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DECLARATION OF CONDOMINIUM PROPERTY

MONTGOMERY CO., OHIO  
RECORDED

FOR

FOXDALE CONDOMINIUM

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

Dated:

DEC 17 1984

By:

*[Signature]*  
Montgomery County Auditor

Plat Reference: Book 123, Page 25-25C

THIS INSTRUMENT PREPARED BY:

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DEC 17 84  
ROBERT L. ROBERTS  
TRANSFERRED

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## DECLARATION OF CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth by Anthony B. Wenzler and Rose Mary Wenzler, hereinafter referred to in the singular as "Declarant".

### RECITALS

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

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

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

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

### DECLARATIONS

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

1. DEFINITIONS

The following terms used herein are defined as follows:

A. Additional Property, shall mean adjacent or adjoining property which is described in Exhibit "C" of this Declaration, and which, together with improvements thereon may be added in the future to the Condominium.

B. Agent, shall mean any person who represents or acts for or on behalf of the Developer in selling or offering to sell a Condominium Ownership Interest, but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

C. Amendment, shall mean an instrument executed with the same formalities of the Declaration and recorded with the Recorder of Montgomery County, Ohio for the purpose of amending the Declaration.

D. Articles and Articles of Incorporation, shall mean the articles, filed with the Secretary of State of Ohio, incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.

E. Association, shall mean Foxdale Condominium Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

F. Board of Managers, shall mean those persons who, as a group, serve as the board of trustees of the Association.

G. By-Laws, shall mean the by-laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provision of Chapter 5311 of the Ohio Revised Code for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.

H. Common Areas and Facilities, shall mean all the Condominium Property except that which is specifically defined and referred to as a Unit.

I. Common Assessments, means the assessments charged proportionately on the basis of percentage of interest against all Units for common purposes.

J. Common Expenses, means those expenses designated as such by Chapter 5311 of the Ohio Revised Code, or in accordance with the provisions of the Declaration, or both.

K. Common Losses, means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

L. Common Profits, means the amount by which the total income received from assessments charged for special benefits to specific Units, rents received from rentals of equipment or space in Common Areas and Facilities, and any other fee, charge, or income other than Common Assessments exceed expenses allocable to the income, rental, fee or charge.

M. Common Surplus, means the amount by which Common Assessments collected during any period exceed Common Expenses.

N. Condominium, shall mean Foxdale Condominium, the condominium regime for the Condominium Property created under and pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

O. Condominium Instruments, shall mean the Declaration, the drawings and By-Laws attached as exhibits thereto, any contract pertaining to the management of the Condominium Property, and all other documents, contracts or instruments establishing ownership or exerting control over the Condominium Property or a Unit.

P. Condominium Ownership Interest, means a fee simple estate or a ninety-nine (99) year leasehold estate, renewable forever, in a Unit, together with its appurtenant undivided interest in the Common Areas and Facilities.

Q. Condominium Property, means land, all buildings, improvements and structures on the land, all easements, rights and appurtenances belonging to the land, and all articles of personal property submitted to the provisions of Chapter 5311 of the Ohio Revised Code by this Declaration and any amendment thereto.

R. Declarant, shall mean Anthony B. Wenzler and Rose Mary Wenzler, their successors and assigns.

S. Declaration, shall mean the instrument by which the hereinafter described property is submitted to the provisions of Chapter 5311 of the Ohio Revised Code and any and all amendments thereto.

T. Developer, shall mean the Declarant, any successor to the Declarant who stands in the same relation to the Condominium Property as the Declarant, and any person who directly or indirectly sells or offers for sale a Condominium Ownership Interest.

U. Drawings, shall mean those drawings, as the same may be lawfully amended from time to time, which are attached as Exhibit "A" to this Declaration.

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



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

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

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

## 2. NAME AND PURPOSE

A. Name. The Condominium Property shall be known as Foxdale Condominium.

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

## 3. LEGAL DESCRIPTION OF PREMISES

The real property subject to this plan for Condominium ownership is described as follows:

Situate in the City of Kettering, County of Montgomery, and State of Ohio, and being Lot Numbered 55 of Foxdale Subdivision, Section Two as recorded in Plat Book 106, Page 65 of the Plat Records of Montgomery County, Ohio.

## 4. DESCRIPTION AND LOCATION OF BUILDING

A. Description. Unless or until amended, there are two (2) buildings located on the Condominium Property which are generally described as follows:

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

(2) Building A is one (1) story in height, containing eight (8) garage spaces, which are specifically designated in Item 7 of this Declaration as Limited Common Areas and Facilities for a Unit or Units.

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

C. Location. The buildings face Donson Circle, a public road.

## 5. DESCRIPTION OF UNITS

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

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


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

B. Type of Units. There are different types of Units which are generally described as follows:

(1) Unit 1288 is a two (2) story townhouse Unit containing approximately fourteen hundred (1,400) square feet. The first floor contains a living area, foyer, kitchen, mud room, nook or activity area and powder room. The second floor contains two (2) bedrooms, two (2) baths and a dressing area.

(2) Units 1284, 1280 and 1276 are two (2) story townhouse Units containing approximately eleven hundred ninety (1,190) square feet. The first floor contains a living room, kitchen, a nook or activity room and powder room. The second floor contains two (2) bedrooms, two (2) baths and laundry area.

6. DESCRIPTION OF COMMON AREAS AND FACILITIES

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

7. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

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

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

- (1) The patios are designated as Limited Common Areas and Facilities for the Unit adjoining such patio.
- (2) The entranceway and stoops are designated as Limited Common Areas and Facilities for the Unit adjoining such entranceway and stoop.
- (3) The air conditioning pad, compressor, duct and conduits thereto are designated as Limited Common Areas and Facilities for the Unit being serviced by such equipment.
- (4) The garage spaces designated and assigned by the Declarant with the conveyance of a Unit are designated as Limited Common Areas and Facilities for the Unit to which it is assigned.

8. USE OF COMMON AREAS AND FACILITIES

Each Unit Owner shall own an undivided interest in the Common Areas and Facilities as a tenant in common with all other such Unit Owners and, except as otherwise limited in this Declaration and in the By-Laws attached hereto as Exhibit "B", shall have the right to use the Common Areas and Facilities for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses as permitted by this Declaration and the By-Laws, including the non-exclusive easement, together with other Unit Owners to the use and enjoyment of the Common Areas and Facilities and for ingress and egress to and from their respective Units, which right shall be appurtenant to and shall run with his Unit. The extent of such ownership in the Common Areas and Facilities is hereby deemed and expressed by the percentage amount set forth in Item 9 hereof, which shall remain constant and shall not be changed except by an amendment to this Declaration pursuant to the provisions of Item 9, Section C and Item 13 hereof.

9. OWNERSHIP OF COMMON AREAS AND FACILITIES

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

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP</u>
1288	28
1284	24
1280	24
1276	24

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

C. Amendment. Except as provided for in Item 21 hereof, the percentage of ownership as herein set forth shall not be altered except by an amendment to the Declaration unanimously approved by all Unit Owners.

