

DECLARATION

DECLARATION OF PROTECTIVE CONVENANTS, CONDITONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS -

THE FOXBERRY VILLAGE COMMUNITIES ASSOCIATION

Date of Declaraton: May 20, 1987

Property Management by:
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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - THE
FOXBERRY COMMUNITIES ASSOCIATION, INC.

(THE FOXBERRY COMMUNITIES ASSOCIATION DECLARATION)

DECLARANT: THE FOXBERRY ASSOCIATES

Date of Declaration: MAY 20, 1987

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RESTRICTIONS, EASEMENTS, CHARGES AND LIENS--
THE FOXBERRY COMMUNITIES ASSOCIATION, INC.

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS -
THE FOXBERRY COMMUNITIES ASSOCIATION, INC.

(THE FOXBERRY COMMUNITIES DECLARATION)

THIS DECLARATION made this 24 day of May, 1987, by
THE FOXBERRY ASSOCIATES, a general partnership having an office at 968
Stuyvesant Avenue, P.O. Box 559, Union, New Jersey 07083, being referred
to hereinafter as "the Declarant".

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the real property described in
Article II of this Declaration; and

WHEREAS, Parcel A of the Initial Property as so described in said
Article II consists of 9.19 acres of land upon which has been developed 136
residential dwelling units, which area is hereinafter referred to as Phase I;
and

WHEREAS, the Declarant has or is in the process of changing the
dwelling units on said Phase I from rental apartments to individual for-sale
condominium units; and

WHEREAS, the Declarant is also the owner of certain undeveloped lands,
identified as "Additional Property" in said Article II, consisting of 7.52
acres lying adjacent to the south and east of Parcel I; and

WHEREAS, all or a part or parts of said Phase II may at some time in
the future, be developed with residential single-family or multi-family
dwelling units; and

WHEREAS, the Declarant desires that the Recreation Area (72' x 51'
parcel within Phase I containing swimming pool, pool patio and pool house) be
available for use by the residents of the land comprising Phase II as well as
Phase I; and

WHEREAS, the Declarant also desires to provide for the preservation of
the values and amenities in said community and for the maintenance of said
open spaces and other common facilities; and, to this end, desires to subject
the Initial Property (Phase I) described in Article II to the covenants,
conditions, restrictions, easements, charges and liens, hereinafter set forth,
each and all of which is and are for the benefit of said property and each
owner thereof, and to provide for the future subjection of the Additional
Property (Phase II) to such covenants, conditions, restrictions, easements,
charges and liens; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the Recreation Area, maintaining the open space areas of Phase I, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has incorporated THE FOXBERRY COMMUNITIES ASSOCIATION, INC. under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions;

WHEREAS, it is the intention of the Declarant as of the date of this Declaration that The Foxberry Communities Association, Inc. shall not hold title to any of the real property described on Schedule A attached hereto (sometimes referred to as "Phase I" and/or the "Initial Property"); and

WHEREAS, the function of The Foxberry Communities Association, Inc. shall be to maintain and administer the Recreation Area located on the property described on Schedule A attached hereto, and to maintain the roadways, parking areas, landscaped areas and other open space areas, if any, of the real property described on said Schedule A and all or part of the real property described on Schedule B attached to this Declaration, if any, when the Declarant, in its sole discretion, elects to subject such property to the terms, covenants and restrictions of this Declaration.

NOW, THEREFORE, the Declarant, for itself, the successors and assigns, declares that the real Property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions, and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1.01. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings;

- A. "ASSOCIATION" shall mean and refer to THE FOXBERRY COMMUNITIES ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties hereafter owned by THE FOXBERRY COMMUNITIES ASSOCIATION, INC. As of the date of this Declaration, the Association does not hold title to any property.
- C. "DECLARANT" shall mean and refer to THE FOXBERRY ASSOCIATES, its heirs, successors and assigns.
- D. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Foxberry Communities, as it may from time to time be supplemented, extended or amended in the manner provided for herein.

