency situations. If such service must be arranged by the Board of Managers, any costs incurred shall be collectible in the same manner as common charges and shall constitute a lien on the Unit involved and a personal obligation of the Unit Owner(s).

Section 11.08. Rules and Regulations. Rules and regulations promulgated by the Board of Managers concerning the use of the Property shall be observed by the Unit Owners.

Section 11.09. Right of Board of Managers to Assign Maintenance Duties to Foxberry Communities Association, Inc. Notwithstanding the specific rights and obligations of the Board of Managers with respect to the maintenance, repair, replacement and control of the common elements as may be set forth in this Declaration or in the By-Laws of the Condominium, subject to such limitations as may be set forth in the By-Laws of the Condominium, the Board may assign its rights and obligations for such maintenance, repair, replacement and control of the common elements to the Foxberry Communities Association, Inc. (hereinafter sometimes referred to as the "Association") for the purpose of creating a single entity responsible for the maintenance, repair and replacement of all common elements in the condominiums comprising Foxberry Village and to simplify the financial aspects of administering the development.

Together with such assignment the Association shall receive (1) an easement and such other access rights from the Board of Managers (as the Board of Managers has pursuant to Section 7.02 of this Declaration) as may be necessary for the Association to carry out its maintenance responsibilities; (2) the right to assess and collect the funds necessary to carry out its responsibilities in accordance with Article IX of this Declaration, and (3)

such other easements and rights given to the Board of Managers under this Declaration which are reasonably necessary for the Association to carry out its obligations and responsibilities under such assignment.

Section 11.10. Expansion of Condominium or Merger of Condominium with Other Condominiums. Nothing in this Declaration shall preclude the expansion of the Condominium to include other residential units, garages, recreational facilities and other amenities in Foxberry Village or the merger of the Condominium with another condominium within Foxberry Village provided such expansion or merger is accomplished pursuant to the laws in effect at the time of such expansion or merger. Notwithstanding anything to the contrary which may be contained in this Declaration, any merger or expansion which results in a single condominium covering the entire lands comprising Foxberry Village (see Schedules A and B to Foxberry Communities Association, Inc. Declaration recorded in the Erie County Clerk's Office) shall mean that all reference herein to Condominium or Association shall be deemed to mean and refer to the condominiums after expansion or merger and all references to the Board of Managers of the Condominium or Board of Directors of the Association shall mean and refer to the Board of Managers of the condominium resulting from such expansion or merger.

Section 11.11. Right of Board of Managers to Assume Maintenance Duties of Foxberry Communities Association, Inc. While the Condominium Property is the sole property encumbered by the Foxberry Communities Association, Inc. Declaration recorded in the Erie County Clerk's Office (see Schedule A thereto), the Board of Managers is authorized in its sole discretion to assume the maintenance and repair responsibility of the Foxberry Communities Association, Inc. (the "Association") with respect to certain common elements of the Condominium which the Association is charged with maintaining.

ARTICLE XII AMENDMENT AND TERMINATION

Section 12.01. Amendment. Except as otherwise provided in this Declaration, this Declaration may be modified, altered, amended or added to at any duly called meeting of Unit Owners provided that:

- (a) A notice of the meeting containing a full statement of the proposed modification, alteration, amendment or addition has been sent to all Unit Owners and first mortgagees of Units as listed on the books and records of the Condominium at least thirty (30) and not more than fifty (50) days prior to the date set for said meeting; and
- (b) 67% or more in number and in common interest of all Unit Owners approve the change; and

- (c) The Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from first mortgagees of 51% or more of the number of Units subject to first mortgages as listed on the books and records of the Condominium; and
- (d) An instrument evidencing the change is duly recorded in the Office of the Erie County Clerk. Such instrument need not contain the written consent of the required number of Unit Owners, but shall contain a certification by the Board of Managers of the Condominium that the consents required by this Section for such change have been received and filed with the Board of Managers, and
- (e) So long as the Sponsor shall continue to own 10% or more of the Units, but in no event later than three (3) years from the date of recording this Declaration, the Board of Managers obtains the Sponsor's written consent to the change.

Section 12.02. Amendment by Sponsor to Correct Errors. Notwithstanding Section 12.01, the Sponsor, during the time it owns any Unit, may make amendments to this Declaration, consistent with the current provisions of the Condominium Act and this Declaration, to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Unit Owner without such Unit Owner's written permission. Such amendment(s) need only be signed by the Sponsor.