10. REGULATION OF COMMON AREAS AND FACILITIES

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



11. RESTRICTIONS ON THE USE OF CONDOMINIUM PROPERTY.

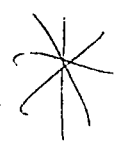
A. Obstruction of Common Areas and Facilities. There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior consent of the Board of Managers of the Association, except as hereinafter expressly provided. Each Unit Owner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

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

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



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



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

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

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

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

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

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

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

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

## 12. UNIT OWNERS' ASSOCIATION

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

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

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

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

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

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

G. Computation. For purposes of Sections E and F of this Item, the percentages of Condominium Ownership Interests sold and conveyed by Declarant shall be determined by comparing the Condominium Ownership Interests sold and conveyed to the total number of Condominium Ownership Interests created and which may be created pursuant to Item 21 hereof.

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

### 13. AMENDMENT OF DECLARATION AND BY-LAWS

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

B. Mortgage or Mortgagee. Any amendment which adversely affects the value, or priority, or the security of any mortgagee of record shall require the written consent of such mortgagee of record. Any amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record.



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

14. MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS.

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

B. Delegation to Managing Agent. The Association may delegate all or any portion of its authority to discharge its responsibility pursuant to Section A of this Item to a Manager or Managing Agent; subject to the limitation that any such delegation be by a written contract of no longer than one (1) year in duration. At the filing date of this Declaration no such contract had been entered into.

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

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

- (1) To maintain, repair and replace at his expense all portions of his Unit and all internal installations of such Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and which exclusively serve such Unit.
- (2) To maintain the garage spaces, patios, entranceways and stoops which are designated by this Declaration as Limited Common Areas and Facilities for the exclusive use of such Unit Owner.
- (3) To maintain the air conditioning pad, compressor, duct and conduits thereto which are designated by this Declaration as Limited Common Areas and Facilities for the exclusive use of such Unit Owner.
- (4) To maintain, repair and replace at his expense all portions of the Common Areas and Facilities which may be damaged or destroyed by reason of the willful or uninsured negligent act or neglect of himself, or by the willful or uninsured negligent act or neglect of any invitee, licensee or guest of such Owner.

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- (5) To maintain and repair all windows and doors of his Unit and of all associated structures and fixtures therein which are appurtenances to his Unit. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.
- (6) To maintain, repair and replace the springs, tracks or any other mechanism relating to the garage doors, including without limitation any garage door opener and the mechanisms associated thereto, whether installed by the Developer or the Unit Owner.
- (7) To perform his responsibilities in such a manner so as not to unreasonably disturb other persons residing within the building.
- (8) Not to paint or otherwise decorate so as to change the appearance of any portion of the building not within the walls of the Unit unless the written consent of the Board of Managers of the Association is obtained.
- (9) To promptly report to the Association or its Agent any defect or need for repairs, the responsibility of which is with the Association.
- (10) Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Association or remove any portion thereof or make any addition thereto, or do anything which would or might jeopardize or impair the safety or soundness of the building, without first obtaining the written consent of the Board of Managers of the Association and of the Owner or Owners of whose benefit such easement exists.

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

F. Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Unit Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they

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are respectively responsible, the existence of a construction guarantee or insurance coverage shall not excuse any delay by the Association or any Unit Owner in performing his obligation hereunder.

#### 15. EASEMENTS

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

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

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

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damage resulting to a particular Unit as a result of the easement herein granted to the Association, shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.

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

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

F. Tie-In Easements. Declarant reserves the right and easement over, on and under the Common Areas and Facilities, to use, tie into and extend all existing utility lines for purposes of serving the Additional Property.

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

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

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

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

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**16. HAZARD INSURANCE**

A. Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of all Owners and mortgagees, insurance on all buildings, structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage", with no coinsurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains coinsurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of and the proceeds thereof shall be payable to, the Association for each of the Unit Owners and mortgagees for the purpose set forth in Item 16 in accordance with the percentage ownership in the Common Areas and Facilities set forth in Section A of Item 9, herein. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Said policy shall also provide that despite any clause that gives the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in case the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code pursuant to the provisions of this Declaration. Such policy shall provide coverage for built-in installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof, and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Unit Owner as hereinafter permitted.

No Unit Owner may purchase an individual policy of fire and extended coverage insurance for his Unit or his interest in the Common Areas and Facilities as real property. If irrespective of this prohibition, a Unit Owner purchases an individual policy insuring such Unit or interest, said Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance, and such amount of loss shall be a lien on his Unit and enforced in the manner provided for in Section D of Item 20 hereof.

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

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

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If the required insurance coverage under this Section A of Item 16 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Condominium Property; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by a special assessment against all Unit Owners under Item 20 of this Declaration and shall not require a vote of the members of the Association, anything to the contrary in this Declaration notwithstanding.

B. Sufficient Insurance. In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril insured against, and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided, however, that in the event, within thirty (30) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Section G of this Item 16, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

C. Insufficient Insurance. In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction thereof, unless the Unit Owners shall, within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to Section G of this Item 16, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the Units so damaged or destroyed shall be undertaken by the Association at the expense of all the Owners of Units in the same proportions in which they shall own the Common Areas and Facilities. Should any Unit Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the Association shall be assessed to such Owner and such assessments shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

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

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

Each Unit Owner shall be deemed to have delegated to the Board of Managers his right to adjust with insurance companies all losses under the insurance policies referred to in Section A of Item 16 of this Declaration.

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

The Trustee shall be selected by the Association from any bank located in Dayton, Ohio, with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000.00). If such selection is prior to any loss the Association shall make all insurance policies under Section A of this Item 16 payable to such Insurance Trustee, for and on behalf of each of the Unit Owners and mortgagees for the purpose set forth in Item 16 in accordance with the percentage of ownership in the Common Areas and Facilities set forth in Section A of Item 9 herein. All insurance policies shall be deposited with the Insurance Trustee who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

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

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

F. Proceeds for Reconstruction or Repair if an Insurance Trustee Has Been Selected. The insurance proceeds and the sums deposited with the Insurance Trustee by the Association from collections of special assessments against Unit Owners on account

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

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

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



17. LIABILITY INSURANCE

The Association as a Common Expense shall insure itself, the Board of Managers, all Unit Owners and members of their respective families and other persons residing with them in the Condominium Property, their tenants, and all persons lawfully in the possession or control of any part of the Condominium Property, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from destruction of property occurring upon, in or about, or arising from the Common Areas and Facilities, such insurance to afford protection to a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident.

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

18. REHABILITATION AND RENEWAL OF OBSOLETE PROPERTY.

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

19. REMEDIES FOR BREACH OF COVENANTS AND REGULATIONS

A. Abatement and Enjoyment. The violation of any restriction or condition or regulation adopted by the Board of Managers

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

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

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

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

## 20. ASSESSMENTS AND LIEN OF ASSOCIATION

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

B. Division of Common Profits and Common Expenses. The proportionate shares of the separate Unit Owners of the respective Units in the Common Profits and Common Expenses of the operation of the Condominium Property shall be in accordance with the percentages of interest appurtenant to their respective Units as set forth in Item 9, Section A hereof.

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

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

E. Lien of Association. The Association shall have a lien upon the estate or interest in any unit of the owner thereof and its percentage of interest in the common areas and facilities for the payment of any delinquent assessments chargeable against such unit. At any time after such delinquency, a certificate of lien

for all or any part of the unpaid assessments, including late charges, interest, and if monthly assessments are delinquent then the remaining unpaid monthly assessments under the then current budget, may be filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Managers. The certificate shall contain a description of the unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the delinquency, and shall be signed by the President of the Association.