- E. "OWNER" shall mean and refer to the holder of record title, whether one or more persons or entities, of (i) the fee interest in any Unit, whether or not such holder actually resides in such Unit, or (ii) the fee interest in any parcel of land subject to this Declaration and contemplated for development.
- F. "PROJECTED UNIT" shall mean and refer to any units contemplated for construction on any parcel of land covered by this Declaration. At the time any parcel is added to this Declaration, there shall specifically be set forth in the instrument adding such parcel, the number of dwelling units projected for such parcel.
- G. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- H. "RESIDENT" shall mean and refer to each person living on the property subject to this Declaration at the time of its recording, or which is added by supplement, extension or amendment to the Declaration.
- I. "UNIT" shall mean and refer to each completed dwelling unit, if any, situated upon the Property, whether such unit is owner occupied or a rental unit.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO

Section 2.01. Initial Property. The real property which initially shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Amherst, County of Erie and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as the "Initial Property".

Section 2.02. Additional Property. Upon approval in writing of the Association pursuant to a vote of its members as provided in its By-Laws, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a supplemental extending declaration which shall extend to such property and thereby subject such additions to assessment for their fair share of the expenses of the Association and may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration. Any such supplemental declaration filed or recorded shall indicate the number of dwelling units contemplated for construction on the property ("Projected Units") added to the scheme of the Declaration by the supplemental instrument. Notwithstanding the above, the Declarant may extend this Declaration to all or any portion of the parcels set forth on Schedule B attached hereto and incorporated by reference herein, and identified thereon as Parcels A, B, C and D (hereinafter collectively referred to as "Phase II"), without obtaining the approval of the members of the Association.

Section 2.03. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

THE ASSOCIATION - STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of the State of New York, the Declarant has formed the Association to own, operate and maintain the Association Property, if any, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-For-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members only Owners of Units and Projected Units.

All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of the interest described in the definition of the word "Owner" as found in Article I of this Declaration.

Section 3.03. Voting Rights in the Association. Each Owner of a Unit or Projected Unit shall be entitled to one (1) vote only. Notwithstanding anything to the contrary, if a mortgagee of a Unit Owner has notified the Association of its position on a particular issue in writing, the vote of such Unit Owner for a position contrary to the stated position of the mortgagee shall not be counted.

Section 3.04. Interest in More than One Unit. If any person or entity owns or holds more than one Unit or Projected Unit, such Owner shall nevertheless be entitled to only one (1) vote.

Section 3.05. Units Owned or Held by More Than One Person. When any Unit or Projected Unit is owned or held by more than one person as tenants by the entirety, in joint or common ownership or interest, such Owners shall collectively be entitled to only one (1) vote, and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed.

Section 3.06. Holder of Security Interest Not an Owner. Any person or entity which holds an interest in a Unit or Projected Unit merely as security for the performance of an obligation shall not be an Owner.

Section 3.07. Restrictions on Voting. Any Owner who is in violation of these Protective Covenants, Conditions and Restrictions, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues. Any Owner who fails to pay any dues or any special assessments established by the Association shall not be entitled to vote during any period in which any such dues or assessments are due and unpaid.

Section 3.08. Assigning Right to Vote. 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.

Any Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.09. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its 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 Owners 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 3.10. Selection of Directors. The nomination and election of Directors and the filing of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.11. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be set forth in the By-Laws of the Association.

Section 3.12. Liability of the Directors. The members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of law, or this Declaration. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 3.13. Declarant's Written Consent Necessary for Certain Actions Taken by Board of Directors Until Ten Years After Recording of Declaration. Notwithstanding anything to the contrary contained in this Declaration, so long as the Declarant or its designee shall continue to own 20% or more of the Units or Projected Units, but in no event later than ten years from the date of recording of this Declaration, the Board of Directors may, not, without the Declarant's written consent, (i) make any addition, alteration or improvement to Association Property, if any, costing more than fifty per cent (50%) of the then current annual budget for the Association; (ii) assess any amount 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 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget; or (iii) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Unit except for the maintenance of an improvement not in existence at the time of the filing of this Association Declaration; or (iv) reduce the quantity or quality of services or maintenance of the Property.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Declarant may convey to the Association, at any time subsequent to the recordation of this Declaration, any real property located within the area of Phase II - Additional Property described on Schedule B attached hereto, for the use and enjoyment of the Owners, their guests, tenants, lessees, licensees and invitees. Such lands shall be conveyed free and clear of all liens and encumbrances, except:

- (i) those created by or pursuant to this Declaration,
- (ii) easements and rights of way granted to governmental authorities for drainage, sewers, water mains and other municipal purposes; and

Association Declaration

- (iii) sewer, drainage or utility easements which service the Units.

