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**INDIAN CREEK
CONDOMINIUMS
PHASE TWO**

**DECLARATIONS OF COVENANTS,
RESTRICTIONS AND CONDITIONS
WITH ATTACHED EXHIBITS**

BY

**OHIO MANAGEMENT AND CO.
AN OHIO PARTNERSHIP**

**5 INDIAN CLUB CIRCLE
WEST CARROLLTON, OHIO 45449**



For Plat Map, See Plat Book 110, pages 20 thru 20C ;

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FOR
INDIAN CREEK CONDOMINIUM
PHASE TWO

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INDIAN CREEK CONDOMINIUM

PHASE TWO

DECLARATION

General Plan

WHEREAS, OHIO MANAGEMENT AND CO., an Ohio General Partnership (hereinafter) referred to as "Declarant") owns certain real property situate in the City of West Carrollton, County of Montgomery, State of Ohio and is described on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant desires to convert an apartment complex built on said Exhibit A property to a residential condominium community without commercial facilities designed for the purpose of obtaining for the owners and residents thereof the benefits of more effective and attractive land use, privacy and security, and freedom from the burdens of individual maintenance and repair of grounds and of exterior surfaces of the structures thereon; and

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates consisting of part of the building and structure comprising each of the separate units, together with the co-ownership by such individual owner of each unit, as tenant in common, of all of the real property and improvements other than separate units made subject to these Declarations.

NOW, THEREFORE, Declarant, the fee owner of the real property described on Exhibit "A" hereby makes the following declarations as to divisions, covenants, restrictions, limitations, conditions and uses to which said real estate and improvements thereon may be put, hereby specifying that these Declarations shall constitute covenants to run with the land and shall be binding on said Declarant, its successors and assigns, and all subsequent owners of all or any part of the real property and improvements subject to these Declarations in accordance with its terms, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, all in accord with Chapter 5311 of the Ohio Revised Code as amended.

ARTICLE I

DEFINITIONS

1.01. "Declarant" shall mean OHIO MANAGEMENT AND CO., an Ohio General Partnership, its successors and assigns.

1.02. "Property" and "Condominium Property" shall mean all of the property described on Exhibit "A" attached hereto, together with all improvements and appurtenances thereto, and by this reference made a part hereof.

1.03. "Association" shall mean and refer to INDIAN CREEK CONDOMINIUM PROPERTY OWNERS ASSOCIATION, an Ohio not-for-profit corporation, its successors and assigns (sometimes called "Property Owners Association" or "Association"). (See Exhibit E.)

1.04. "Residential Unit" (sometimes called "Unit") shall mean such of the Condominium Property as is individually and separately owned and being that part of the property within a building, including one or more rooms, located on a part of a floor, designed and intended for independent residential use and having access to common elements and more specifically located and graphically shown on attached Exhibit "B".

(a) Each Residential Unit consists of the space enclosed or bounded by the undecorated surface of the perimeter walls and interior surfaces of the horizontal and vertical planes, including windows and doors, in the perimeter walls, unfinished surfaces, floors and ceilings, switches, medicine cabinets, base plugs, and other items of a similar nature which may extend through or into a wall, set forth in the delineation thereof in Exhibit "C". The dimensions, layouts, and descriptions of each such unit shown on the Drawings, includes, without limitation:

1. The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile, carpeting, and any other finishing material(s) applied to the interior of perimeter walls, floors and ceilings;
2. All windows, window screens and doors including the frames, sashes, and jambs and the space occupied thereby and the hardware thereon; partition walls and cabinets;
3. All fixtures, appliances and cabinets, utility and service lines, mechanical, electrical, plumbing, water softening, water heating, all heating and cooling systems and all other equipment and systems whether located within the bounds of the unit or the Limited Commons, as defined herein, and installed for the sole and exclusive use of such unit.
4. Supporting walls, fixtures and other parts of the building which are within the boundaries of a unit but which are necessary for the existence, support, maintenance, safety or comfort of any other part of the condominium property are not a part of the unit.

(b) No Unit Owner shall, by deed, plat or otherwise, subdivide, or in any manner cause his unit to be separated into any tracts or parcels smaller than the whole unit as shown on Exhibit "C".

(c) Every deed, lease, mortgage, or other instrument may legally describe a unit by its identifying number or symbol, and every such description shall be deemed good and sufficient for all purposes.

(d) Every deed, mortgage, lease or other instrument affecting title to a Unit shall include therein both the interest in the Unit and the corresponding percentage of ownership in the Common Elements, whether or not such percentage interest is specifically stated, it being the intention hereof to prevent any severance of such ownership.

(e) Except as a tenant in common with other owners, no Owner shall own any pipes, wires, ducts, conduits, public utility lines, or structural components running through his Unit, whether they serve only the unit through which they run, or whether they serve more than his unit, and whether or not such items shall be located in the floors, ceilings, or perimeter or interior walls of the Unit.

1.05. "Carport Units" (referred to as such and distinguished from Residential Units or Units) shall mean such of the Condominium Property as is individually and separately owned and being that part of the property within a carport building, including the separate space located on part of the asphalt paved ground surface designed and intended for independent accessory use to house, shelter, and store such items of vehicular and recreational personal property as may be owned by a Unit Owner. Such Carport Units have access to common elements as more specifically located and graphically shown on attached Exhibit "B".

(a) Each Carport Unit consists of the space enclosed or bounded by a space measured nine feet in width by nineteen feet in length as shown by lines delineated on the attached drawings in Exhibit "C" and the horizontal and vertical planes from asphalt paved surfaces to the underside surface of roofs. The dimensions, layout, descriptions of each unit shown on the Drawings, includes, without limitation:

(1) That line whether painted on the surface or delineated by a curb or bumper block on the paved ground or not, when projected vertically to the rear edge of the roof as may constitute an unconstructed division wall between the rear of the building and the common elements.

(2) That line whether painted on the surface of the paved ground or not, when projected vertically to the roof, as may constitute an unconstructed division wall between units.

(3) That line, whether painted on the surface of the paved ground or not, when projected vertically to the front edge of the roof as may constitute an unconstructed door or access to the parking and driveway portion of the common elements.

(4) Such supports as may be necessary for maintenance of the roof of the structures comprising the Carport Units, which are within the boundaries of a Carport Unit are not a part of the Carport Unit and are generally described as four inch by four inch galvanized steel braces each separated nineteen feet in pairs each twelve feet apart.

(b) No Carport Unit Owner shall, by deed, plat or otherwise, subdivide, or in any other manner cause his Carport Unit to be separated into any tracts or parcels smaller than the whole Carport Unit, or partition by any wall whether temporary or permanent, attached or freestanding, material, whether fixed or flexible; nor shall any door or access part be constructed.

(c) Every deed, lease, mortgage, or other instrument may legally describe a Carport Unit by its identifying number or symbol, and every such description shall be deemed good and sufficient for all purposes.

(d) Every deed, mortgage, lease or other instrument affecting title to a Carport Unit shall include therein both the interest in the Carport Unit and the corresponding percentage of ownership in the Common Elements, whether or not such percentage interest is specifically stated, it being the intention hereto to prevent any severance of such ownership.

(e) No Carport Owner may by deed, lease, contract or other conveyance, whether legal or equitable, sell, convey, or transfer, any ownership right of any nature to any person as herein defined, who is not a Residential Owner as herein defined.