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

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

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

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

I. Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit other than a conveyance in lieu of foreclosure, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by

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

## 21. ADDITIONAL PROPERTY

A. Contemplated Annexation by Declarant. Declarant is the Owner in fee simple of certain real property adjacent to the Condominium Property, said property being hereinafter referred to as the "Additional Property". It is the desire of the Declarant to submit the Additional Property, together with the buildings and other improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311 of the Ohio Revised Code, so that the same will become in all respects part of the Condominium Property.

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

C. Option to Renew. The right and reservation of the Declarant to expand the Condominium Property pursuant to this Item may be extended for an additional seven (7) year period, beyond the period specified in Section B of this Item, at the option of the Declarant. Such option must be exercised by the Declarant within six (6) months prior to the expiration of the original seven (7) year period, and consented to by the majority of the Unit Owners, other than Declarant. The only circumstances that will terminate this option to renew prior to the time limits described herein would be the completion of the entire development by the submission of the maximum number of Units to the Condominium.

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

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

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

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

H. Units. There will be a maximum of eighty (80) Units constructed on the Additional Property, with a density not to exceed fifteen (15) Units per acre. Such Units need not be substantially identical to the Units constructed on the Condominium Property. Unless otherwise specified in this Item, there are no limitations imposed on Declarant as to the types of Units that may be created on the Additional Property.

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

J. Reservation of Right to Amend Declaration. Declarant hereby reserves the right to amend this Declaration, in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, the right to amend this Declaration so as (1) to include any or all of the Additional Property and the improvements which may be constructed thereon as part of the Condominium Property, (2) to include descriptions of buildings constructed on said real estate and to add drawings thereof to the appropriate exhibits hereto, and (3) to provide that the Owners of Units in the buildings will have an interest in the Common Areas and Facilities of the Condominium Property, and to amend Item 9 so as to establish percentages of interest in the Common Areas and Facilities which the Owners of all Units within the

buildings on the Condominium Property will have at the time of such amendment, which percentage shall be, with respect to each Unit, in the proportion that the fair market value of each Unit at the date said amendment is filed for record bears to the then aggregate fair market value of all of the Units within the Condominium Property, which determination shall be made by Declarant and shall be conclusive and binding upon all Unit Owners.

K. Consent and Approval for Annexation Amendments. Declarant, on its own behalf as the Owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves, and each Unit Owner and his mortgagees by acceptance of a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Item 21, including, without limiting the generality of the foregoing, the amendment of this Declaration by Declarant in the manner provided in Section K of this Item 21, and all such Unit Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

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

M. Description. The Additional Property is described in Exhibit "C" attached hereto.

## 22. LIMITED WARRANTIES BY DECLARANT

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

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

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

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

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

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

### 23. MISCELLANEOUS PROVISIONS

A. Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

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

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



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

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

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

G. Unless otherwise provided in this Declaration or by statute, neither Declarant nor his representatives, successors or assigns shall be liable for any claim whatsoever arising out of, or by reason of, any actions performed pursuant to any authorities granted or delegated to it by, or pursuant to, this Declaration or the By-Laws attached hereto as Exhibit "B" or in Declarant's capacity as Developer, contractor, Owner, Manager or seller of the Condominium Property, whether or not such claim (1) shall be asserted by any Unit Owner, occupant, the Association, or by any person or entity claiming through any of them; or (2) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (3) shall arise ex contractu or, except in the case of gross negligence, ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, occupant, the Association and their respective Agents, employees, guests, invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services.

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

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

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

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

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

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

IN WITNESS WHEREOF, Anthony B. Wenzler and Rose Mary Wenzler have caused the execution of this instrument this 30 day of NOVEMBER, 1984.

Signed and acknowledged  
in the presence of:

Cynthia L. Larbins

Anthony B. Wenzler  
Anthony B. Wenzler

Rose Mary Wenzler

Rose Mary Wenzler  
Rose Mary Wenzler

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 30 day of NOVEMBER, 1984, by Anthony B. Wenzler and Rose Mary Wenzler.

Cynthia L. Larbins  
Notary Public

CYNTHIA L. LARBINS, Notary Public  
In and for the State of Ohio  
My Commission Expires NOV 5 1987

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FOXDALE CONDOMINIUM ASSOCIATION, INC.

EXHIBIT "B"

CONDOMINIUM ASSOCIATION BY-LAWS

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EXHIBIT "B"

CONDOMINIUM ASSOCIATION BY-LAWS

The within By-Laws are executed and attached to the Declaration of Condominium pursuant to Chapter 5311 of the Ohio Revised Code. Their purpose is to provide for the establishment of a Unit Owners' Association for the administration of the Condominium Property in the manner provided by the Declaration and by these By-Laws. All present or future Owners or tenants or their employees, and any other person who might use the facilities of the Condominium Property in any manner, shall be subject to any restrictions, conditions, or regulations hereafter adopted by the Board of Managers of the Association. The mere acquisition or rental of any of the Units, located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of the Units, will constitute acceptance and ratification of the Declaration and of these By-Laws.

1. THE ASSOCIATION

A. Name of Association. The Association shall be an Ohio corporation not-for-profit and shall be called FOXDALE CONDOMINIUM ASSOCIATION, INC.

B. Membership. Each Unit Owner upon acquisition of title to a Unit shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his Unit, at which time the new Owner of such Unit shall automatically become a member of the Association. Membership in the Association is limited to Unit Owners within the Condominium.

C. Voting Rights. There shall be one (1) vote for each of the Units comprising the Condominium Property. The Owner or Owners of each Unit shall be entitled to one (1) vote for their Unit. In the event a Unit has been acquired by the Association in its own name or in the name of its agent, designee or nominee on behalf of all Unit Owners, the voting rights of such Unit shall not be exercised so long as it continues to be so held. If two (2) or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Unit, each may exercise the proportion of the voting power of all the Owners of his Unit that is equivalent to his proportionate interest in the Unit.

D. Majority of Owners. As used in these By-Laws, the term "majority of Owners" shall mean those Unit Owners holding fifty-one percent (51%) of the votes in the Association.

E. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of Owners as defined in Section D of this Item shall constitute a quorum.

F. Proxies. Votes may be cast in person or by proxy. The person appointed as proxy need not be a Unit Owner. Proxies must be in writing and filed with the Secretary of the Association before the appointed time of each meeting or action taken. Unless otherwise provided, all proxies shall be revocable at any time by delivering written notice of such revocation to the Secretary of the Association. If, by the terms of a first mortgage, a Unit Owner has designated such mortgagee as his proxy, the presentation to the Secretary of the Association by a representative of such mortgagee of a copy of the mortgage containing such proxy designation shall constitute notice of such proxy designation, and if the mortgage so states, notice of the irrevocability of such designation.

G. Place of Meetings. Meetings of the Association shall be held at such place upon the Condominium Property, or at such other place, as may be designated by the Board of Managers and specified in the notice of the meeting at 8:00 P.M., or at such other time as may be designated by the Board of Managers and specified in the notice of the meeting.

H. First Meeting. The first meeting of members of the Association shall be held within the time limits prescribed by the Declaration and shall be considered the first annual meeting.

I. Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the Owners as directed by resolution of the Board of Managers or upon a petition signed by a majority of the Owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the Owners present, either in person or by proxy.

J. Notice of Meeting. It shall be the duty of the Secretary of the Association to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Owner of record, at least fourteen (14) days, but not more than twenty-eight (28) days, prior to such meeting. The Owners of record will be determined as of the day preceding the day on which notice is given.

K. Waiver of Notice. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or at the commencement of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any members of the Association at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting.