Section 12.03. Termination. The Condominium shall not be terminated or abandoned except as provided for by law. In addition to any requirements of law, termination shall require the consent of at least 67% of all Unit Owners in number and in common interest and the approval of first mortgage holders of at least 51% of the Units in number and in common interest of all Units subject to mortgages as listed on the books and records of the Condominium.

ARTICLE XIII GENERAL

Section 13.01. Service of Process. Service of process on the Unit Owners in any action with relation to the common elements shall be made upon: Board of Managers of the Foxberry Village Condominium, Unit 16A, Foxberry Drive, Amherst, New York 14068.

Section 13.02. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 13.03. Waiver. No provision 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.

Section 13.04. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

Section 13.05. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender whenever the context so requires.

IN WITNESS WHEREOF, the Sponsor has caused this Declaration to be executed this 20th day of MAY, 1987.

THE FOXBERRY ASSOCIATES

By Daniel Solondy
General Partner

STATE OF New Jersey)
COUNTY OF Union) : ss

On this 20th day of May, 1987, before me personally appeared Daniel Solondy, to me personally known, who, being by me duly sworn, did depose and say that he is a partner of the FOXBERRY ASSOCIATES, a partnership, and that he executed the foregoing Instrument in the name of the partnership; that he had authority to sign the same; and he acknowledged to me that he executed the same as the act and deed of said partnership.



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

SCHEDULE A
DESCRIPTION OF CONDOMINIUM PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in Town of Amherst, County of Erie and State of New York, being part of Lot No. 64, Township 12, Range 7 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the west line of Lot No. 64 (also being the center line of Campbell Boulevard) at the westerly terminus of a boundary line agreement recorded in Erie County Clerk's Office in Liber 2145 of Deeds at page 374 which point is two thousand two hundred sixty-seven and sixty-one hundredths (2,267.61) feet southly of the northwest corner of Lot No. 64; thence southerly along the west line of Lot No. 64, a distance of three hundred eighteen and fifty-two hundredths (318.52) feet to the norther line of lands conveyed to Max Walther; thence easterly parallel with the south line of Lot No. 64 a distance of four hundred fourteen and forty-eight hundredths (414.48) feet to a point; thence southeasterly at an included angle with the last described line $230^{\circ}00'$ a distance of one hundred thirty-nine (139.0) feet; thence southerly at an included angle with the last described line of $220^{\circ}21'$ a distance of one hundred thirteen (113.0) feet; thence southeasterly at an included angle with the last described line of $135^{\circ}00'$ a distance of one hundred sixty-five and eighteen hundredths (165.18) feet; thence easterly at an included angle with the last described line of $134^{\circ}39'$ a distance of two hundred fifty (250) feet; thence northeasterly at an included angle with the last described line of $135^{\circ}00'$ a distance of one hundred eighty (180) feet; thence northerly at an included angle with the last described line of $135^{\circ}00'$ a distance of one hundred seventy-one and sixty-two hundredths (171.62) feet; thence northwesterly at an included angle with the last described line of $150^{\circ}00'$ a distance of one hundred twenty-three and nine hundredths (123.09) feet; thence northwesterly at an included angle with the last described line of $150^{\circ}00'$ a distance of five hundred (500.0) feet to a point on the boundary line agreement recorded in said Clerk's Office in Liber 2145 of Deeds at page 374; thence westerly along said boundary line agreement and being parallel with the south line of Lot No. 64 and at an included angle with the last described line of $150^{\circ}00'$ a distance of five hundred (500.0) feet to the west line of Lot No. 64 at the point of beginning.

SUBJECT to the rights of others in and to that part of the premises lying within the bounds of Campbell Boulevard.

SCHEDULE B
DESCRIPTION OF THE BUILDINGS

Each building has two structural stories, with the ground floor constructed as a slab on grade and bearing walls constructed on concrete walls with spread footings. Each building has a concrete masonry unit fire wall in the center of the building along its long axis extending from the ground floor up through the second story to the roof. The exterior building walls are of wood frame construction with brick veneer on the lower story and wood frame construction on the upper story. Unit interior walls are wooden stud walls with 1/2" gypsum dry wall and the entrance corridor walls are of wooden stud and gypsum dry wall construction. The ground floors are comprised of 2 x 10 wood joists at 16 O.C. with 3" batt insulation and plywood. A reinforced concrete slab was constructed over the plywood. The roofs are a mansard design constructed with wood framing, plywood sheathing, and asphalt shingle roofing. Flashing is aluminum with some galvanized or aluminum drip edges and roof drainage diverters. Roof ventilation is provided by means of plastic convection ventilators which vent the attic space. Soffits have 8" x 16" metal grill vents.