1.06. "Limited Commons" shall mean such portion of the Common Areas and Facilities (sometimes called "common elements" and described at 1.07 below) restricted to the use of the owners of the units to which such areas and facilities pertain including by way of example patios, balconies, areas for storage and furnaces and water heaters, designated or intended solely for the use of one or more of such units to the exclusion of others. No such unit owner shall use such Limited Common Areas in any manner contrary to such rules and regulations as may be established therefor from time to time by the Association, unless he shall first obtain the written consent of the Association.

1.07. "Commons" shall mean all of the Common Areas and Facilities (sometimes called "common elements") on the Condominium Property, except that which is specifically defined and referred to as Residential Units, and including specifically both Limited Commons, the swimming pool area, maintenance building, lake, club/office building, and the private roadways shown on Exhibit "B". Each owner shall own an undivided interest in the Commons and Limited Commons as a tenant in common with all the other owners of the Property, and, except as otherwise limited in this Declaration, especially as to Limited Commons, shall have the right to use the Commons for all purposes incident to the use and occupancy of his unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his unit, also including:

(a) Utility pipes and lines, wire, conduits, ducts and fixtures as defined by the laws of the State of Ohio and all replacements thereof located in the bounds of a unit as defined by the laws of Ohio and all replacements thereof located in bounds of a unit as herein defined which are not installed for the sole and exclusive use of such unit shall be part of the Common Areas and Facilities.

(b) An easement for access to the swimming pool, clubhouse/office, and lake constructed as graphically shown on Exhibit "B-1", is granted for ingress and egress to and from both Phases.

(c) Ownership percentages in the Commons hereby declared to be as set forth in the attached Exhibit "F".

Reference herein to Commons shall include Limited Commons when not inconsistent with the definitions herein contained.

1.08. "Residential Owner" shall mean and refer to the Owner of a Residential Unit, being that person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Residential Unit. For convenience such Owners are sometimes herein referred to with Owners of Carport Units collectively as "Unit Owners" or "Owners".

1.09. "Carport Owner" shall mean and refer to the Owner of a Carport Unit, being that person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Carport Unit. For convenience such Owners are sometimes herein referred to with Owners of Residential Units collectively as "Unit Owners" or "Owners".

1.10. "Occupant" shall mean person or persons, other than Owner, in possession.

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

1.12. Other definitions as may be suitable are incorporated by reference from Ohio Revised Code Sec. 5311.01.

ARTICLE II

Establishment of Indian Creek Condominium Phase Two

2.01. General Description. Indian Creek Condominium Phase Two hereby established by filing for record in the Office of the Recorder of Montgomery County, Ohio, these Declarations, together with drawings and a plot plan of the property described on Exhibit "A-2" attached hereto and by this reference made a part thereof. This is an expandable condominium property, and complies with RC 5311.04 et seq.

(a) It is the intent of Declarant that the property on Exhibit "A-2" is declared immediately following the Declaration for Condominium ownership known as Phase One and is added to this Plan of Condominium by this supplemental Declaration of Phase Two. This includes the designation of Commons and Limited Commons substantially similar to that in Phase One. Each Owner, by acceptance of a deed, whether or not expressed in such deed is deemed to covenant that such Owner irrevocably consents to and approves this supplemental annexation, including any necessary change of ownership percentage interest stated as par value as shown in Exhibit "F". Phase Two contains 108 Residential and 22 Carport Units.

(b) All Units on such added property are identical to those in Phase One. All structures on any property so added are compatible with the structures on property previously submitted in terms of quality of construction, principal materials used, and architectural style. Improvements on such added property include pavement, curbs, sidewalks, sanitary sewer and similar improvements to those made in Phase One.

(c) By addition of the property annexed herewith to the Condominium as permitted and contemplated in the Declaration for Phase One, the percentage of par value interest of each Unit Owner in the Common Areas and Facilities in Phase One of the Condominium prior to such annexation has automatically reduced unless both Phases are filed for record and Declared in immediate sequence in which event Owners of Units in Phase One which are a part of the Condominium prior to such annexation, shall be granted and receive a percentage of interest in the Common Area and Facilities as has been disclosed previously on Exhibit F of this Declaration and that for Phase One.

(d) Total Units in both Phases will be 240 Residential and 87 Carports.

(e) There is also declared to be a part of the Condominium a clubhouse/ office, swimming pool, cabana, maintenance building, and lake constructed thereon. Such amenities have been fully constructed by the Declarant, and will be managed by the Property Owners Association with ownership in proportion to the number of units, as shown on Exhibit "F". The Declarant hereby grants to the co-owners, and the tenants (and the families of each) of the condominium Residential Units a non-exclusive right to use the clubhouse, swimming pool, cabana, and lake, subject to the obligation to pay their proportionate share of the cost of maintaining and operating such amenities and the rules and regulations of the Association. These amenities are constructed on Phase One.

(f) An easement is hereby granted to owners of Units in both Phases, for use of driveways and walkways over the Common Areas shown on Exhibit "B-1", for the purposes of traveling to and from the swimming pool and any recreational and common facilities established.

2.02. Limitations on Use. Common Areas and Facilities are limited as to their use as follows:

(a) No person shall use the Common Areas and Facilities or any part thereof in any manner contrary to or not in accordance with rules and regulations pertaining thereto as from time to time may be adopted by the Association.

(b) Except as otherwise provided herein, management, repair, alteration, and improvement of the Common Areas and Facilities shall be the responsibility of the Association. The Association may delegate all of its authority to discharge such responsibility to a manager or managing agent. All units owners are prohibited from making any alterations, additions, or service charges to the units, Limited Common Areas and Facilities, and Common Areas and Facilities, which includes interior and exterior of units, without the prior written approval of the Association which approval may be granted or withheld in the discretion of the Board of Managers of the Association.

(c) An illuminated identification sign is constructed on the Common Area, facing the adjacent interstate highway. Such sign is the property of the Association and shall be at all times maintained, repaired and replaced with no change of the lettering or content of the wording thereon.

(d) A brick wall and decorative guardhouse as well as other safety, protective, and decorative walls are erected as shown on Exhibit "B" which shall be maintained, repaired and replaced by the Association.

2.03. Location of Residential Units. Indian Creek Condominium Phase Two consists of five residential buildings containing 108 individual residential units, all for residential purposes, which have been operated since their construction as an apartment rental project.

(a) The acreage in Exhibit "A-2" which is Phase One of the Condominium is 5.646 acres.

(b) Buildings consist of groupings of six (6) units, two units on each floor, for three floors with a common entry, stairway, and stairhall. The number of groupings vary from building to building. See (c) below.

I. A room with furnace/air conditioners and waterheater herein declared to be Limited Commons is on the ground floor, first landing (second floor), and second landing (third floor).

II. A storage room with lockers on the ground floor, first landing (second floor), on second landing (third floor), is herein declared to be Commons. A washer-dryer, a worktable and laundry tray located in the utility area which is on the first landing (second floor) is herein declared to be Commons.

III. All units are entitled to storage lockers to be assigned by the Property Owners Association.

IV. Certain units have rental water softeners located in the Common Areas, which appliances are not conveyed or owned at the time of this Declaration. An easement is granted for location, installing, maintaining and servicing said softeners. The rental contracts shall be assigned and become the obligation of the Unit Owner.

(c) The buildings are described as containing

I. Building #6 has thirty (30) units in five (5) groups of six units with entrances at 1116, 1118, 1120, 1122, 1124 Eagle Feathers Circle.

II. Building #7 has twenty-four (24) units in four (4) groups of six units with entrances at 1108, 1110, 1112, 1114 Eagle Feathers Circle.