L. Action by Unanimous Written Consent of the Unit Owners. Any action which may be authorized or taken at a meeting of the Unit Owners, may be authorized or taken without a meeting in a writing or writings signed by all of the Unit Owners. The writing or writings evidencing such action taken by the unanimous written consent of the Unit Owners shall be filed with the records of the Association. Written notice of any action proposed to be taken by the unanimous written consent of the Unit Owners shall be sent to all persons entitled to notice under Section C of Item 6 of these By-Laws at least five (5) days prior to the circulation of the action for unanimous written consent among the Unit Owners and shall specify the action proposed to be so taken.

M. Order of Business. The order of business at all meetings of the Owners of Units shall be as follows:

- (1) Roll Call
- (2) Proof of notice of meeting or waiver of notice
- (3) Reading of minutes of preceding meeting
- (4) Reports of officers
- (5) Report of committees
- (6) Election of Inspectors of Election
- (7) Election of Managers
- (8) Unfinished business
- (9) New business
- (10) Adjournment

## 2. BOARD OF MANAGERS

A. Number and Qualification. The affairs of the Association shall be governed by a Board of Managers composed of five (5) persons, all of whom must be Owners of Units in the project or occupants of a Unit who are related to an Owner by a marital or fiduciary relationship. If, at any one time, one bank or lending institution shall hold mortgages upon more than fifty percent (50%) of the Units, such lending institution may designate its representative who shall be a sixth member of the Board of Managers. Such representative need not be an Owner or occupier of a Unit.

B. Election of Managers. The required Managers shall be elected at each annual meeting of members of the Association. Only persons nominated as candidates shall be eligible for election as Managers, and the candidates receiving the greatest number of votes shall be elected. Each member may vote for as many candidates as



there are vacancies in the Board of Managers, due to the expiration of their terms. Provided, however, that a vacancy in the position of a representative of a lending institution as provided in Section A of this Item 2, if any, shall be filled by such lending institution.

C. Vacancies During the Term. In the event of the occurrence of any vacancy or vacancies in the Board of Managers during the term of such Manager or Managers, the remaining Managers, though less than a majority of the whole authorized number of Managers, may, by the vote of a majority of their number, fill any such vacancy for the unexpired term; provided, however, that a vacancy in the position of a representative of a lending institution as provided in Section A of this Item 2, if any, shall be filled by such lending institution.

D. Term of Office; Resignation. Each Manager shall hold office until his term expires, or until his earlier resignation, removal from office or death. Any Manager may resign at any time by oral statement to that effect made at a meeting of the Board of Managers, or in a writing to that effect delivered to the Secretary of the Association, such resignation to take effect immediately or at such other time as the Manager may specify. At the first annual meeting of the members of the Association, the term of office of three (3) Managers shall be fixed so that such term will expire one (1) year from and after the date of the next following annual meeting of members of the Association. The term of office of the remaining two (2) Managers shall be fixed so that such term will expire at the date of the next following annual meeting of members of the Association. At the expiration of such initial term of office of each respective Manager, his successor shall be elected to serve for a term of two (2) years.

E. Removal of Managers. At any regular or special meeting duly called, any one or more of the Managers may be removed with or without cause by the vote of members entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, except the Manager, if any, acting as a representative of a lending institution, may not be removed by such vote. Any Manager whose removal has been proposed by the members of the Association, shall be given an opportunity to be heard at such meeting. In the event that a Manager is removed by such vote, his successor shall then and there be elected to fill the vacancy thus created. This Section shall be subject to the provisions contained in Section A of Item 6.

F. Organization Meeting. Immediately after each annual meeting of members of the Association, the newly elected Managers, and those Managers whose terms hold over, shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

G. Regular Meetings. Regular meetings of the Board of Managers may be held at such times and places as shall be determined by a majority of the Managers, but at least four (4) such meetings shall be held during each year.

H. Special Meetings. Special meetings of the Board of Managers may be held at any time upon call by the President or any three (3) Managers. Written notice of the time and place of each such meeting shall be given to each Manager either by personal delivery, or by mail, or telegram or telephone at least two (2) days before the meeting, which notice shall specify the purpose of the meeting; provided, however, that attendance of any Manager at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before or at the commencement of such meeting. If all the Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

I. Board of Managers' Quorum. At all meetings of the Board of Managers, a majority of the Managers shall constitute a quorum for the transaction of business, and the acts of the majority of the Managers present at a meeting at which a quorum is present shall be the acts of the Board of Managers. If, at any meeting of the Board of Managers, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At the continuation of any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

J. Action by Unanimous Written Consent of the Board of Managers. Any action which may be authorized to be taken at a meeting of the Board of Managers, may be taken or authorized without a meeting in a writing or writings signed by all of the members of the Board of Managers. The writing or writings evidencing such action taken by the unanimous written consent of the Board of Managers shall be filed with the records of the Association.

K. Fidelity Bonds. The Board of Managers shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

### 3. OFFICERS

A. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board of Managers. The offices of Treasurer and Secretary may be filled by the same person.

B. Term of Office; Vacancies. The officers of the Association shall hold office until the next organization meeting of the Board of Managers and until their successors are elected, except in case of resignation, removal from office or death. The Board of Managers may remove any officer at any time, with or without cause, by a majority vote of the Managers then in office. Any vacancy in any office may be filled by the Board of Managers.

C. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Managers. Subject to directions of the Board of Managers, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Managers or otherwise provided for in the Declaration or in these By-Laws.

D. Vice-President. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Managers.

E. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Managers and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Managers may direct; he shall be in charge of sending any notices and he shall, in general, perform all the duties incident to the office of Secretary.

F. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Managers.

#### 4. GENERAL POWERS OF THE ASSOCIATION

A. Payments from Maintenance Funds. The Association shall establish, and shall pay for out of the maintenance funds, the following:

- (1) Utility Services for Common Areas, and to Units When Measured by Common Meter. The cost of water, sewer services, waste removal, electricity, telephone, heat, power or any other necessary utility service to or for the Common Areas, plus the costs or charges for any utility service to individual Units which are being serviced by a common meter, i.e., water and sewer services which are being supplied

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to all of the Units of a building and measured through one (1) meter. The Association reserves the right to levy additional assessments against any Owner to reimburse it for excessive use, as shall be determined by the Board of Managers by such Owner of any utility service having been charged against or to the maintenance fund.

- (2) Care of Common Areas and Facilities. The cost of landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Areas.
- (3) Care of Certain Limited Common Areas and Facilities. The cost of maintenance, repair and replacement of those Common Areas which are designated by the Declaration as Limited Common Areas and Facilities for the exclusive use of a particular Unit or Units; excepting, however, those responsibilities for care of the Limited Common Areas and Facilities by Unit Owners as set forth in the Declaration.
- (4) Certain Maintenance of Units. The cost of the maintenance and repair of any Unit or Limited Common Areas and Facilities, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Areas or any other portion of a building, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner or Owners, provided the Association shall levy special assessment against such Unit Owner for the cost of said maintenance or repair.
- (5) Casualty Insurance. The premium upon a policy or policies of fire insurance, with extended coverage, vandalism and malicious endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually.
- (6) Liability Insurance. The premium upon a policy or policies insuring the Association, the members of the Board of Managers, and the Owners against any liability to the public or to the Owners of Units, their invitees or tenants, incident to the ownership and/or use of the Common Areas, as provided in the Declaration, the limits of which policy shall be reviewed annually.
- (7) Wages and Fees for Services. The fees for services of any person or firm employed by the Association, including, but not limited to, the services of a person or firm to act as a Manager or managing agent

for the Condominium Property and legal and/or accounting services necessary or proper in the operation of the Condominium Property or the enforcement of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association.