Any land that may be conveyed to the Association in the future shall hereinafter be referred to as "Association Property." The Association must accept any such conveyance made by the Declarant provided such conveyance is made without consideration. The conveyance of such lands to the Association shall state that such land has been designated as an Association Property for the purpose of this Section 4.01. No portion of the Property shall be subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the same shall have been so designated and the above described conveyance recorded in accordance with the procedure provided herein.

Section 4.02. Right and Easement of Enjoyment In Association Property. Every Owner (and such Owners' guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, if any, except if restricted pursuant to Section 4.07 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01. All such rights, easements and privileges, shall be subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Declarant as set forth in Section 4.08 herein.

Every Owner (and such Owners' guests, licensees, tenants and invitees) shall also have an easement for ingress and egress over the Initial Property by vehicle where appropriate or on foot. This easement will be subject to the rights of the Association as set forth in Section 4.03 herein.

Section 4.03. Rights of Association. With respect to Association Property owned, if any, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

- (a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Owners;
- (b) to grant easements or rights of way to any public utility corporation, governmental agency or political subdivision with or without consideration;
- (c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee, subject to the following:

- (i) such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association;
- (ii) any conveyance by the Association prior to December 31, 2001, or prior to the transfer of title to all existing or projected Units by the Declarant, whichever first occurs, shall also require the approval of the Declarant unless the Declarant waives such right in a written agreement recorded in the Erie County Clerk's Office prior to said December 31, 2001;
- (iii) no such conveyance shall be made if lending institutions which together are first mortgagees on 51% or more of the number of Units subject to first mortgages as listed on the books and records of the Association advise the Association in writing, prior to the date set for voting on the proposed conveyance, which opposition must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees listed on the books and records of the Association not less than thirty (30) days nor more than ninety (90) days prior to the date set for voting on the proposed conveyance;
- (d) to charge reasonable fees for the use of Association Property, if any;
- (e) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association;
- (f) to borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties, if any. No such mortgage, however, shall encumber or otherwise interfere with the easement of ingress and egress of the Owners as described in this Article. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be determined by the Board of Directors acting in its absolute discretion, subject only to the ability of the Association to repay such borrowed funds from assessments;
- (g) to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall

entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives and other homeowners' or residents' associations, both within and without the Property. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association;

- (h) to file such federal, state or other tax returns on behalf of the Association as it deems necessary or desirable.

Section 4.04. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times, maintain any Association Property and facilities in good repair and condition and shall operate such Association Property and facilities in accordance with high standards.

Section 4.05. Right of Association to Use Utility Lines. The Association shall, from time to time as it shall deem necessary or expedient, have the right to use water or electricity from outdoor taps or sockets located anywhere on the Property for the purpose of maintaining, improving or repairing the Association Property, if any, or such other areas or facilities within the Property which the Association has the obligation or responsibility to maintain. If possible, the Association shall use such taps and sockets which are connected to "house" meters. There shall be no charge to the Association for water or electricity consumed from such taps or sockets if such water or electricity was used to benefit the Condominium Property. Such use shall be subject to the Association reimbursing the Unit Owner or lessee of the lot upon which such tap or socket is located, for that portion of the Condominium's, Unit Owner's or lessee's charges for water or electricity attributable to the water or electricity used by the Association, such portion to be as the Association shall reasonably determine.

Section 4.06. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, the Association shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.07. Rights of Association With Respect to Initial Property. With respect to the Initial Property as described in Schedule A to this Declaration, the Association shall have an easement and right of way:

- (a) for the maintenance, repair and replacement of open space areas including landscaped areas, driveways, roadways and walkways;

- (b) for parking and for ingress and egress by vehicles or on foot in, through, over, under and across the roadways, driveways and walkways, now existing and which may be constructed in the future, for the members of the Association and their guests, employees, licensees and invitees, subject to the reasonable regulation thereof by the Association's Board of Directors.
- (c) to connect with and make use of utility lines wires, pipes and conduits (including but not necessarily limited to sewer, water, gas, electric, telephone, drainage and cable television) and to maintain, repair and replace same.
- (d) for the construction, maintenance and repair and replacement of such other utility lines (including but not necessarily limited to sewer, water, gas, electric, telephone, drainage and cable television) which the Association deems necessary to service its Property, if any, provided such lines do not substantially and materially interfere (temporary inconvenience shall not be prohibited) with the use of the Initial Property by the residents thereof. The cost of any such construction, repair, maintenance or replacement as provided for in this Section shall be at the sole cost and expense of the Association.