III. Building #8 has eighteen (18) units in three (3) groups of six units located at 1107, 1109, 1111 Arrowhead Crossing.

IV. Building #9 has eighteen (18) units in three (3) groups of six units located at 1101, 1103, 1105 Arrowhead Crossing.

V. Building #10 has eighteen (18) units in three (3) groups of six units located at 1100, 1102, 1104 Arrowhead Crossing.

(d) Each unit is designated for unit numbering and address purposes and uniformity in locating units within buildings as A through F but this is not related to the types of units as herein declared and shown on Exhibit C and again listed on Exhibit F.

(e) Each unit has its own externally located gas and electric meter the charges for which are the unit owner's separate responsibility. Water is metered to the building and will be the responsibility of the Property Owners Association, the charges to be a part of the monthly assessment.

(f) Trash areas are located in each such building and are a part of the Commons, controlled by the Association.

(g) Amenities and Recreational Facilities for the benefit of all owners are constructed and located on Exhibit B, which are part of the Commons, controlled by the Association. They are:

I. A two story colonial clubhouse with rooms for storage, private parties and management offices.

II. A swimming pool measuring approximately 30 x 60 which is in a fenced area and has constructed adjacent thereto a Cabanna Building containing restrooms, dressing rooms, showers, and storage.

III. A three bay maintenance building with overhead type garage doors and a workroom and kitchen.

IV. A 2 acre \pm recreation lake.

Except by the exercise of the reservation in the Declaration to add additional acreage and Units as herein accomplished, no further amendments will be made to this Declaration without the affirmative vote of those unit owners exercising not less than seventy-five percent (75%) of the voting power, except removal from condominium as set forth in Article IX.

2.04. Description of Residential Units. Exhibit "C" of this Declaration describes each Residential Unit thereon, as to the type of construction, approximate

graphically showing the Residential Units by example and locating them by schedule of unit numbers on Exhibit "F", and by graphic designation on Exhibit "B".

The Residential Units are all capable of individual utilization on account of having their own exit to a public street or to a common area and facility leading to a public street or a permanent easement leading to a public street across additional property as shown on Exhibit "B". Residential Units will be sold to one or more owners, each owner obtaining a particular and exclusive fee simple right thereto, herein referred to as "residential unit", and also an undivided interest in the common elements and limited common elements of the Condominium (being the same as are known in the Ohio Revised Code as "Common Areas and Facilities" and "Limited Common Areas and Facilities") as listed in this Declaration, necessary for their adequate use and enjoyment and hereinafter referred to as "common elements" and/or "limited common elements", all of the above in accordance with Chapter 5311 of the Ohio Revised Code.

Each Residential Unit has a designated street address number. The individual residential units are designated Type A, B, C, D, each being capable of being constructed either "right or left entry" as shown on Exhibit "C". The main door of each building has access to the common roadways or direct exit to a permanent easement leading to a public street across property identified as shown on Exhibit "B".

All buildings are constructed on concrete slab foundations with precast concrete tile (flexicore) floors with poured grout capping on the second and third floors. Exterior walls and interior halls are brick on four inch block and interior walls are two by four framing studs constructed sixteen inches on center. Roofing is of asphalt shingle. Bathrooms are drywall with one piece fiberglass tubs/showers.

All units have ranges with hoods, refrigerators, disposal, and dishwashers.

All units have gas forced air heat with air conditioning units integrated and hot water heaters, which are located in adjacent Limited Commons as shown on Exhibit "C".

2.05. Location and Description of Carport Units. Indian Creek Condominium Phase Two contains one (1) carport building with 22 individual Carport Units, for the purposes stated as herein, defined as an appurtenance to the Condominium.

(a) The Building is located on the blacktop area behind Residential Building Number 7 with the back side on Interstate 75.

(b) There are six carport areas not declared to be Units, which are a part of the Common Areas, used for trash purposes and located in Building #1 (but which are numbered in sequence for convenience).

(c) Exhibit "C" of this Declaration describes each Carport Unit thereon as to the location, approximate area, and other data necessary for proper identification, graphically showing the Carport Units by example and locating them by schedule of Unit numbers on Exhibit "F", and by graphic designation on Exhibit "B". Each Carport Unit has a designated location in order to be used for transfer of ownership and uniformity in locating Units within buildings.

(d) The Carport Units are all capable of individual utilization on account of having their own exit to a public street or to a common area and

facility leading to a public street, or a permanent easement leading to a public street across additional property as shown on Exhibit "B". Carport Units will be sold only to Residential Owners, each owner obtaining a particular and exclusive property right thereto, herein referred to as "Carport Unit", and also an undivided interest in the Common Elements and Limited Common Elements of the Condominium as herein defined as are necessary for their adequate use and enjoyment.

(e) As a restriction on the ownership of a Carport Unit, it is a requirement that no interest in a Carport Unit may be held by other than a Residential Owner.

(f) Carport Buildings are constructed of galvanized metal mansard style roofs with enamel finish and supported by four inch by four inch galvanized steel posts. Posts are located nineteen feet apart and arranged in pairs between every second Carport Unit each of such pairs being twelve feet apart. See Exhibit C-3.

2.06. 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 a unit, or any part of a unit 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 any portion 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 more than one unit presently encroaches or shall hereafter encroach upon any part of the unit, 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 in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of said owner.

(b) Maintenance Easements. The owner of each unit shall be subject to easements for access arising from the necessity of maintenance or operation of the entire building. The owner of each unit shall have the permanent right and easement to and through the Common Areas and Facilities and walls to the use of water, sewer, electric, 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 his unit insofar as such attachment projects through the interior surface.

(c) Easement for Certain Utilities. The Association may hereafter grant easements for utility purposes for the benefit of the condominium property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical and television conduits and wires over, under, along and on any portion of the Common Areas and Facilities; and each unit owner hereby grants 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.

(d) Easements Through Walls Within Units. Easements are hereby declared and granted to the Association or the Declarant while original ownership is held to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, flues, public utility lines or structural components running through the walls of the units, whether or not such walls lie in whole or in part within the unit boundaries, or such installation shall lie in whole or in part in a Common Area.

(e) Easement for Access to Swimming Pool and Lake. An easement is hereby granted to owners of units, for use of driveways and walkways over the Common Areas shown on Exhibit "B", for the purposes of traveling to and from the swimming pool,

lake, and recreational facilities established by Declarant or the Association.

(f) Easements To Run With Land. All easements and rights described herein 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 undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

(g) Reference to Easements in Deeds. Reference in the respective deeds of conveyance, or in any mortgage or Land Contract or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such document.

2.07. Percentage Ownership. Each Residential Owner shall be the owner in fee simple of a Residential Unit, together with an undivided percentage of ownership in all of the real property made subject to this Declaration. Exhibit "F", attached hereto and made a part hereof, sets forth the percentage of ownership of each Residential Unit in each Phase as it is added to the Condominium. The share of common expenses, profits and losses will be borne in accordance with said percentage. Separate assessments will be made to Carport Units as set forth in Exhibit "F" and as authorized by Section 6.02 and the By-Laws of the Association.

The percentage of ownership is stated as a "par value". Such par value is generally related to the square footage of each Unit as it bears to the then aggregate square footage of all units in the condominium as each Phase is declared. All units in both Phases are constructed prior to the filing of this Declaration for Phase One.