- (8) Workmen's Compensation. The costs of Workmen's Compensation insurance to the extent necessary to comply with any applicable law.
- (9) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Condominium Property or any part thereof which may, in the opinion of the Association, constitute a lien against the entire Condominium Property rather than merely against the interests therein of particular Owners, it being understood, however, that the foregoing authority shall not be in limitation to any statutory provisions relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said Owners.
- (10) Additional Expenses. The cost of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, common expenses or assessments which the Association is required to secure to pay for, pursuant to the terms of the Declaration and these By-Laws, or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Condominium Property as a first class condominium project, or for the enforcement of the Declaration and these By-Laws.

B. Capital Additions and Improvements. The Association powers described in Section A of Item 4 are limited in that the Association shall have no authority to pay for, out of the maintenance fund, any capital additions and improvements having a total cost in excess of Two Thousand Dollars (\$2,000.00), unless it is for the purpose of replacing or restoring portions of the Common Areas. The Association shall not authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring any expenditure in excess of Two Thousand Dollars (\$2,000.00), without, in each case, the prior approval of a majority of the members of the Association.

C. Rules and Regulations. The Board of Managers may, by majority vote, adopt such reasonable rules and regulations and may amend the same which the Board of Managers may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the Condominium Property. Written notice of such rules and regulations shall be given to all Owners and occupants, and the Condominium Property shall at all times be maintained subject to such rules and regulations. In the event that adopted rules and regulations conflict with any provisions of the Declaration and of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

D. No Active Business to be Conducted for Profit. Nothing herein shall be construed to give the Association authority to conduct active business for profit on behalf of the Owners or any of them.

E. Delegation of Duties. The Association, through its Board of Managers and officers, has the authority to delegate to persons, firms or corporations of its choice such duties and responsibilities of the Association as the Board of Managers shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

F. Right of Entry. An Owner shall grant the right of entry to the Association or its agent, in case of any emergency originating in or threatening his Unit, whether the Owner is present at the time or not.

G. Special Services. The Association may arrange for the providing of any special services and facilities for the benefit of any Unit Owners that may desire to pay for the same. Fees for such special services and facilities shall be determined by the Board of Managers, and will be charged directly to the participating Unit Owners.

## 5. DETERMINATION AND PAYMENT OF ASSESSMENTS

A. Obligation of Owners to Pay Assessments. Each Unit Owner shall have the duty to pay his proportionate share of the expenses of administration, maintenance and repair of the Common Areas, and of other expenses provided for herein. Unless otherwise provided for, such proportionate share shall be in the same ratio as his percentage of ownership in the Common Areas as set forth in the Declaration. Payment thereof shall be in such amounts and at such times as may be determined by the Board of Managers of the Association, as hereinafter provided.

B. Preparation of Estimated Budget. The Association shall, before or on December 1st of every year, prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together

with a reserve for contingencies and replacements. On or before December 15th, each Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereof. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Owner shall be obligated to pay to the Association or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section. On or before the date of the annual meeting in each calendar year, the Association shall supply to all Owners, an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's percentage of ownership in the Common Areas to the next monthly installment due from Owners during the current year's estimate, until exhausted, and any net shortage shall be added according to each Owner's percentage of ownership in the Common Areas to the installments due in the succeeding six (6) months after rendering of the accounting.

C. Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any Owner's assessment, the same shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Areas. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the reasons therefor, the amounts, and the date or dates when such further assessments are due. At the option of the Board of Managers, such further assessment may be payable in a lump sum or in installments.

D. Limited Common Areas and Facilities Assessments. The expense of maintenance, repair and replacement of the Limited Common Areas and Facilities designated for the use of more than one (1) Unit shall not be Common Expenses, but shared and paid for by those Units for which such Limited Common Areas and Facilities are designated for their use. Each Unit's share shall be equal to the expense of such maintenance, repair and replacement multiplied by a fraction, the numerator of which is the percentage of interest of such Unit and the denominator of which is the total of the percentages of interest of all the Units to which such Limited Common Areas and Facilities are designated. The Board of Managers shall separately state such Limited Common Areas and Facilities Assessments in the annual budget along with the expenses associated therewith. The Board of Managers, in order to collect such assessments, may avail themselves of the lien rights and other rights provided in the Declaration for the collection of assessments for Common Expenses.

E. Periodic Assessments. Notwithstanding any provision in this Item, the Board of Managers may, at its option, elect that certain expenses such as insurance, water and sewer be paid by periodic assessments based on the billing date of such expenses. If the Board of Managers so elects, such expenses shall be separately stated in the budget specifying the amount and due date thereof.

F. Uniform Per Unit Expense. In the event that the Association is billed or charged for certain services hereinbefore described on a non-discriminatory uniform per Unit basis by a third party, i.e., trash, management, water and sewer, the Board of Managers may elect to assess such expenses on a strictly per Unit basis. In such event such expenses shall not be considered Common Expenses to be allocated among the Units on the basis of their percentages of ownership. Such expenses shall be assessed on a uniform per Unit basis. The Board of Managers shall elect to exercise such option by separately stating and classifying such expenses as per Unit expenses in the annual budget. The Board of Managers, in order to collect such per Unit expenses, may avail themselves of the lien rights and other rights provided in the Declaration for the collection of assessments for Common Expenses.

G. Budget for First Year. When the first Board of Managers hereunder take office, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the Owners during said period as provided in Section B of this Item 5.

H. Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the Owner, shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period, until the first monthly maintenance payment which occurs more than ten (10) days after such annual or adjusted estimate shall have been mailed or delivered.

I. Books and Records of the Association. The Association shall keep correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Areas and other common receipts and expenses, together with records showing the allocation, distribution, and collection of the common profits, losses and expenses among and from the Unit Owners; minutes of the proceedings of the Unit Owners and Board of Managers; and records of the names and addresses of the Unit Owners and their respective percentages of interest in the Common Areas. Such books and records shall be open for inspection by any Owner, or any representative of an Owner, duly authorized in writing, at reasonable times and upon request by an Owner. In addition, the holder of any first mortgage of record may inspect such books and records, at reasonable times and upon reasonable notice, after presentation



to the Secretary of the Association of a duly certified copy of its mortgage. Upon ten (10) days notice to the Board of Managers and upon payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

J. Assessments. Monthly assessments shall begin upon the filing of the Declaration with the Recorder of Montgomery County, Ohio. These assessments shall be paid by every Unit Owner of record, including those Units the title of which is vested in Declarant after the filing for record of the Declaration.

K. Audit. Upon the written request of any lending institution holding mortgages on over fifty-one percent (51%) of the Units, or by any group of lending institutions who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units, the books of the Association shall be audited, but not more than once every three (3) years by an independent Registered or Certified Public Accountant, the results of which shall be sent to every Unit Owner of record, and the holder of any duly recorded mortgage against any Unit ownership who requests a copy thereof in writing.

L. Remedies for Failure to Pay Assessments. If an Owner is in default in the monthly payment of the aforesaid charges, the members of the Board of Managers may avail themselves of the lien rights and other rights provided for in the Declaration.