Section 4.08. Rights of Declarant With Respect to Association Property. With respect to Association Property, if any, the Declarant shall have the right until the marketing and sale of all existing or projected Units is completed, provided the rights of the Unit Owners are not substantially and materially (except for temporary inconvenience) restricted:

- (a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to: water, gas, electric, telephone, drainage, sewer and cable television.
- (b) to connect with and make use of utility lines, wires, pipes and conduits located on the Association Property.
- (c) to use the Association Property for ingress and egress and for the storage of building materials.

Section 4.09. Rights of Declarant With Respect to Initial Property. With respect to the Initial Property, the Declarant shall have the right for itself and for its successors and assigns for the benefit of those lands described in Schedule B to this Declaration:

- (a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not

necessarily limited to: water, gas, electric, telephone, drainage, sewer and cable television.

- (b) to connect with and make use of utility lines, wires, pipes and conduits.
- (c) to use the existing and future roadways, driveways and walks on such property for ingress and egress by vehicle or on foot to and from public streets and Association Property.
- (d) to use 109 of the total 409 parking spaces with the location of such 109 parking spaces to be reasonably designated by the Declarant.
- (e) to expand the parking area pavement to the boundary lines of said Initial Property along the outer perimeter of the roadway known as Foxberry Drive.
- (f) to use the swimming pool, pool patio and pool house.

ARTICLE V

ASSESSMENTS

Section 5.01. Imposition, Personal Obligations, Lien. Each Unit Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges ("Maintenance Assessments") for the maintenance and operation of Association Property and the other Property subject to this Declaration (including roadways, parking areas, walkways, landscaped areas and utility lines);
- (b) special assessments ("Special Assessments") for capital improvements to Association Property, if any, or to such other areas which the Association has the responsibility to maintain;

together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided shall be a charge and continuing lien upon the Unit against which the Assessment is made and shall also be the personal obligation of the Owner of such Unit at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property, if any, the promotion of the recreation, safety and welfare of the Owners of the Association, and the maintenance of the landscaped areas, roadways, parking areas and walkways within the Property, and any other buildings, the maintenance of which is specifically made the responsibility of the Association whether or not on Association Property, including but not limited to:

- the payment of taxes on Association Property, if any, and income,
- the repair, replacement and improvement of Association Property, if any, or other property which the Association is obligated to maintain,
- the maintenance, repair and replacement of utility lines (including septic system and water lines) servicing two or more Units,
- the cost of labor, equipment, materials, management and supervision thereof,
- such other needs as may arise and which the Board of Directors deems appropriate or desirable.

In addition, the Association may, in accordance with Section 4.03, furnish management services to any condominium, cooperative or other homeowners' or residents' association. Such services may include the exterior maintenance of dwelling units, the maintenance of common elements and other services in addition to the "open space" maintenance services otherwise provided by the Association within the Property.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence with respect to the Initial Property on the day on which the first Unit in such Initial Property was conveyed to a purchaser for occupancy. The Assessments provided for herein shall commence with respect to each parcel of Additional Property on the day on which the first Unit in such Additional Property was conveyed to a purchaser for occupancy or otherwise occupied as a dwelling. Notwithstanding the above, Assessments shall not commence with respect to Declarant owned Units located on a parcel of Additional Property prior to the time a certificate of occupancy is issued by the Town of Amherst for a specific unit or for the multi-unit structure within which any such Unit is located, whichever first occurs. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall prepare the Association's budget and fix the amount of the Assessment against each Unit or Projected Unit at least thirty (30) days in advance of each annual Assessment period. The Assessments shall be payable in equal monthly installments due on the first day of the month unless the Board of Directors establishes