2.08. Expandable Condominium. Declarant has added the part of the Exhibit "A", as described in Exhibit "A-2" to be made subject to these Declarations. Such act is accomplished by filing for record Phase Two immediately with the preceding Declaration incorporating by reference Phase One so that when both the Phases are filed for record, that Condominium Phase Two and previous Condominium Phase One shown graphically on Exhibit "B-1" shall constitute and comprise a single Condominium subject to the Declarations, and to the By-Laws and Articles of Incorporation of Indian Creek Condominium Property Owners Association and to §5311 of the Ohio Rev. Code. The percentage of ownership or par value in the Commons and Limited Commons of both Phases is shown in Exhibit "F".

2.09. Power of Attorney. 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, its successors, assigns, or nominees, as Attorney-in-Fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at the option of the Attorney for the limited purpose of making technical corrections and amendments to satisfy mortgage lenders, and to correct typographical and scrivener's errors, which do not change the percentage of ownership interest, to execute, acknowledge and record for and in the name of such unit owner, his or her spouses, heirs, executors, administrators and assigns, an amendment of this Declaration for such purpose. This covenant shall be deemed to run with the land and for a period of five years from the date of filing of this Declaration, and in the event that amendment of the Association's Articles of Incorporation or By-Laws would be necessary or appropriate in connection with such an amendment, the above described Power of Attorney, consent and approval of each owner through such covenant shall be deemed to apply to such amendments of those other instruments.

2.10. Adjacent Use. The property adjacent to this Condominium, located at 1700 Cherokee Drive, is owned by the Grantor of the Declarant and is occupied by him for maintenance-storage-office in connection with his business. As a part of the consideration for purchase of the Exhibit "A" property, the parties agree that should Seller desire to rezone the property at 1700 Cherokee or request change of use from a public body or municipality, Buyer, its successors, or the Property Owners Association formed by the Buyer, will not oppose such request. As further consideration, Seller granted a first right of refusal to purchase said land and building for a period of 60 days after notice to Buyer, or the Property Owners Association of receipt of a bona fide offer, and on identical terms. This agreement is deemed a restriction which survived the delivery of the Deed and expires by its own terms in seven (7) years from such date.

ARTICLE III

UNIT OWNERS' ASSOCIATION

3.01. MEMBERSHIP. Declarant has caused to be formed an Ohio corporation not for profit, to be called Indian Creek Condominium Property Owners Association (hereinafter and hereinafter called the "Association"). (See Exhibit "E"). Each unit owner, upon acquisition of title to a unit, shall automatically become a member of the Association and entitled thereby to one vote on all matters to which the membership is entitled to vote according to the type unit owned. Such membership shall terminate upon the sale or other disposition by such member of his unit ownership, at which time the new owner of such unit shall automatically become a member of the Association. The Board of Managers and officers of the Association elected as provided in the By-Laws of the Association attached hereto as Exhibit "D" 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 stated; 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 the purposes of this Declaration and the By-Laws attached hereto as Exhibit "D".

3.02. 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 "D". Each owner, tenant or occupant of a unit shall comply with the provisions of this Declaration, By-Laws, decisions and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, and resolutions of the Association or its representatives as lawfully amended from time to time, shall be grounds for an action to recover sums due for damages, or for injunctive relief.

3.03. SERVICE OF PROCESS. When and after the Association is lawfully constituted and the President thereof designated to be the person to receive service of process, his name and address (and that of each successor) shall be filed with the Ohio Secretary of State on such forms as are prescribed for the subsequent appointment of a Statutory Agent for an Ohio corporation, not for profit. Until such time as a President is elected and the Declarant is the owner of less than 60 Residential Units in both Phases or five years, whichever is first, service may be made upon P. Kevin Fitzpatrick, 4222 Lotz Road, Kettering, Ohio 45429. The person to receive service of process for the Association shall be the President of the Association after the Declarant is the owner of less than 60 Residential Units in both Phases. The President of the Association shall be an owner of one of the Residential Units.

3.04. Classes of Membership. There are two classes of members, Residential Unit Owners and Carport Unit Owners. All matters affecting the maintenance, repair, replacement, assessment, and rules concerning use and occupancy of Carports not in conflict with general rules for conduct adopted by the Board of Managers shall be voted on by Carport Owner Members only. All other matters concerning the Condominium not affecting the Carport Units exclusively, shall be voted on by Residential Unit Members only.

3.05. Transfer of Membership with Ownership. The transfer of membership shall be automatic upon transfer of title to a Unit. No Owner of any interest in any Unit shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of his obligations as such member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Owner shall be of any force or effect for any purposes.

3.06. Officers. Except as expressly otherwise provided by the Articles of Incorporation or By-Laws of the Association or this Declaration, or as otherwise required by law, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise, shall be vested in its Board of Managers and its officers under the direction of said Board, and shall not be subject to any requirement of approval on the part of its members. The By-Laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

3.07. Duties of Officers. The Association shall deal with the Commons, and such other assets as it may receive from time to time, in accordance with the provisions of this Declaration and of its Articles of Incorporation and By-Laws. The Corporate Charter of the Association shall provide that upon dissolution of the Association, which requires approval by the affirmative vote of members entitled to vote not less than 3/4 of the votes of each class of members, its assets shall be dedicated or distributed to an appropriate public agency or other non-profit organization to be devoted to uses and purposes corresponding as nearly as practicable to those set forth in this Declaration or in said Corporate Charter.

3.08. Authority to Enforce. By reason of the nature of the planned community herein contemplated, any violation on the part of any Unit Owner of any of the terms and conditions of this Declaration to be kept, observed or performed by him or of any rules or regulations adopted by the Association pursuant to the authority herein granted to it so to do, will or is likely to result in damages which are irreparable or impossible of ascertainment. Therefore, the Association shall have, and is hereby granted, the right to prevent any such actual or threatened violation on the part of any Unit Owner, or the further continuation of any such violation, as the case may be, by means of injunctive proceedings, as well as by restricting or entirely suspending for such period or periods, not exceeding sixty (60) days, as the Board of Managers of the Association may from time to time determine, the use by the offending person of any facility or service, the privilege of which use has been abused.

3.09. Multiple Remedies. The various rights and remedies herein granted to the Association shall be in addition to all other rights and remedies which may be available and in addition to each other. All the rights and remedies available to the Association may be exercised either concurrently or consecutively, or partly concurrently and partly consecutively, as the Association may from time to time elect, and as often as the Association may elect.

ARTICLE IV

GENERAL PROVISIONS AS TO RESPONSIBILITIES FOR UNITS AND COMMON AREAS AND FACILITIES

4.01. MAINTENANCE OF UNITS.

(a) By the Association.

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each Residential Unit and Carport Unit which contribute to the support of the building, excluding, however, within Residential Units, interior partition walls. In addition, the Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within Residential Units boundaries, exclusive of any portions of the foregoing which may be located at the wall outlets, or which may be the responsibility of an individual unit owner under any other provision of this Declaration. In addition the Association shall be responsible for the maintenance, repair and replacement of the Commons and Limited Commons and their appurtenances.

(b) By the Unit Owner.

The responsibility of each Residential Unit Owner shall be as follows:

- (1) To maintain, repair and replace at his expense all portions of his unit, including interior walls, and all internal installations of such unit 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 or within the Limited Commons or Commons which are appurtenant to the Unit.
- (2) To maintain and repair windows, doors, cabinets, and all of associated structure and fixtures therein, which are appurtenances to his unit or designated or intended solely for its use. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

The responsibility of each Residential Unit Owner and Carport Unit owner shall be as follows:

- (3) To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the building.
- (4) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the Residential Unit or the defined space of a Carport Unit, unless the written consent of the Association is obtained.
- (5) To report promptly to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.
- (6) 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 additions 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 managers of the Association, nor shall any unit owner impair any easement, without first obtaining the written consents of the Association and of the owner or owners for whose benefit such easement exists.