## 6. GENERAL PROVISIONS

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

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

C. Service of Notices on the Board of Managers. Notices required to be given to the Board of Managers or to the Association may be delivered to any member of the Board of Managers or officer of the Association, either personally or by mail, addressed to such member or officer at his Unit.

D. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these By-Laws 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.

E. Agreements Binding. All agreements and determinations lawfully made by the Association, in accordance with the procedure established in the Declaration and these By-Laws, shall be deemed to be binding on all Unit Owners, their successors, heirs and assigns.

F. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these By-Laws.

IN WITNESS WHEREOF, Anthony B. Wenzler and Rose Mary Wenzler have caused the execution of this instrument this 30 day of November, 1984.

Signed and acknowledged  
in the presence of:

Cynthia L. Larkins

Anthony B. Wenzler  
Anthony B. Wenzler

Hans H. Soltau

Rose Mary Wenzler  
Rose Mary Wenzler

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 30 day of NOVEMBER, 1984, by Anthony B. Wenzler and Rose Mary Wenzler.

Cynthia L. Larkins  
Notary Public

CYNTHIA L. LARKINS, Notary Public  
In and for the State of Ohio  
My Commission Expires NOV. 5, 1986

THIS INSTRUMENT PREPARED BY:

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

EXHIBIT "C"



DESCRIPTION OF TRACT II  
FOXDALE SUBDIVISION, SECTION THREE  
MAY 31, 1984

Located in Section 22, Town 2, Range 6 M.R.S., City of Kettering, County of Montgomery, State of Ohio, and being all of Lots 65 thru 77 of Foxdale Subdivision, Section Three, as recorded in Plat Book 119, page 24 in the Plat Records of Montgomery County, Ohio, and being more particularly described as follows:

Beginning at the northeast corner of said Foxdale Subdivision, Section Three;

thence with the east line thereof, South no degrees one minute fifty seconds (00° 01' 50") West for six hundred thirty and 59/100 (630.59);

thence North eighty-nine degrees fifty-eight minutes ten seconds (89° 58' 10") West for three hundred thirty and 31/100 (330.31) feet;

thence South fifty-six degrees forty-seven minutes thirty-one seconds (56° 47' 31") West for twenty-nine and 73/100 (29.73) feet to a point in the east line of Foxdale Subdivision, Section Two, as recorded in Plat Book 106, page 65 in the Plat Records of Montgomery County, Ohio;

thence with the line common to said Foxdale Subdivisions, Sections Two and Three, for the following five (5) courses:

North five degrees fifteen minutes twenty seconds (05° 15' 20") West for two hundred forty and 52/100 (240.52) feet;

thence North thirty-two degrees twenty-five minutes twenty-three seconds (32° 25' 23") West for one hundred twelve and 58/100 (112.58) feet;

thence North eighty-nine degrees fifty-eight minutes ten seconds (89° 58' 10") West for one hundred thirty and 00/100 (130.00) feet;

thence on a tangent bearing, North twenty-eight degrees thirty minutes no seconds (28° 30' 00") West for one hundred eight and 96/100 (108.96) feet;

thence on a curve to the right with a radius of twenty and 00/100 (20.00) feet for an arc distance of thirty-one and 42/100 (31.42) feet [long chord bearing, North sixteen degrees thirty minutes no seconds (16° 30' 00") East for twenty-eight and 28/100 (28.28) feet] to a point in the south line of Cross Creek Circle;

thence with the line of said Cross Creek circle for the following eight (8) courses:

on a curve to the right with a radius of one hundred and 00/100 (100.00) feet for an arc distance of forty-nine and 80/100 (49.80) feet [long chord bearing, North seventy-five degrees forty-five minutes fifty-five seconds (75° 45' 55") East for forty-nine and 28/100 (49.28) feet];

thence on a tangent bearing, South eighty-nine degrees fifty-eight minutes ten seconds (89° 58' 10") East for one hundred thirty-six and 00/100 (136.00) feet;

DESCRIPTION OF TRACT II  
FOXDALE SUBDIVISION-SECTION THREE  
PAGE TWO

thence on a curve to the right with a radius of two hundred twenty-five and 00/100 (225.00) feet for an arc distance of three hundred eighteen and 02/100 (318.02) feet [long chord bearing South forty-nine degrees twenty-eight minutes forty-one seconds (49° 28' 41") East for two hundred ninety-two and 20/100 (292.20) feet];

thence on a curve to the right with a radius of fifty and 00/100 (50.00) feet for an arc distance of fifty-five minutes twenty-one and 5/10 (22° 45' 21.5") West for fifty-two and 61/100 (52.61) feet];

thence on a curve to the left with a radius of fifty and 00/100 (50.00) feet for an arc distance of two hundred nine and 23/100 (209.23) feet [long chord bearing, South sixty-five degrees twenty-two minutes twenty (65° 22' 42.5") East for eighty-six and 71/100 (86.71) feet];

thence on a tangent bearing, North five degrees fifteen minutes twenty seconds (05° 15' 20") West for seventy-five and 00/100 (75.00) feet; thence on a curve to the left with a radius of two hundred seventy-five and 00/100 (275.00) feet for an arc distance of four hundred six and 60/100 (406.60) feet [long chord bearing, North forty-seven degrees thirty-six minutes forty-five seconds (47° 36' 45") West for three hundred seventy and 56/100 (370.56) feet];

thence on a tangent bearing, North eighty-nine degrees fifty-eight minutes ten seconds (89° 58' 10") West for one hundred fourteen and 59/100 (114.59) feet to a point in the line common to said Foxdale Subdivisions, Sections Two and Three;

thence with said common line, North seven degrees forty-four minutes ten seconds (07° 44' 10") West for one hundred twenty-eight and 56/100 (128.56) feet to the northwest corner of said Foxdale Subdivision, Section Three; thence with the north line thereof, South eighty-nine degrees fifty-eight minutes ten seconds (89° 58' 10") East for five hundred fifty-nine and 97/100 (559.97) feet to the point of beginning containing 6.084 acres, more or less, subject, however, to all covenants, conditions, restrictions, reservations, and easements contained in any instrument of record pertaining to the above-described tract of land.

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DESCRIPTION OF TRACT 1  
FOXDALE SUBDIVISION, SECTION THREE  
MAY 31, 1984

Located in Section 22, Town 2, Range 6 M.R.S., City of Kettering, County of Montgomery, State of Ohio, and being all of Lots 78 thru 84 of Foxdale Subdivision, Section Three, as recorded in Plat Book 119, page 24 in the Plat Records of Montgomery County, Ohio, and being more particularly described as follows:

Beginning at the southeast corner of said Foxdale Subdivision, Section Three, said point being in the north line of Southbrook Manor, Section Three, as recorded in Plat Book 96, page 46 in the Plat Records of Montgomery County, Ohio;

thence with the south line of said Foxdale Subdivision, Section Three, and the north line of said Southbrook Manor, Section Three, South eighty-eight degrees fifty minutes fifty seconds ( $88^{\circ} 50' 50''$ ) West for four hundred sixty-two and 01/100 (462.01) feet to the southwest corner of said Foxdale Subdivision, Section Three, said point being the southeast corner of Foxdale Subdivision, Section Two, as recorded in Plat Book 106, page 65 in the Plat Records of Montgomery County, Ohio;

thence with the west line of said Foxdale Subdivision, Section Three, and the east line of said Foxdale Subdivision, Section Two, North one degree nine minutes ten seconds ( $01^{\circ} 09' 10''$ ) West for one hundred thirty and 02/100 (130.02) feet to a point in the south line of Donson Circle;

thence with the south, east, and north lines of said Donson Circle for the following four (4) courses:  
on a tangent bearing, North eighty-eight degrees fifty minutes fifty seconds ( $88^{\circ} 50' 50''$ ) East for two hundred seventy and 17/100 (270.17) feet;  
thence on a curve to the left with a radius of fifty and 00/100 (50.00) feet for an arc distance of two hundred nine and 44/100 (209.44) feet [long chord bearing, North thirty-one degrees nine minutes ten seconds ( $31^{\circ} 09' 10''$ ) West for eighty-six and 60/100 (86.60) feet];  
thence on a curve to the right with a radius of fifty and 00/100 (50.00) feet for an arc distance of fifty-two and 36/100 (52.36) feet [long chord bearing, South fifty-eight degrees fifty minutes fifty seconds ( $58^{\circ} 50' 50''$ ) West for fifty and 00/100 (50.00) feet];  
thence on a tangent bearing, South eighty-eight degrees fifty minutes fifty seconds ( $88^{\circ} 50' 50''$ ) West for one hundred thirty-eight and 35/100 (138.35) feet to a point in the line common to said Foxdale Subdivisions, Sections Two and Three;

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DESCRIPTION OF TRACT 1  
FOXDALE SUBDIVISION, SECTION THREE  
PAGE TWO

thence with said common line, North one degree nine minutes ten seconds  
(01° 09' 10") West for one hundred twenty-nine and 03/100 (129.03) feet;  
thence continuing with said common line and its extension, North fifty-  
six degrees forty-seven minutes thirty-one seconds (56° 47' 31") East for one  
hundred ten and 91/100 (110.91);  
thence South eighty-nine degrees fifty-eight minutes ten seconds (89° 58'  
10") East for three hundred thirty and 31/100 (330.31) feet to a point in the  
east line of said Foxdale Subdivision, Section Three;  
thence with said east line, South no degrees one minute fifty seconds  
(00° 01' 50") West for three hundred sixty-one and 14/100 (361.14) feet to the  
point of beginning containing 3.200 acres, more or less, subject, however, to  
all covenants, conditions, restrictions, reservations, and easements of record  
pertaining to the above-described tract of land.

DEC 17 1984

✓  
TRANSFERRED  
ROBERT L. RODERER

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# FOXDALE CONDOMINIUM ASSOCIATION, INC.

WELCOME to Foxdale Condominium Association. We, the Board of Directors for the Association, hope you enjoy your condominium unit. Our objective is to maintain Foxdale Condominium Association as very nice place to live. In order to accomplish this, we created this handbook to highlight certain rules that specifically pertain to living at Foxdale Condominium Association.

These are common sense rules and regulations that take into consideration the health, safety and comfort of all owners and residents at Foxdale Condominium Association. The Board is authorized to adopt and enforce these rules and regulations pursuant to Bylaws Article IV, Section C. We hope you will find them reasonable and will cooperate by upholding them.

The Board has hired a management company, Evland Property Management LLC, to handle the day-to-day operations of the property. The Management Company's job includes: handling accounts receivable and payable, soliciting bids, and overseeing the work performed by the various contractors hired by the Board.

We ask you to keep this booklet handy and refer to it when necessary. If something arises that may not be covered in the booklet, please do not hesitate to contact the Management Company. Additional information is also contained in the Declaration of Condominium Ownership and Bylaws as recorded in the Montgomery County Records.

This booklet is intended to supplement, not replace, the Declaration and Bylaws; therefore, is there should be an inadvertent discrepancy between what is expressed in this booklet and the recorded documents, the Declaration and/or Bylaws shall govern.

Before moving into Foxdale Condominium Association, you should have received a copy of the Declaration and Bylaws. If you do not have these documents, they can be obtained at cost from the County Recorder or from the Management Company.

Thank you,

The Board of Directors  
Foxdale Condominium Association

**FOXDALE CONDOMINIUM ASSOCIATION, INC.**

**THE PURPOSE OF THIS BRIEF OVERVIEW IS TO ACQUAINT NEW AND  
CURRENT OWNERS AT FOXDALE WITH THE RULES AND REGULATIONS SET  
FORTH IN THE DECLARATION OF CONDOMINIUM, BYLAWS, AND BY THE  
BOARD OF DIRECTORS.**

**PLEASE KEEP THIS DOCUMENT WITH YOUR COPY OF THE DECLARATION  
AND BYLAWS.**



## **ASSOCIATION**

The Condominium Property is known as Foxdale Condominium. The Condominium Property is used for single family residence.

Foxdale Condominium Association, Inc. is governed by Ohio Condominium Law, its Declaration and Bylaws, and finally by a five (5) member, unpaid, elected Board of Directors. The Board oversees the operation of the common holdings of the Association, including Management.

## **DECLARATION, BYLAWS AND AMENDMENTS**

All owners must, by law, have a complete set of the Declarations, Bylaws and Amendments, which should be provided by the seller at the time of closing. If you do not have a complete set, they may be obtained from the manager for a fee.

## **OWNERSHIP**

You own your unit which includes the decorated surfaces, including paint, lacquer, varnish, wallpaper, and other finishing materials applied to the interior surface of such perimeter wall, floors and ceilings; all windows, screens and doors, including the frames, sashes and jams, and the space occupied thereby; all fixtures located within the bounds of a Unit, installed in and for the exclusive use of said Unit, commencing at the point of disconnection from the structural body of the building or from the point of disconnection of the utility pipes, lines or systems serving the entire building or more than one Unit thereof, whichever may be applicable; all control knobs, switches, thermostats and base plugs, floor plugs, and connections affixed to or projecting from the walls, floors, and ceilings which service either the Unit or the fixtures located therein; all interior walls, floors and ceilings; all plumbing, electric, heating, security, alarm, vacuum, cooling and other utility lines, pipes, wires, ducts, conduits which exclusively serve the Unit or fixtures located therein and which are located within the bounds of the Unit. You do not own the exterior of the building, the yards, walks, trees, shrubs, parking areas, driveways, etc. The Association owns all of these and you, as a unit owner, own a share of the Association.

## **PROPERTY MANAGEMENT**

Foxdale Condominium Association, Inc. is managed by Evland Property Management LLC, 8235 Old Troy Pike, PMB #281, Dayton, OH 45424. Our manager, Kelley Evans, can be reached at (937) 422-8849.

## **FEES**

Monthly assessment fees are payable on the first of each month and are considered late after the tenth of the month. If payment is not received by the tenth of the month, a \$20.00 late charge will be applied. On the tenth of the third month that a homeowner is delinquent, a lien may be filed.

If the account remains delinquent for another thirty (30) days after filing the lien, foreclosure action may be initiated.

Coupons are provided for convenience in mailing your monthly assessments. Please make check payable to: Foxdale Condominium Association. Fees are set annually based on the budget for that year and will be distributed to the owners by December 15<sup>th</sup>. The fee is used to pay for the following services:

- Short and long term building maintenance
- Common area maintenance
- Lawn and landscaping
- Snow removal
- Sidewalk maintenance
- Common utilities
- Common insurance
- Management and administration

## **INSURANCE**

The Association has a master insurance policy. The buildings, including the amenities, are covered on a blanket basis with a present limit being \$3,135,936. Coverage in the policy is subject to a \$2,500 deductible applying to each loss. Building coverage does not include personal property belonging to and purchased by the unit owner. Every owner should obtain extended insurance coverage for the interior of their condo, and all personal property. Any improvements or upgrades to the interior of the unit, beyond the standard model specifications, must be insured under the homeowner's individual contract, e.g., a remodeled kitchen and bath, new carpet, lighting and fans, etc.