other periods of payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the budget and the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Units or Projected Units. Once Assessments have commenced with respect to the Initial Property pursuant to Section 5.03 above, the Owner of each Unit, including the Declarant shall be liable for the payment of the established Maintenance Assessment, and Special Assessments, if any, for such Unit.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Unit assessed shall be the same for residential Units within a Phase for which Assessments have commenced pursuant to Section 5.04 hereof. It is the intent of the Declarant that the Association's costs for exterior maintenance and repair to residential and garage buildings in Phase II, and its costs for casualty insurance on such buildings in Phase II be borne solely by the Owners of Units in Phase II receiving the benefit of such maintenance, repair and insurance coverage. The Maintenance Assessment of Units in Phase II shall be increased to cover the Association's costs for maintenance and repair to residential and garage buildings located in such Phase, and the cost of casualty insurance on such buildings for which the Association is responsible (e.g., residential and garage buildings which are not part of a duly formed condominium). The above increase to the Maintenance Assessment is hereinafter referred to as the "Phase II Assessment Adjustment."

Subject to the Phase II Assessment Adjustment described above, the amount of the annual Maintenance Assessment for Units in each Phase shall be determined each year by first multiplying the total amount which the Board of Directors shall deem necessary to fully fund the budget of expenses and reserves (and any operating deficits previously sustained) by a fraction, the numerator being the number of Units in a particular Phase for which Assessments have commenced and the denominator being the total number of Units in all Phases for which Assessments have commenced. The resulting amount is then divided by the number of existing Units in the Phase (e.g., the numerator) which yields the annual Assessment against Units in such Phase.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than 67% of the total votes of Unit Owners and 67% of the total votes of the Owners of Projected Units voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Unit Owners and Owners of Projected Units, at least thirty (30) days in advance and shall set forth the purpose of the meeting. In addition, the written consent of the Declarant shall be required for any change in the basis of determining the Maintenance Assessment made prior to January 1, 2001 or until the Declarant no longer owns any Unit

or projected Unit, whichever first occurs. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Erie.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any Assessment year, a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of, a capital nature, to the Association Property, if any, including the necessary fixtures and personal property related thereto, provided that the consent is obtained of 67% of the total votes of all Directors of the Association. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof, including reasonable attorneys fees, as herein provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation.

A purchaser of a Unit shall be liable for the payment of unpaid Assessments 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 Assessments against such Unit, and which became due prior to the acquisition of title. Except as provided above, in any conveyance of a Unit 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 Assessments 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 mortgagee.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable,

not to exceed 5% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Unit Owner to withhold or fail to pay the Assessments due to the Association for the Unit or Units owned by such Owner.

If the Assessment or any installment thereof, is not paid within thirty (30) days after the due date (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice to the Unit Owner which notice shall afford the Unit Owner not less than 10 days to pay such installments of the Assessment, and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Section 5.09. Rights and Obligations Re Foreclosure of Liens for Unpaid Assessments. In any action brought by the Board of Directors to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rental for the use of the Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Directors shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the Unit. A suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Unit which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Unit), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Unit as of the date of such

certificate, (i) whether the Assessments, if any, have been paid, (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot or Unit subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment.

ARTICLE VI

EXTERIOR MAINTENANCE

Section 6.01. Maintenance and Repair by the Association.

a. All maintenance and repair of and replacements to the buildings and improvements on Association Property, if any, the maintenance, repair and replacement of all roadways, parking areas and walkways on the Property, snow removal from all roadways, parking areas and walkways on the Property, (whether or not such areas are on Association Property), the maintenance of all landscaped areas on the Property (whether or not such areas are on Association Property) and the repair and maintenance of the swimming pool, pool house and pool area (including fencing and lighting fixtures) shall be the responsibility of, and at the cost and expense of the Association. Such cost shall be funded from the Maintenance Assessments.

b. In addition, the Association shall be obligated to provide all exterior maintenance and repair, and common casualty insurance for any residential and garage buildings located on any portion of Phase II (see Schedule B attached hereto and Section 2.02 hereof), whether or not such buildings are on Association Property, unless such buildings are a part of a condominium duly formed pursuant to Real Property Law Article 9-B, in which case such obligations shall be the responsibility of any such condominium. The cost and expense of such Association obligations shall be funded from the Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above,

all maintenance, repair and replacement to any buildings or structures which are not owned by the Association shall not be the responsibility of the Association. The Association shall be responsible for the maintenance, repair or replacement of any sewer lines, water lines or other utility lines located on Property covered by this Declaration.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Unit Owner (or the members of such Unit Owner's family, guests or invitees) or the Declarant shall be made at the cost and expense of such Unit Owner or the Declarant, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Unit Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit, to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs.
All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Unit Owner(s), have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