4.02. Each owner agrees to maintain, repair and replace at his expense all portions of the Common Areas and Facilities, Limited Commons, and Residential or Carport Units owned by others, which may be damaged or destroyed by reason of his own or any occupant's act or neglect, or by the act of neglect of any invitee, licensee, or guest of such owner or occupant.

4.03. In the event that the Property or any part thereof or any of the Units thereon shall be damaged or destroyed, the Residential owner shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as reasonably possible to the condition in which such property was immediately prior to such damage or destruction.

4.04. All repair, restoration or rebuilding pursuant to the provisions of this ARTICLE IV shall be carried out under such supervision and direction as the Board of Managers of the Association shall deem appropriate in order to assure the expeditious and correct completion of the work concerned, and the Residential Unit owner of each Unit which shall have been damaged or destroyed shall fully cooperate with and abide by all instructions and directions of the Association in connection therewith.

4.05. In any case in which the Residential Unit Owner or Carport Unit owner concerned shall fail after 30 days notice to carry out and see to the repair, restoration or rebuilding of a Residential Unit or Carport Unit or any part thereof as required by the provisions of this Article IV, or shall request the Association to carry out and see to such repair, restoration or rebuilding, the Association shall carry out and see to the repair, restoration or rebuilding required by the provisions of this Article IV.

4.06. Notwithstanding the fact that the Association and/or unit owner may be entitled to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of insurance coverage shall not excuse any delay by the Association or any unit owner in performing his obligation hereunder.

ARTICLE V

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The following covenants, restrictions, conditions and limitations as to use and occupancy which shall run with the land shall be binding upon each unit owner, his heirs, tenants, licensees and assigns.

5.01. No part of the condominium property other than Carport Units shall be used for other than housing. Each Residential Unit shall be used as a residence for a single family and for no other purpose. An owner may use a portion of his unit for his office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant.

5.02. Except as otherwise provided herein, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, shall be conducted, maintained, or permitted on any part of the condominium property, nor shall any signs or other window displays or advertising be maintained or permitted on any part of the condominium property. No owner, occupant or mortgagee may place "For Sale" or "For Rent" signs on any unit. A list of Units for sale or rent shall be maintained by the Association at the management office which shall be readily available or posted. ✓

5.03. 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.

5.04. No pets other than domestic breeds of dogs and cats and none larger than 15 pounds shall be kept by any Residential owner without specific written authority of the Association. All such pets are subject to regulations and/or order of removal by the Association.

5.05. 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 structurally change the buildings.

5.06. 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 intended use, without the prior written consent 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.

5.07. Residential owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Association, other than those originally provided by the Declarant. Drapes must be lined in white or off-white.

5.08. By reason of the fact that there are 87 Carports for 240 Units in both Phases of the Condominium all Carports are separately sold and their ownership is described in deeds of conveyance. Such exclusive ownership may be severed from the original Residential Unit purchased and Carport Units may be separately conveyed. No person or owner or occupant of another Carport Unit may use a Carport to which exclusive ownership has not been purchased by such person.

5.09. There shall be no obstruction of the Common Areas and Facilities or Limited Commons, nor shall anything, including by way of example but not exclusion, motor homes, campers, trailers, boats, bicycles, motorcycles, recreational, racing or off road vehicles be stored in the Common Areas and Facilities or Limited Commons without the prior written consent of the Association.

5.10. Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except as hereinafter provided or upon the prior written consent of the Association.

5.11. The Residential Units 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 thirty days, or (ii) any rental if the occupants of the units are provided customary hotel service such as room service for food and beverage, maid service, furnishing of laundry and linen service. Other than the foregoing obligations, the owners of the Residential Units shall have the absolute right to lease the same provided that said lease is made subject to the covenants and restrictions in this Declaration and further subject to the By-Laws of the Association attached hereto as Exhibit "D" and the rules and regulations as established from time to time.

5.12. The condominium property and use thereof shall be further subject to such rules and regulations as shall be in force from time to time by reason of action taken by the Association pursuant to Article III hereof.

5.13. Until such time as the Declarant is no longer the owner of any units, it shall have the right, but not the obligation, at its own cost and expense, to make such repairs, replacements and improvements to the Common Areas and Facilities as it deems necessary or appropriate.

ARTICLE VI

ASSESSMENTS

6.01. GENERAL. Assessments for the maintenance, repair and insurance of the Common Areas and Facilities, and for the insurance, real estate taxes and assessments of the units and the Common Areas and Facilities, together with the payment of the common expenses and utilities shall be made in the manner provided herein, and in the manner provided by the By-Laws. The Declarant, for each unit owned within the Property, hereby covenants, and each owner of any unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges which shall include by way of example items of maintenance and repair, contract services, and insurance premiums, and

(b) Special Assessments other than annual items of replacement, repair and reserves in connection with new items to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The assessment as to each unit (including those owned by Declarant) shall commence as of the first day of the first month after transfer by deed of each unit.

6.02. The proportionate shares of the separate owners of the respective units in the common profits and the common expenses of the operation of the condominium property is based upon the proportionate estimated par value of each separate unit to all of the units in each Phase as Declared and to all units if both Phases are declared immediately. Owners of Carport Units have separate assessments based on the proportionate par value of the Carport Unit to all Carport Units. Such proportionate share of profits and expenses of each unit owner shall be in accordance with the percentages set forth on Exhibit "F" attached hereto except those common expenses, which are separately assessed to a unit by other provisions of this Declaration.

6.03. In addition to the assessments authorized above at 6.01, the Association may levy, in any assessment year, a special assessment for capital improvements provided that any such assessment shall have the assent of 2/3 of the votes of members of the class entitled to vote on such matter who are voting in person or by proxy at a meeting duly called for this purpose.

6.04. No Owner may exempt himself from liability for the assessment imposed by this Article VI by waiver of the use or enjoyment of any of the areas or facilities of the Commons or by the abandonment of his Unit or otherwise.

6.05. Notwithstanding anything to the contrary in this Declaration contained, if the Association shall incur any cost or expense for or on account of any items of maintenance, repair, or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any Residential or Carport Owner, such cost or expense shall not be borne by the Association, but by such Owner, and if paid by the Association, shall be paid or reimbursed to the Association by such owner as a special assessment forthwith upon the Association's demand.

6.06. Any sum due to be paid by any Owner to the Association, as a regular or special assessment as provided in 6.01 of this Article VI or a special capital improvement assessment as provided in 6.03 of this Article VI or otherwise, which shall not be paid when due, shall bear interest until paid at the maximum rates allowable by law, and if there be no maximum, then at the greater of a rate of eight percent (8%) or the prime rate then being charged by national banks in Dayton, Ohio. If any such sum shall not be paid when due, the Association shall have the right upon not less than fifteen days notice to such Owner, to collect such sum by suit at law and all other legal means and to add to such sum and collect reasonable attorney's fees and all other expenses incurred by the Association in connection therewith.