The windows for the building are double glazed aluminum gliding type with screens and brush seals. The window sills are limestone and lintels are steel on the brick veneer walls and wooden in the mansard roof areas. The front entrance doors for the buildings are hollow metal construction with wood door frames and weather stripping. The service doors in the rear of the buildings are hollow metal doors with weather stripping window and screen. Corridor doors at the fire wall location are of hollow metal construction with metal frames. Interior entrance doors to the Units are of hollow metal construction and those within the Units are hollow core wood doors. Balcony doors and patio doors are sliding glass aluminum type. The exterior balconies for the second story are precast concrete decks with wrought iron railings. The decks are supported by ornamental steel lattice columns extending from the first floor patios and the exterior bearing wall of the building.

Roof drainage is gathered by four inch (4") aluminum gutters about the roof perimeter with aluminum downspouts leading to exterior yard drainage system. The roof areas directly over the rear balconies have roof diverters to direct water laterally to gutters in lieu of gutters at the roof edge. The exhaust stack from the common hot water heater is six inch (6") diameter steel and the stack has a metal wind cap.

The finishes of the Units are flat latex painted dry wall for walls in all areas except the kitchen and bathroom. The walls of the kitchen have ceramic tile above the counter area and the bathroom has wallpaper with ceramic tile wainscoting. The floors are typically carpeted except for the kitchen which has a linoleum floor and the bathroom which has a ceramic tile floor with base coving. The ceilings are typically sprayed textured type ceilings mounted on 1/2" gypsum dry wall.

Stairways are composed of wooden stringers, treads and risers covered by carpeting and wrought iron railings. The stairways are 3'-6" wide with risers 7-3/4" high and treads 9-1/2" wide. The wrought iron railings are attached by means of an iron strip balustrade attached to the stringer. There is one main stairway near the entrance foyer in each building.

SCHEDULE C
FOXBERRY VILLAGE CONDOMINIUM DECLARATION
ADDRESS/UNIT DESIGNATIONS/PERCENTAGE INTERESTS IN COMMON ELEMENTS/
APPROXIMATE SQUARE FOOT AREA/ROOMS/ACCESS TO COMMON ELEMENTS/
TAX LOT NUMBERS

<u>ADDRESS AND UNIT DESIGNATION</u>	<u>PERCENTAGE INTEREST IN COMMON ELEMENTS</u>	<u>APPROX. SQUARE FOOT AREA</u>	<u>NO. OF ROOMS/BATH</u>	<u>COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS</u>	<u>TAX LOT NUMBER*</u>
<u>FOXBERRY DRIVE</u>					
<u>BUILDING 17</u>					
2A	0.7600	810	5/1	1,2,3,4,5,6	2A
2B	0.7825	810	5/1	1,2,3,4,5,6	2B
4A	0.5800	620	4/1	1,2,3,4,5,6	4A
4B	0.8425	895	5/1	1,2,3,4,5,6	4B
6A	0.5800	620	4/1	1,2,3,4,5,6	6A
6B	0.8425	895	5/1	1,2,3,4,5,6	6B
8A	0.7600	810	5/1	1,2,3,4,5,6	8A
8B	0.7825	810	5/1	1,2,3,4,5,6	8B
<u>BUILDING 16</u>					
10A	0.7600	810	5/1	1,2,3,4,5,6	10A
10B	0.7825	810	5/1	1,2,3,4,5,6	10B
12A	0.5800	620	4/1	1,2,3,4,5,6	12A
12B	0.8425	895	5/1	1,2,3,4,5,6	12B
14A	0.5800	620	4/1	1,2,3,4,5,6	14A
14B	0.8425	895	5/1	1,2,3,4,5,6	14B
16A	0.7600	810	5/1	1,2,3,4,5,6	16A
16B	0.7825	810	5/1	1,2,3,4,5,6	16B
<u>BUILDING 15</u>					
18A	0.7600	810	5/1	1,2,3,4,5,6	18A
18B	0.7825	810	5/1	1,2,3,4,5,6	18B
20A	0.5800	620	4/1	1,2,3,4,5,6	20A
20B	0.8425	895	5/1	1,2,3,4,5,6	20B
22A	0.5800	620	4/1	1,2,3,4,5,6	22A
22B	0.8425	895	5/1	1,2,3,4,5,6	22B
24A	0.7600	810	5/1	1,2,3,4,5,6	24A
24B	0.7825	810	5/1	1,2,3,4,5,6	24B
<u>BUILDING 14</u>					
26A	0.7600	810	5/1	1,2,3,4,5,6	26A
26B	0.7600	810	5/1	1,2,3,4,5,6	26B
28A	0.5800	620	4/1	1,2,3,4,5,6	28A
28B	0.8200	895	5/1	1,2,3,4,5,6	28B
30A	0.5800	620	4/1	1,2,3,4,5,6	30A
30B	0.8200	895	5/1	1,2,3,4,5,6	30B
32A	0.7600	810	5/1	1,2,3,4,5,6	32A
32B	0.7600	810	5/1	1,2,3,4,5,6	32B