ARTICLE VII

INSURANCE

Section 7.01. Insurance to be Carried. The Board of Directors shall, at its option, obtain and maintain, to the extent obtainable, the following insurance: fire and casualty insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the buildings, if any, owned by the Association. Such insurance shall be in such amount, taking into account co-insurance provisions, as the Board of Directors shall determine. All such policies shall provide that adjustment of loss shall be made by the Board of Directors and that the net proceeds thereof shall be payable to the Association.

The Board of Directors shall obtain and maintain, to the extent obtainable, comprehensive general liability coverage on Association Property, if any, in an amount not less than \$500,000.00 per occurrence, and an excess umbrella liability policy with limits of \$1,000,000.00.

Section 7.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Association Property, if any, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration, and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if 75% or more of a building is destroyed or substantially damaged, the Board of Directors may elect, by the vote of not less than 67% of the entire Board, not to repair or restore the damaged or destroyed building. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners.

Section 7.03. Insurance Carried by Unit Owners. Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that such policies contain waivers of subrogation and further provided that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Unit Owner.

ARTICLE VIII

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 8.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Unit or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Unit or other portion of the Property.

Section 8.02. Enforceability. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Declarant and the

Association (being hereby deemed the agent for all of its members), and by any Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 8.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Declarant, the Association (or any officer, director, employee, member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 8.04. Obligation and Lien for Cost of Enforcement by Association. If the Association successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is an Owner, such cost shall also be a lien upon the Lot or other portion of the Property owned by such violator, if any.

Section 8.05. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Unit. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 8.06. Amending or Rescinding. The Declarant, during the time it shall own any of the lands described in Schedules A and B to this Declaration, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Owner without such Owner's written consent. Unless otherwise specifically provided for herein, this Declaration may be amended upon the consent in writing of the Owners of not less than 51% of all Units or Projected Units which are subject to this Declaration, and rescinded upon the consent in writing of 67% of the Owners of all such Units. In addition, until ten (10) years from the date of recording of this Declaration, so long as the Declarant owns twenty per cent (20%) or more of the Units and Projected Units, the written consent of the Declarant will be required for any amendment which adversely affects the interest of the Declarant.

In voting for such amendment or rescission, the Owner of each Unit or Projected Unit, shall have one (1) vote for each Unit owned and each Projected Unit which is contemplated for construction on that portion of the Property owned by the Owner.

The Owners of every Unit and other Owners of any portion of the Property must receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date set for voting on said proposed amendment or rescission.

In addition to the approval of the Unit Owners, Owners of portions of the Property contemplated for Projected Units and Declarant as provided for herein, no amendment or rescission may be made which substantially affects the interest of any lending institutions which together are mortgagees on 51% or more of the Units, if such mortgagees advise the Association in writing, prior to the date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date set for voting on the proposed amendment or rescission.

Section 8.07. When Amendment or Rescission Becomes Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Erie. Such instrument need not contain the written consent of the required number of Owners but in lieu thereof shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 8.08. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners and Residents thereof until December 31, 2016, and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten years.

Section 8.09. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and Residents of the

Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 8.10. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 8.11. Attorneys' Fees. Any party to a proceeding who succeeds in enforcing a covenant, condition or restriction or enjoining the violation of a covenant, condition or restriction against an Owner (or such Owner's tenant, lessee, licensee or invitee), shall be entitled to reasonable attorneys' fees against such Owner.

Section 8.12. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 8.13. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE IX

GENERAL

Section 9.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content hereof.

Section 9.02. Right Reserved to Impose Additional Protective Covenants. The Declarant reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 9.03. Mortgages on Units and Notice to Mortgagees. Any Unit Owner who mortgages his Unit shall promptly provide the Board of Managers with the name and address of the mortgagee. 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 Association 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 9.04. Notice. Any notice required to be sent to the Declarant or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Declarant, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 9.05. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 9.06. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association, condominium or similar entity.

THE FOXBERRY ASSOCIATES

By Daniel Salomon
General Partner

THE FOXBERRY COMMUNITIES
ASSOCIATION, INC.