## **BOARD MEETINGS**

Regular meetings of the Board of Directors are held four times a year. The Annual Meeting of all homeowners is held each year in April.

## **SIGNS**

Only "For Sale" signs are permitted to be displayed on any part of the Condominium property.

## **TRASH COLLECTION**

Trash collection is the responsibility of the unit. Which is picked up by the City of Kettering.

## **SNOW REMOVAL**

Snow removal will normally commence with the accumulation of two (2) inches of snow. Snow blowers will clear a single path on the sidewalks. Snow will be removed as close to the garage doors as is possible for the snow plow to get, 5-6 inches.

## **LANDSCAPING**

The Board has established the following rules regarding plantings in limited common and common areas:

1. Requests will be considered by the Board to:
  - a. Plant additional trees and shrubs (at unit owner's expense). Submit type and size.
2. Once a tree or shrub has been planted, it becomes the property of Foxdale Condominium Association, Inc. The landscape service rakes all leaves and trims all shrubs.
3. You must have Board approval to remove or replace trees and shrubs.

## **PARKING**

Vehicles that are deemed non-operational, unsightly, or without current registration or current inspection, will be towed at vehicle owner's expense. Vehicles improperly parked, parked on lawns, in fire lanes, in designated reserved areas, or obstructing a driveway will be towed. Parking of trucks over 4000 lbs. on the driveways is prohibited. Storage of boats, trailers and/or recreational vehicles is not permitted. Car washing is permitted in the rear of the buildings.

## **EXTERIOR IMPROVEMENTS**

All outside changes or improvements must have the approval of the Board prior to being implemented. Written requests for exterior changes must be submitted to the Board at least two (2) weeks in advance. Anything that in any way changes the appearance of your unit from the outside falls in this category. This includes storm doors and windows, door color changes, door knockers, light fixtures, etc. The Board wishes to be flexible, yet we must maintain architectural integrity. Please do not put yourself in a position where you have to UNDO CHANGE; GET APPROVAL FIRST. If an unauthorized change has to be removed, the cost will be assessed to the owner. Once approval has been granted, the work must be accomplished within six (6) months, or re-submission for approval is required.

## **INTERIOR IMPROVEMENTS**

Any interior structural change must be submitted to the Board for approval in advance of the proposed change.

## **OUTWARD APPEARANCE OF YOUR UNIT**

Unit Owners shall not cause or permit anything to be hung, displayed on the outside or inside of the windows or placed on the outside walls of the building and no sign, awning, canopy, shutter, satellite dish, radio or television antenna shall be affixed to or placed upon the exterior walls or roofs or any part without the written consent of the Board of Directors of the Association.

## **ANIMALS AND PETS**

No animals, rabbits, livestock or fowl of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats or other household pets may be kept in Units subject to the rules and regulations adopted by the Board of Directors of the Association. Any pet creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions upon three (3) days written notice from the Board of Directors of the Association. Pets are to be walked on a leash and are not permitted to run free under any conditions or allowed to be staked in the common areas. Pet excrement is to be cleaned up immediately whether it is on public or private property.

## **OUTSIDE DECORATIONS**

1. Christmas lights are prohibited on the exterior siding of all buildings. They are permitted on shrubs, trees and railings adjacent to your unit. Extension cords must be of weatherproof quality and may not cross or lie on sidewalks. Christmas decorations may be displayed after Thanksgiving through January 10.
2. Thanksgiving decorations may be displayed from November 15 through November 30.
3. Halloween decorations may be displayed from October 15 through November 15.
4. Decorations for other holidays are permitted for a one (1) week period, i.e., three (3) days before through three (3) days after the event.
5. Seasonal wreaths and decorative plaques are permitted on exterior doors year round.

## **GARAGE AND ESTATE SALES – Not permitted**

## **FIREWOOD**

Firewood is not to be stored on any portion of the exterior buildings.

## **UNIT SAFETY**

For the sakes of protecting yourself, your neighbors, and all of our property, we offer the following recommendations:

1. Do not warm up your car inside the garage; there is a good chance that carbon monoxide will leak into the units.
2. If you use your fireplace, have it checked periodically to see when it needs cleaning.
3. Burn ONLY seasoned hardwood in your fireplace, no other materials.
4. Install smoke detectors and check them periodically.
5. Store charcoal carefully in summer heat. At temperatures above 90 degrees, damp charcoal can ignite spontaneously.
6. Do not use a grill inside your garage.
7. Turn off water at main shut-off valve when you are away.
8. If your pipes freeze, use a hair dryer to thaw them slowly, or call a plumber to prevent further damage.
9. When you are away, advise the manager as to who has access to your unit should there be an emergency affecting your unit. Have someone keep your porch clear of newspapers, advertising circulars, etc.
10. Snow, ice, leaves and other debris should be kept from accumulating around the air conditioning units.
11. Periodically check your dryer vent on the inside for excess lint. Check the outside vent to be sure the air is venting.

## **SALE OF UNIT**

It is helpful if you advise the management company when you list your unit for sale.

You are expected to give the new owner your keys, monthly fee coupons, Declaration and By-Laws, and this document.

## FINES

As specified in the Declaration and Bylaws, the Board of Directors may adopt rules and regulations to govern the community. The following penalties have been established for the violation of the rules and regulations.

1 <sup>st</sup> Offense	A warning notice will be given
2 <sup>nd</sup> Offense	A maximum fine of \$25.00 will be imposed
3 <sup>rd</sup> Offense	A maximum fine of \$50.00 will be imposed
Subsequent Offenses	A maximum fine of \$100.00 will be imposed

Upon notification of an alleged violation, the owner has the right to respond to the alleged violation before any imposition of fines.

# FOXDALE CONDOMINIUM ASSOCIATION

## SATELLITE DISH POLICY

### **THIS FORM MUST BE SIGNED BY THE UNIT OWNER AND APPROVED BY THE BOARD OF DIRECTORS BEFORE INSTALLATION BEGINS**

Requests to install satellite dishes in the common area must be in writing and will be considered on a case-by-case basis. The following procedures and restrictions will govern installation of dishes. The homeowner must request any deviation from these procedures and restrictions in writing.

1. Owners are responsible for the purchase, installation, and maintenance of their satellite dishes, mountings, brackets/boxes, wiring and cables. Owners are also responsible for the repair of any damage that may be done to the common area during, or because of, the installation of the satellite dish. Your satellite dish should be covered by your homeowner's insurance policy.
2. Owners are to inform the Board of the date and time the dish is to be installed.
3. With regard to the installation of a satellite dish, a Board member must be present to observe and to safeguard the common area.
4. Only dishes measuring not larger than eighteen inches (18") in diameter and having the dark gray finishes are permitted.
5. Dishes must be mounted on the roof only. The dish must be installed on the rear side of the roof of your unit so as not to be seen from the street.
6. Wiring/cables are to enter the unit through the attic only.
7. In the event the unit is sold, the homeowner is responsible for having the dish removed following the same guidelines as for installation. The common area must be restored to its original condition at the owner's expense.

I have read, understand and acknowledge receipt of the above policy and agree to abide by it.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board Approved: Name (Please Print)

\_\_\_\_\_  
Board Signature

\_\_\_\_\_  
Date