*Each Tax Lot Number (S.B.L. No.) Contains the prefix number 41.07-4-1./

SCHEDULE C
FOXBERY VILLAGE CONDOMINIUM DECLARATION
ADDRESS/UNIT DESIGNATIONS/PERCENTAGE INTERESTS IN COMMON ELEMENTS/
APPROXIMATE SQUARE FOOT AREA/ROOMS/ACCESS TO COMMON ELEMENTS/
TAX LOT NUMBERS

<u>ADDRESS AND UNIT DESIGNATION</u>	<u>PERCENTAGE INTEREST IN COMMON ELEMENTS</u>	<u>APPROX. SQUARE FOOT AREA</u>	<u>NO. OF ROOMS/BATH</u>	<u>COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS</u>	<u>TAX LOT NUMBER *</u>
<u>BUILDING 13</u>					
34A	0.7600	810	5/1	1,2,3,4,5,6	34A
34B	0.7600	810	5/1	1,2,3,4,5,6	34B
36A	0.5800	620	4/1	1,2,3,4,5,6	36A
36B	0.8200	895	5/1	1,2,3,4,5,6	36B
38A	0.5800	620	4/1	1,2,3,4,5,6	38A
38B	0.8200	895	5/1	1,2,3,4,5,6	38B
40A	0.7600	810	5/1	1,2,3,4,5,6	40A
40B	0.7600	810	5/1	1,2,3,4,5,6	40B
<u>BUILDING 12</u>					
42A	0.7600	810	5/1	1,2,3,4,5,6	42A
42B	0.7600	810	5/1	1,2,3,4,5,6	42B
44A	0.5800	620	4/1	1,2,3,4,5,6	44A
44B	0.8200	895	5/1	1,2,3,4,5,6	44B
46A	0.5800	620	4/1	1,2,3,4,5,6	46A
46B	0.8200	895	5/1	1,2,3,4,5,6	46B
48A	0.7600	810	5/1	1,2,3,4,5,6	48A
48B	0.7600	810	5/1	1,2,3,4,5,6	48B
<u>BUILDING 11</u>					
50A	0.7600	810	5/1	1,2,3,4,5,6	50A
50B	0.7600	810	5/1	1,2,3,4,5,6	50B
52A	0.5800	620	4/1	1,2,3,4,5,6	52A
52B	0.8200	895	5/1	1,2,3,4,5,6	52B
54A	0.5800	620	4/1	1,2,3,4,5,6	54A
54B	0.8200	895	5/1	1,2,3,4,5,6	54B
56A	0.7600	810	5/1	1,2,3,4,5,6	56A
56B	0.7600	810	5/1	1,2,3,4,5,6	56B
<u>BUILDING 10</u>					
58A	0.7600	810	5/1	1,2,3,4,5,6	58A
58B	0.7600	810	5/1	1,2,3,4,5,6	58B
60A	0.5800	620	4/1	1,2,3,4,5,6	60A
60B	0.8200	895	5/1	1,2,3,4,5,6	60B
62A	0.5800	620	4/1	1,2,3,4,5,6	62A
62B	0.8200	895	5/1	1,2,3,4,5,6	62B
64A	0.7600	810	5/1	1,2,3,4,5,6	64A
64B	0.7600	810	5/1	1,2,3,4,5,6	64B