By Daniel Salomon
President

Association Declaration

STATE OF New Jersey)
 : ss
 COUNTY OF Union)

On this 20th day of May, 1987, before me personally appeared Daniel S. [unclear], 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

NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires July 1, 1990

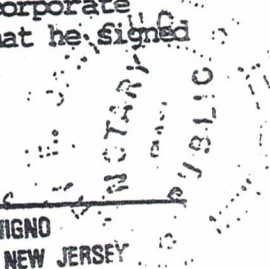


STATE OF New Jersey)
 : ss
 COUNTY OF Union)

On this 20th day of May, 1987, before me personally came Daniel S. [unclear], to me personally known, who, being by me duly sworn, did depose and say that he resides at 100 [unclear] [unclear] [unclear], that he is the President of THE FOXBERRY COMMUNITIES ASSOCIATION, INC., the corporation described in, and which executed the above instrument; that said corporation has no seal, never having adopted any seal, and that the foregoing instrument was executed without corporate seal by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Mary E. Benigno

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



SCHEDULE A

PHASE I

ALL THAT TRACT OR PARCEL OF LAND situate in the 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 southerly 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 north 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 (250.0) feet; thence northeasterly at an included angle with the last described line of $135^{\circ}00'$ a distance of one hundred eighty (180.0) 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
PHASE II

PARCEL A 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 and Range 7 of the Holland Land Company's Survey, bounded and described as follows:

Beginning at a point on the west line of said Lot No. 64, Township 12, Range 7, being also the center line of Campbell Boulevard, one thousand two hundred and ninety-seven hundredths (1200.97) feet north of the southwest corner of said Lot No. 64, Township 12, Range 7, said southwest corner being also the point of intersection of the center line of Campbell Boulevard and Dodge Road: running thence easterly at right angles one hundred twenty (120) feet: thence southerly at right angles eighty-nine (89) feet: running thence easterly at right angles two hundred ninety-four and forty-seven hundredths (294.47) feet to a point in the east line of lands conveyed to Max A. Walther and Bertha his wife by deed recorded in Erie County Clerk's Office in Liber 1117 of Deeds at page 336: running thence northerly along said east line of lands so conveyed to Walther by aforesaid deed one hundred sixty and forty-four hundredths (160.44) feet to the north line of lands so conveyed to Max Walther by aforesaid deed: running thence westerly on a line drawn making an exterior angle of 89°39' with the center line of Campbell Boulevard and along the north line of lands so conveyed to Walther by aforesaid deed four hundred fourteen and forty-eight hundredths (414.48) feet to the center line of Campbell Boulevard: running thence southerly along the center line of Campbell Boulevard sixty-eight and ninety-one hundredths (68.91) feet to the point of beginning.

PARCEL B All that tract or parcel of land situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 64, Township 12 and Range 7 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the west line of said Lot No. 64, which said line is also the center line of Campbell Boulevard, distant one thousand ninety-two and ninety-seven hundredths (1092.97) feet northerly as measured along said line from the southwesterly corner of said Lot No. 64 and running thence southerly along the west line of said Lot No. 64 and along the center line of Campbell Boulevard ninety-nine (99) feet more or less to the northwesterly corner of lands conveyed by Bertha Walther to Russell H. Stroke and Shirley M. Stroke his wife by deed dated May 31, 1958 and recorded in Erie County Clerk's Office in Liber 6307 of Deeds at page 314 June 25, 1958: thence easterly along the northerly line of said lands conveyed to said Russell H. Stroke and Shirley M. Stroke by the aforesaid deed four hundred fourteen and forty-eight hundredths (414.48) feet: thence northerly on a line parallel with the westerly line of said Lot No. 64 and along the easterly line of said lands conveyed to said Max A. Walther and Bertha Walther his wife by the aforesaid deed, one hundred fifteen and forty-seven hundredths (115.47) feet: thence westerly on a line at right angles to the last described boundary line herein three hundred fourteen and forty-eight hundredths (314.48) feet: thence southerly on a line at a right angle to the last described boundary line herein nineteen (19) feet: running

thence westerly on a line at a right angle to the last described boundary line herein one hundred (100) feet to the west line of said lot the point or place of beginning