6.07. The Association shall have a lien upon the estate or interest in any unit of the owner thereof and his percentage of interest in the Common Areas and Facilities for the payment of the portion of the common expenses chargeable against such unit which remain unpaid for ten days after the same have become due and payable from the time a certificate thereof, subscribed by the President of the Association, is filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Managers of the Association. Such certificate shall contain a description of the unit, the name or names of the record owner or owners thereof and the amount of such unpaid portion of the common expenses. Such lien shall remain valid for a period of five years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages or real property or discharged by the final judgment or order of the court in an action brought to discharge such lien as hereinafter provided.

6.08. The lien provided for in Section 6.07 of this article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action. The owner or owners of the

unit affected shall be required to pay a reasonable rental for such unit during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

6.09. 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 bring an action in the Court of Common Pleas for Montgomery County, Ohio, for the discharge of such lien, pursuant to Section 5311.18(c) of the Ohio Revised Code, or in lieu thereof, submit the same to arbitration in accordance with the rules and regulations of the American Arbitration Association, which decision shall be final and binding on all parties.

6.10. Where the mortgagee of a first mortgage of record or other purchaser of a unit acquires title to the unit as a result of foreclosure of the first mortgage, or by conveyance in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the 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.

6.11. In a voluntary conveyance of a unit, 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, any such grantee or his first mortgage lender shall be entitled to a statement from the Board of Managers of the Association setting forth the amount of all unpaid assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the unit conveyed be subject to a lien for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

ARTICLE VII

INSURANCE

7.01. The Association shall maintain in force at all times insurance covering the buildings containing Residential Units and Carport Units and that portion of the Commons connected to Units, consisting of, or providing all the protections afforded by, at least the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief to the full insurable value thereof, either without co-insurance or on an 80% maximum co-insurance basis, with loss payable on the basis of the cost of replacement without deduction for depreciation. Any such insurance shall be purchased on the condition that such company will issue separate Certificates of Insurance to mortgagees of individual units and shall provide for notice to mortgagees prior to cancellation.

The Association shall also maintain in force such insurance protecting the Association from loss, damage, expense or liability resulting directly or indirectly from any act or omission of any Unit, Owner or any employer, agent, representative, guest or invitee of such Unit Owner as the Association shall by rule or regulation, require from time to time; provided, however that no such rule or regulation shall require the obtaining of any insurance of any type not then issued by responsible insurance companies authorized to do business in the State of Ohio.

7.02. All insurance required to be maintained by the Association shall be issued by companies and through agencies selected by the Association and shall provide that all proceeds becoming payable shall be paid to the Association as Trustee for the benefit of all owners and mortgagees as their interest appear and shall be applied to rebuilding as required by this Article VII.

In the event the Association fails to purchase and pay for any insurance required to be maintained herein, any mortgagee may advance such premium, and any sum so paid shall be due and payable immediately upon notice given, with such sums being chargeable as a Special Assessment under Section 6.01.

7.03. Immediately after a casualty causing damage to any portion of the Condominium Property, the Association shall obtain reliable estimates of the cost to replace the damaged property in as good condition as before the casualty, including such professional fees and bond premiums as the Board deems necessary.

The insurance proceeds and the sums deposited with the Association from collections of special assessments against unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed by the Association to payment of the cost of reconstruction and repair of the Condominium Property as the work progresses. The Association shall make such payments upon a Certificate, dated not more than ten (10) days prior to such request, signed by an officer of the Association (other than the Officer making payment) and a qualified person supervising the work selected by the Association, setting forth (1) that the sum then requested is justly due to persons who have rendered services or furnished materials therein described in connection with the work, and that the sum requested does not exceed the value of the services and materials described, (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 persons signing such certificate after due inquiry which might become the basis of lien rights arising from such work, and (3) that the cost estimated of the work remaining to be done after the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Association after the payment of the sum requested. It shall be presumed that the first disbursement of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association.

7.04. The Association and its officers, managers, employees, agents and representatives shall have no liability to any Unit Owner for damage to or loss of either the Unit of such Owner or any personal property of said Owner. Each insurer of any said Owner's interest in said Unit or personal property shall be bound by the provisions of this Section 7.04 and shall, to the extent that such practice is normal and customary in the insurance industry, by appropriate provision in each policy of insurance concerned, waive all its rights of subrogation against the Association and its officers, managers, employees, agents and representatives.

7.05. In any case in which insurance proceeds shall not be paid or payable on account of any damage to or destruction of any Unit and that portion of the Commons connected to the Units, or shall be inadequate to fully cover the cost of repair, restoration or rebuilding which the Association is by the provisions of this Article VII required to carry out, the cost of such repair, restoration or rebuilding in excess of the amount of insurance proceeds available shall be borne and paid for by the Association, and shall become collectible as a Special Assessment under Section 6.05, but without diminishing or in any way affecting any rights of recovery thereof which the Association may have by law against any person or persons who shall be directly or indirectly responsible for such damage or destruction by reason of any negligent or wrongful act or omission.

7.06. Notwithstanding anything to the contrary herein contained, the obligations of the Association under the provisions of this Article VII shall be limited to the repair, restoration and rebuilding of any loss, damage or destruction to or of the Commons and to or of so much of the Units as constitutes structure or improvement upon the real estate, and the Association shall not be responsible for repair, restoration or replacement of any personal property of the Owners or other which, although situated in or about the Residential Units, shall not be attached thereto so as to form an affixed part thereof.

7.07. The Association is required to obtain and maintain additional insurance to the full insurable value thereof with respect to damage to or

destruction to that portion of the Commons that is connected to the Units, and may, but shall not be required to insure any other tangible or intangible assets owned by the Association or for which the Association may have responsibility from time to time, from any cause, and may also obtain such liability and other kinds of insurance protection against such other matters or happenings as its Board of Managers shall from time to time deem prudent.

ARTICLE VIII

MORTGAGES

8.01. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit pursuant to first mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No other sale or transfer shall relieve such unit from liability for any assessments due or from the lien thereof.

8.02. For all the purposes of this Declaration of Restrictions, the term "mortgage" shall mean and include mortgages, trust deeds, and all other documents in the nature of mortgages.

8.03. Any mortgagee, bona fide purchaser or his proposed mortgagee, shall be entitled to a certification that the current installment and all prior installments have been paid and the dollar amounts of the current assessment from the Association promptly upon request.

8.04. Any first mortgagee is entitled to written notification of any default by the owner of a unit mortgaged to such mortgagee of any default in the performance of obligations which attach to such unit by reason of this Declaration of Restrictions or operation of law, which is not cured in sixty (60) days, provided however that a written request is on file with the Association by such mortgagee.

8.05. Any first mortgagee is entitled to examine the books and records of the Property Owners' Association upon reasonable notice.

8.06. Any first mortgagee of a unit may jointly or singly pay taxes, hazard insurance premiums or other charges which are in default and have become a charge against the common property, or may secure new insurance if it has lapsed, and shall be entitled to immediate reimbursement from the Property Owners' Association.

ARTICLE IX

REMOVAL FROM CONDOMINIUM OWNERSHIP

The Residential and Carport Unit owners, by unanimous vote may elect to remove the condominium property from the provisions of Chapter 5311, Ohio Revised Code. In the event of such election, all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the condominium property, shall be paid, released, or discharged, and a certificate setting forth that such election was made shall be recorded with the Recorder of Montgomery County, Ohio. Such certificate shall be signed by the President of the Board of Managers of the Association, who shall certify therein under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the common areas and facilities have been paid, released or discharged, and shall also be signed by the unit owners, each of whom shall certify therein under oath that all such liens and encumbrances on his unit or units have been paid, released or discharged.