*Each Tax Lot Number (S.B.L. No.) contains the prefix number 41.07-4-1

SCHEDULE C
FOXBERRY VILLAGE CONDOMINIUM DECLARATION
ADDRESS/UNIT DESIGNATIONS/PERCENTAGE INTERESTS IN COMMON ELEMENTS/
APPROXIMATE SQUARE FOOT AREA/ROOMS/ACCESS TO COMMON ELEMENTS/
TAX LOT NUMBERS

<u>ADDRESS AND UNIT DESIGNATION</u>	<u>PERCENTAGE INTEREST IN COMMON ELEMENTS</u>	<u>APPROX. SQUARE FOOT AREA</u>	<u>NO. OF ROOMS/BATH</u>	<u>COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS</u>	<u>TAX LOT NUMBER *</u>
BUILDING 9					
66A	0.7600	810	5/1	1,2,3,4,5,6	66A
66B	0.7600	810	5/1	1,2,3,4,5,6	66B
68A	0.5800	620	4/1	1,2,3,4,5,6	68A
68B	0.8200	895	5/1	1,2,3,4,5,6	68B
70A	0.5800	620	4/1	1,2,3,4,5,6	70A
70B	0.8200	895	5/1	1,2,3,4,5,6	70B
72A	0.7600	810	5/1	1,2,3,4,5,6	72A
72B	0.7600	810	5/1	1,2,3,4,5,6	72B
BUILDING 8					
74A	0.7600	810	5/1	1,2,3,4,5,6	74A
74B	0.7600	810	5/1	1,2,3,4,5,6	74B
76A	0.5800	620	4/1	1,2,3,4,5,6	76A
76B	0.8200	895	5/1	1,2,3,4,5,6	76B
78A	0.5800	620	4/1	1,2,3,4,5,6	78A
78B	0.8200	895	5/1	1,2,3,4,5,6	78B
80A	0.7600	810	5/1	1,2,3,4,5,6	80A
80B	0.7600	810	5/1	1,2,3,4,5,6	80B
BUILDING 7					
82A	0.7600	810	5/1	1,2,3,4,5,6	82A
82B	0.7600	810	5/1	1,2,3,4,5,6	82B
84A	0.5800	620	4/1	1,2,3,4,5,6	84A
84B	0.8200	895	5/1	1,2,3,4,5,6	84B
86A	0.5800	620	4/1	1,2,3,4,5,6	86A
86B	0.8200	895	5/1	1,2,3,4,5,6	86B
88A	0.7600	810	5/1	1,2,3,4,5,6	88A
88B	0.7600	810	5/1	1,2,3,4,5,6	88B
BUILDING 6					
90A	0.7600	810	5/1	1,2,3,4,5,6	90A
90B	0.7600	810	5/1	1,2,3,4,5,6	90B
92A	0.5800	620	4/1	1,2,3,4,5,6	92A
92B	0.8200	895	5/1	1,2,3,4,5,6	92B
94A	0.5800	620	4/1	1,2,3,4,5,6	94A
94B	0.8200	895	5/1	1,2,3,4,5,6	94B
96A	0.7600	810	5/1	1,2,3,4,5,6	96A
96B	0.7600	810	5/1	1,2,3,4,5,6	96B

* Each Tax Lot Number (S.B.L. No.) contains the prefix number 41.07-4-1./

SCHEDULE C
FOXBERRY VILLAGE CONDOMINIUM DECLARATION
ADDRESS/UNIT DESIGNATIONS/PERCENTAGE INTERESTS IN COMMON ELEMENTS/
APPROXIMATE SQUARE FOOT AREA/ROOMS/ACCESS TO COMMON ELEMENTS/
TAX LOT NUMBERS