PARCEL C

All that tract or parcel of land situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 64, Township 12 and Range 7 of the Holland Land Company's Survey and described as follows:

Beginning at a point in the west line of said Lot No. 64, which said line is also the center line of Campbell Boulevard, distant one thousand ninety-two and ninety-seven hundredths (1092.97) feet northerly as measured along said line from the southwest corner of said Lot No. 64, said point of beginning being also the northwesterly corner of lands conveyed to Russell H. Stroke by deed recorded in Erie County Clerk's Office in Liber 6545 of Deeds at page 68 and by correcting deed recorded in said Clerk's Office in Liber 6870 of Deeds at page 415: thence northerly along the west line of said Lot No. 64 and along the center line of Campbell Boulevard one hundred eight (108) feet to the south line of lands conveyed to Hudson W. Stroke by deed recorded in Erie County Clerk's Office in Liber 7096 of Deeds at page 463: thence easterly at right angles to said west line of said Lot No. 64 and along the south line of lands conveyed to said Hudson W. Stroke by deed aforesaid, one hundred twenty (120) feet: thence southerly at right angles to the last described boundary line eighty-nine (89) feet: thence westerly at right angles to the last described boundary line twenty (20) feet: thence southerly at right angles to the last described boundary line nineteen (19) feet to the north line of lands conveyed to Russell H. Stroke by deed aforesaid and thence westerly at right angles to the west line of said Lot No. 64 and along the north line of said lands conveyed to Russell H. Stroke by deed aforesaid, one hundred (100) feet to the west line of said Lot No. 64 at the point or place of beginning.

PARCEL D

All that tract or parcel of land, situate in the 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 on a line parallel with the southerly line of Lot No. 64, which point is 414.48 feet east of the westerly line of Lot No. 64 (also being the center line of Campbell Boulevard) at a point on the said westerly line of Lot No. 64, which is 2586.13 feet south of the northerly line of Lot No. 64; thence southeast at an excluded angle with the last described line of 230°00' a distance of 139 feet; thence south at an excluded angle with the last described line of 220°21', a distance of 113 feet; thence southeast at an excluded angle with the last described line of 135°00' a distance of 165.18 feet; thence east at an excluded angle with the last described line of 134°39', a distance of 250 feet; thence northeast at an

excluded angle with the last described line of $135^{\circ}00'$, a distance of 180 feet; thence north at an excluded angle with the last described line of $135^{\circ}00'$, a distance of 171.62 feet; thence northwest at an excluded angle with the last described line of $150^{\circ}00'$, a distance of 123.09 feet; thence northwest at an excluded angle with the last described line of $150^{\circ}00'$, a distance of 500 feet to a point on a line determined by a boundary line agreement recorded in Erie County Clerk's Office in Liber 2145 of Deeds at page 374, which line is parallel to the northerly line of Lot No. 64; thence easterly along said Block and the extension of the said boundary line agreement, a distance of 630.54 feet to the west line of lands conveyed to George Diebold by deed recorded in said Clerk's Office in Liber 298 of Deeds at page 143; thence southerly along Diebold's westerly line, being also the center line of a ditch, the following courses and distances:- Southerly at an interior angle with the last described line of $76^{\circ}03'24''$, a chord distance of 216.80 feet to an angle point in said center line; thence continuing southerly at an exterior angle of $158^{\circ}33'24''$, a chord distance of 134 feet to an angle point in said center line; thence continuing southerly at an exterior angle of 165° , a chord distance of 180 feet to an angle point in said center line; thence continuing southerly at an interior angle of 162° , a chord distance of 183 feet to a point in said center line; thence continuing southerly at an exterior angle of $170^{\circ}30'$, a chord distance of 84 feet to a point on a line parallel with the southerly line of Lot No. 64; thence westerly parallel with the southerly line of Lot No. 64; thence westerly parallel with the southerly line of Lot No. 64, a distance of 789.60 feet more or less to a point 814.88 feet north of the southerly line of Lot No. 64; thence northerly, a distance of 508.05 feet record, 455.0 feet measured, more or less to the point of beginning.

Excepting therefrom lands appropriated by the State of New York for Highway purposes, said Notice of Appropriation being recorded in Liber 9131 of Deeds at page 425, and Supplemental Notices recorded in Liber 9172 of Deeds at page 449 and in Liber 9197 of Deeds at page 656.