ARTICLE X

REMEDIES FOR BREACH OF COVENANTS AND REGULATIONS

10.01. The violation of any restriction or condition or regulation adopted by the Board of Managers of the Association or the breach of any

covenant or provisions contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit "D", shall give the Board of Managers the right, in addition to the rights hereinafter set forth in this article, (a) to enter upon the land or unit or 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 (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

10.02. If any owner (either by his own conduct or by the conduct of another 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 "D", 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-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-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. 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, or in the alternative, a decree declaring the termination of the defaulting owner's right to occupancy, 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 taxes and assessments then due and payable, court costs, Receiver's or commissioner's fees, court reporter charges, reasonable attorneys' fees, and all other expenses of the proceeding, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the owner. Upon the confirmation of such sale, the purchaser thereof 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.

ARTICLE XI

Declarant makes the following representations and warranties in compliance with the Statutes of Ohio.

11.01. Deposits, Earnest Money, and Down Payments. Any deposit, earnest money or down payment made in connection with the sale will be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the purchaser, or forfeited to the Declarant. If a deposit of Two Thousand Dollars or more is held for more than 90 days, interest will be paid at 4% per annum for any period exceeding 90 days payable by credit or settlement or upon return or other credit or added to any forfeit.

11.02. Declarant to Retain no Interest. Except in his capacity as a unit owner of unsold condominium ownership interests, Declarant or its agent will not retain a property interest in any of the Common Areas and Facilities after control of the condominium development is assumed by the Property Owners Association.

11.03. Control by Property Owners Association. The owners of condominium ownership interests that have been sold by the Declarant or its agent will assume control of the Common Areas and Facilities and of the Property Owners Association as set forth in the By-Laws and as prescribed in Division (C) of Section 5311.08 of the Revised Code.

11.04. Pre-existing Management Contracts. Neither the Property Owners Association nor the unit owners will be subject to any management contract or agreement executed prior to the assumption of control for more than one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the residential owners pursuant to the By-Laws.

11.05. (a) Limited Warranty. Following are the limited warranties (and limitations thereon) which the Declarant gives to the buyers of a Unit from it, which are not enforceable by the buyers unless and until the sale of the Unit to the buyers is closed. Except as provided in (b) below, the Declarant grants a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the condominium property occasioned or necessitated by a defect in material of workmanship, and a one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical such as furnaces and air conditioners, and other elements pertaining to each unit, occasioned or necessitated by a defect in material or workmanship commencing 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 as to units in each Phase.

(b) Manufactured Items Warranties. In the case of ranges, refrigerators, disposals, hot water heaters, and other similar appliances installed and furnished as part of the unit by the Declarant, an assignment by the Declarant of the express and implied warranty of the manufacturer will be made with respect to such appliances and the Declarant's warranty under such assignment is limited to the installation of the appliances. All warranties made to the Declarant that exceed time period specified in 11.05 with respect to any part of the units or Common Areas and Facilities will be assigned to the Residential Owner.

(c) Limitations and Other Rights.

(1) No responsibility is assumed for damage from any cause, whatsoever, other than to repair or replace, at the Declarant's cost, items containing defects covered by Declarant's warranty.

(2) No responsibility is assumed for consequential or incidental damage except to the extent, if any, not permitted to be excluded or limited by law.

(3) Implied warranties, if any, are limited to one year from the date on which the unit is deeded to the buyers, except to the extent, if any, that limitation is not lawful.

(4) These written warranties are the only express warranties the Declarant gives to the buyers unless additional warranties are included in a written contract between the Declarant and the buyers.

(5) Any request for service must be sent in writing to the Declarant at such address as the Declarant may designate, from time to time, in writing to the buyers. The Declarant or the Declarant's designated representative will commence performance of the Declarant's obligations under this warranty within thirty (30) days after receipt of the buyers' request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 a.m. to 5:00 p.m.

(6) Other Rights. This written limited warranty gives the buyers specific legal rights and the buyers may also have other legal rights under law.

11.06. Declarant's Unsold Units. Declarant will assume the rights and obligations of a unit owner in his capacity as owner of condominium ownership

interests not yet sold, including, without limitation, the obligation to pay common expenses as defined in 6.01 attaching to such interest, from the date the Declaration is filed for record as to each Phase.

11.07. Tenant's Option to Purchase. All tenants will be offered an option, exercisable within not less than ninety (90) days after notice, to purchase a condominium ownership interest in the development, and such tenants will be given written notice of not less than one hundred twenty (120) days prior to being required to vacate the premises to facilitate the conversion.

ARTICLE XII

MISCELLANEOUS AND ADDITIONAL RULES

12.01. The making of changes or amendments in this Declaration or in the easements, restrictions and rights herein set forth, and the amendment (other than to make those of a technical nature not changing percentage of ownership as provided in 2.09), modification and revocation thereof, all pursuant to the powers to do so granted or reserved to the Association in and by this Declaration, shall be done only with the approval by affirmative vote of members entitled to vote not less than seventy-five percent (75%) of all the votes which the members of the Association shall be entitled to vote, subject to the limitation that such action shall not cause the property or any part thereof to be in non-compliance with any zoning ordinance or other applicable law or governmental regulation, nor shall such action change the percentage of ownership in the Commons by any Residential Unit, nor shall such action prejudice the rights or priority of any mortgagee without its consent. If any mortgagee objects to an amendment to the Declaration and/or the By-Laws, said amendment or modification shall nevertheless be valid among the unit owners, inter sese, provided that the rights of a non-consenting mortgagee shall not be derogated thereby. No provision of this Declaration or By-Laws attached hereto as Exhibit "D" may be changed, modified or rescinded, however, which, after such change, modification or rescission would conflict with the provisions of Chapter 5311, Ohio Revised Code (and to annex Phase Two as provided in 2.01 and 2.08).

12.02. Any action taken pursuant to Section 12.01 of this Article XII shall be evidenced by an appropriate written instrument issued by the Association and shall become and be effective as of such date as shall be designated in such instrument, but not earlier than the date upon which such instrument shall be filed for record in the Office of the Recorder of Montgomery County, Ohio.

12.03. The Association shall have, and is hereby granted, the power to adopt, amend, modify, otherwise alter and enforce additional rules and regulations bearing upon the use and the manner of occupancy and maintenance of the property, including either or both Common Areas and the Residential Units, or any part thereof, at any time and from time to time by action recommended by its Board of Managers, subject only to the limitations that any such action bearing upon Residential Units shall be applied uniformly to all Residential Units, and that such action shall not cause the property or any part thereof to be in non-compliance with any zoning ordinance or other applicable governmental law or regulation or any provision of this Declaration or the Articles of Incorporation of the Association.

12.04. The failure of the Association to seek redress for any violation, or to enforce any term or provisions of this Declaration or of any rule or regulation issued hereunder or pursuant hereto shall never be deemed a waiver of any such right of redress or enforcement, either as to any subsequent violation of a similar or other nature or as to any further continuation of any violation.

12.05. Any management, service or other contracts entered into between the Declarant (or any person, firm or corporation associated or affiliated with Declarant) and the Association at such time as persons appointed by Declarant as provided in the By-Laws constitute a majority of the members of the Board of Managers of the Association may be terminated by the Association upon sixty (60) days written notice to the other contracting party and notwithstanding any provision in any contract to the contrary, payment upon termination shall be only for the value received by the Association to the date of termination less payments theretofore made.