<u>ADDRESS AND UNIT DESIGNATION</u>	<u>PERCENTAGE INTEREST IN COMMON ELEMENTS</u>	<u>APPROX. SQUARE FOOT AREA</u>	<u>NO. OF ROOMS/BATH</u>	<u>COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS</u>	<u>TAX LOT NUMBER *</u>
BUILDING 5					
98A	0.7600	810	5/1	1,2,3,4,5,6	98A
98B	0.7825	810	5/1	1,2,3,4,5,6	98B
100A	0.5800	620	4/1	1,2,3,4,5,6	100A
100B	0.8425	895	5/1	1,2,3,4,5,6	100B
102A	0.5800	620	4/1	1,2,3,4,5,6	102A
102B	0.8425	895	5/1	1,2,3,4,5,6	102B
104A	0.7600	810	5/1	1,2,3,4,5,6	104A
104B	0.7825	810	5/1	1,2,3,4,5,6	104B
BUILDING 4					
106A	0.7600	810	5/1	1,2,3,4,5,6	106A
106B	0.7825	810	5/1	1,2,3,4,5,6	106B
108A	0.5800	620	4/1	1,2,3,4,5,6	108A
108B	0.8425	895	5/1	1,2,3,4,5,6	108B
110A	0.5800	620	4/1	1,2,3,4,5,6	110A
110B	0.8425	895	5/1	1,2,3,4,5,6	110B
112A	0.7600	810	5/1	1,2,3,4,5,6	112A
112B	0.7825	810	5/1	1,2,3,4,5,6	112B
BUILDING 3					
114A	0.7600	810	5/1	1,2,3,4,5,6	114A
114B	0.7825	810	5/1	1,2,3,4,5,6	114B
116A	0.5800	620	4/1	1,2,3,4,5,6	116A
116B	0.8425	895	5/1	1,2,3,4,5,6	116B
118A	0.5800	620	4/1	1,2,3,4,5,6	118A
118B	0.8425	895	5/1	1,2,3,4,5,6	118B
120A	0.7600	810	5/1	1,2,3,4,5,6	120A
120B	0.7825	810	5/1	1,2,3,4,5,6	102B
BUILDING 2					
122A	0.7600	810	5/1	1,2,3,4,5,6	122A
122B	0.7825	810	5/1	1,2,3,4,5,6	122B
124A	0.5800	620	4/1	1,2,3,4,5,6	124A
124B	0.8425	895	5/1	1,2,3,4,5,6	124B
126A	0.5800	620	4/1	1,2,3,4,5,6	126A
126A	0.8425	895	5/1	1,2,3,4,5,6	126B
128A	0.7600	810	5/1	1,2,3,4,5,6	128A
128B	0.7825	810	5/1	1,2,3,4,5,6	128B

*Each Tax Lot Number (S.B.L. No.) contains the prefix number 41.07-4-1./

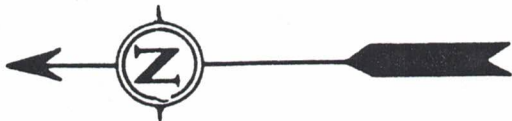
**SCHEDULE C
 FOXBERRY VILLAGE CONDOMINIUM DECLARATION
 ADDRESS/UNIT DESIGNATIONS/PERCENTAGE INTERESTS IN COMMON ELEMENTS/
 APPROXIMATE SQUARE FOOT AREA/ROOMS/ACCESS TO COMMON ELEMENTS/
 TAX LOT NUMBERS**

<u>ADDRESS AND UNIT DESIGNATION</u>	<u>PERCENTAGE INTEREST IN COMMON ELEMENTS</u>	<u>APPROX. SQUARE FOOT AREA</u>	<u>NO. OF ROOMS/BATH</u>	<u>COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS</u>	<u>TAX LOT NUMBER *</u>
<u>BUILDING 1</u>					
130A	0.7600	810	5/1	1,2,3,4,5,6	130A
130B	0.7825	810	5/1	1,2,3,4,5,6	130B
132A	0.5800	620	4/1	1,2,3,4,5,6	132A
132B	0.8425	895	5/1	1,2,3,4,5,6	132B
134A	0.5800	620	4/1	1,2,3,4,5,6	134A
134B	0.8425	895	5/1	1,2,3,4,5,6	134B
136A	0.7600	810	5/1	1,2,3,4,5,6	136A
136B	0.7825	810	5/1	1,2,3,4,5,6	136B

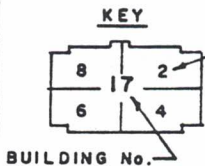
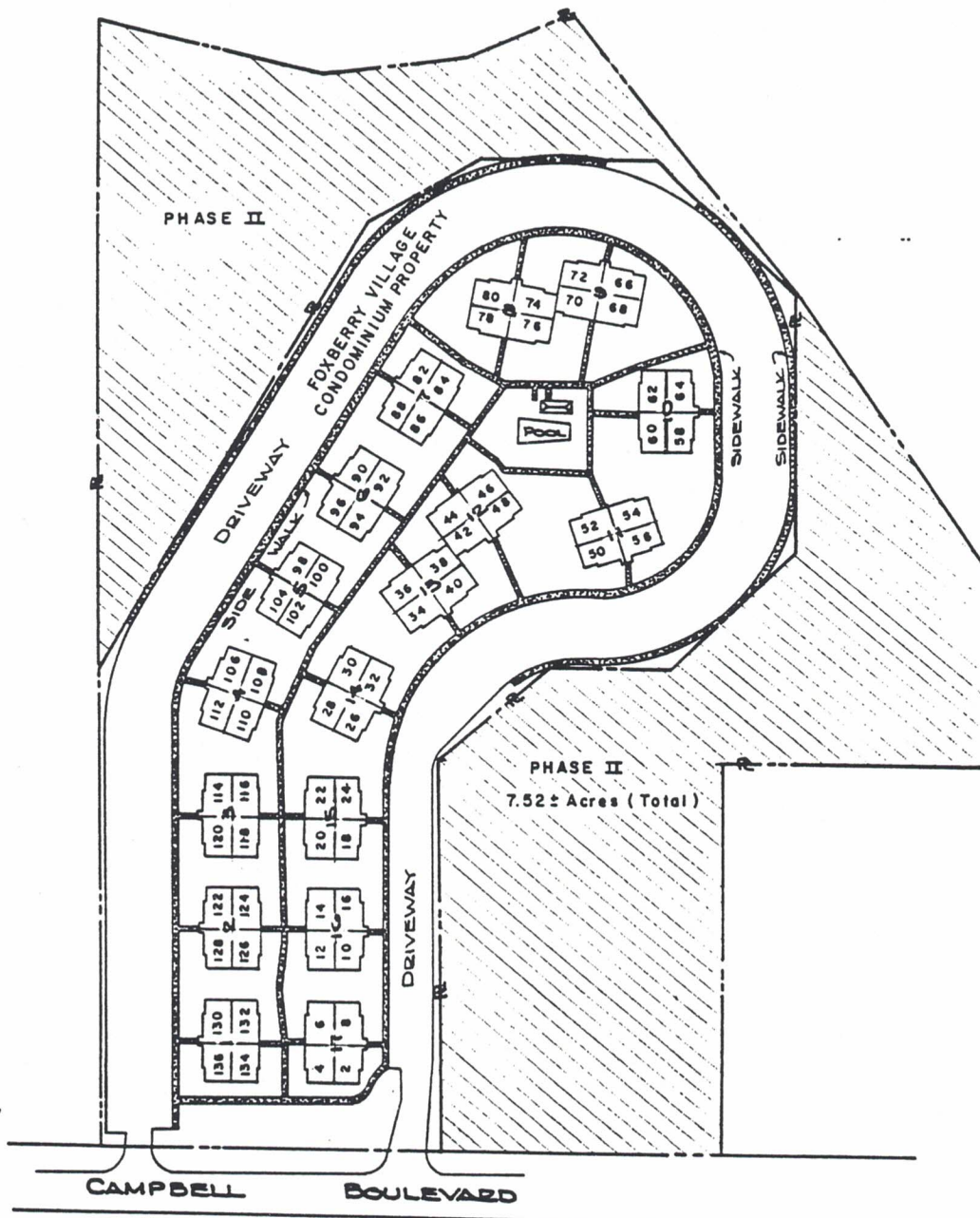
IMMEDIATE ACCESS CODE:

- 1 - interior hallway, stairway, 2 - front and rear entrance way,
 3 - patio or balcony, 4 - first floor utility room and storage area,
 5 - exterior concrete walkway, 6 - parking area.

*Each Tax Lot Number (S.B.L. No.) contains the prefix number 41.07-4-1./



SCHEDULE D



UNIT No.
 Each number represents two units - a lower unit designated by "A" and an upper unit designated by "B" (e.g. 2A and 2B, 4A and 4B, etc.)

SITE PLAN
FOXBERRY VILLAGE
 AMHERST, NEW YORK

ph Pratt & Huth Associates
 Engineers — Surveyors — Planners

138 Bryant Street • Buffalo, New York 14222 • (716) 884-0503

JOB NO: 84026

DATE APRIL 25, 1985

SCALE:

NOTE UNAUTHORIZED ALTERATION OR ADDITION TO THIS DOCUMENT IS A VIOLATION OF SECTION 7209, PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW

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