12.06. If all or any part of the Common Areas and Facilities shall be taken, injured or destroyed by the exercise of the power of eminent domain, such

unit owner and mortgagee shall be entitled to notice of such taking and to participate through the Association in the proceedings incident thereto. Any damages shall be for the taking, injury or destruction as a whole and shall be collected by the Association and distributed by it among the unit owners and among any mortgagees entitled thereto pursuant to the terms of their mortgages in proportion to each unit owner's interest in the Common Areas and Facilities except to the extent that the Association deems it necessary or appropriate to apply them to the repair or restoration of any such injury or destruction.

12.07. Each grantee or the 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 inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

12.08. 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.

If any of the privileges, covenants or rights created by this Declaration shall be unlawful or void for violating of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until the expiration of the longest period allowable by law.

12.09. So long as said Declarant owns one or more of the units established and described herein the Declarant shall be subject to the provisions of this Declaration and of Exhibits "D" and "E" attached hereto; and said Declarant covenants to take no action which would adversely affect the rights assigned to the Association by reason of the establishment of the condominium.

12.10. Neither Declarant nor its 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 "D" or in Declarant's capacity as developer, contractor, owner, manager or seller of the condominium property whether or not such claim (a) shall be asserted by any unit owner, occupant, the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) 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 of neglect of any unit owner, occupancy, the Association, and their respective agents, employees, guest, and 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 (heat, air conditioning, electricity, gas, water, sewage, etc.).

12.11. The heading to each article and to each section hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Declaration nor in any way affect this Declaration.

12.12. 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 quality residential condominium development.

IN WITNESS WHEREOF, this Declaration has been executed by OHIO MANAGEMENT AND CO., an Ohio General Partnership, by P. KEVIN FITZPATRICK, duly authorized Partner, as of this 10th day of April, 1980.

WITNESS:

[Signature]
[Illegible Name]

OHIO MANAGEMENT AND CO., an Ohio General Partnership

By: [Signature]
P. Kevin Fitzpatrick, Duly Authorized Partner

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

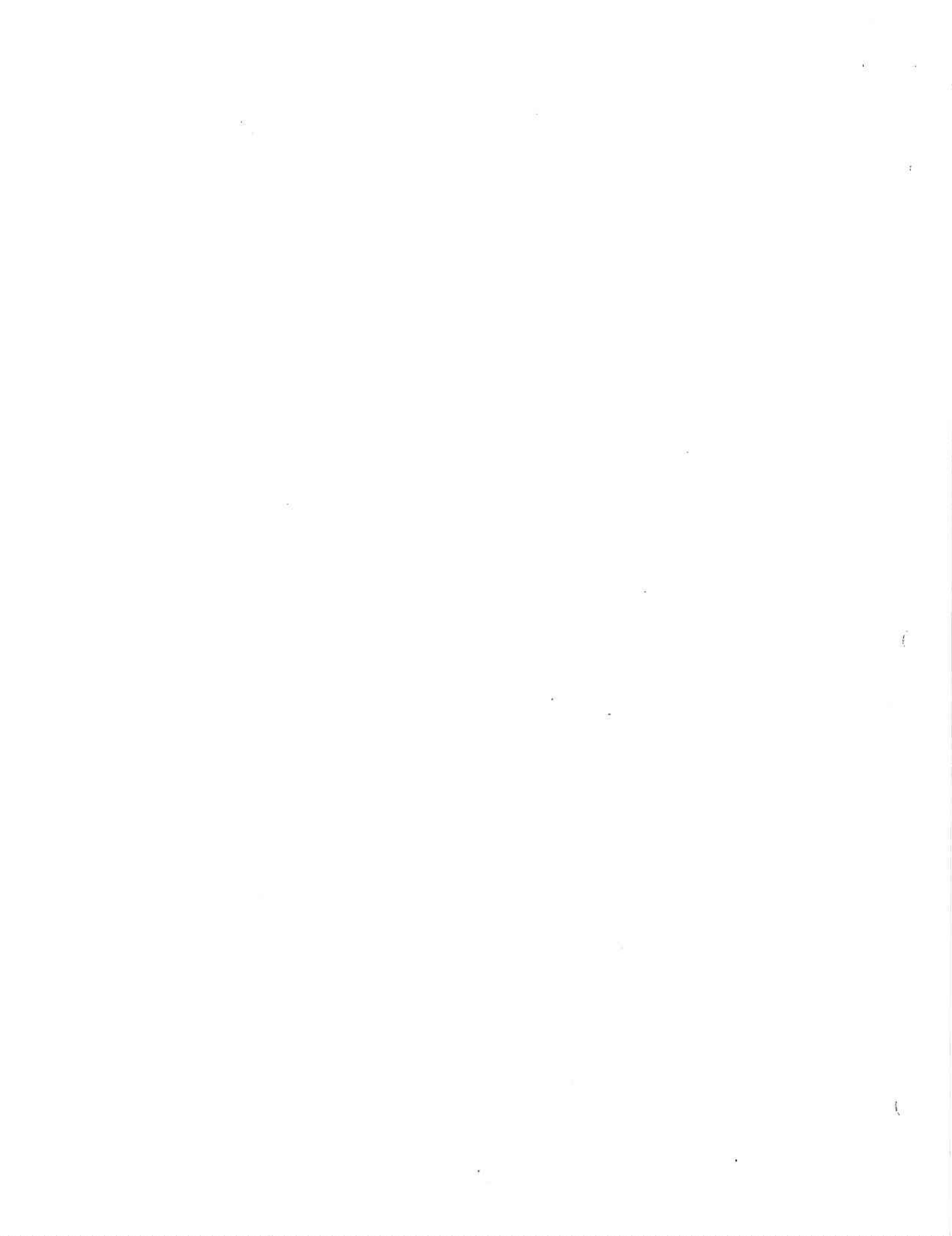
Before me, a Notary Public in and for said County, personally appeared P. Kevin Fitzpatrick, who acknowledged that he is one of the General Partners of Ohio Management and Co., and that he is duly authorized to execute this Declaration and sign on behalf of the Partnership.

[Signature]
Notary Public

HARRY G. EBELING, Attorney-at-Law
Notary Public - State of Ohio
My Commission has no expiration date
Section 147 D1 R. C.



THIS INSTRUMENT PREPARED BY HARRY G. EBELING, ATTORNEY AT LAW, DAYTON, OHIO



SCHEDULE OF EXHIBITS
INDIAN CREEK CONDOMINIUM
PHASE TWO

- A. Perimeter Survey Description of Entire Tract
- A-2 Perimeter Survey Description of Phase Two
- A-3 Survey Description of Access Easement to Phase Two
- B Site Plan for all Phases
- B-1 Site Plan showing Building, Commons, and Limited Commons with Doorway Access to Common Walks, and Driveways, Parking and Carports, Phase One
- B-2 Site Plan showing Buildings, Commons, and Limited Commons with Doorway Access to Common Walks, and Driveways, Parking and Carports, Phase Two
- B-3 Schematic Drawing of Access Easement to Phase Two
- C-1 to C-2 Drawings of Individual Residential Units - Showing Where Located by Building, floor elevations, address, Limited Commons, and Common Areas within Buildings, and types of units.
- C-3 Drawings of Individual Carport Units - Showing Where Located by Building, Common Areas for trash stations, and typical Carport Unit Floor Plan
- C-4 a to h Floor Plans, Typical Residential Units A-D, Right and Left Entry
- D By-Laws of Property Owners Association - Index
- E Articles of Incorporation of Property Owners Association
- F Schedule of Units in all Phases, Showing Unit Number, Type, Unit, Address and Undivided Interest in Commons as each Phase is added

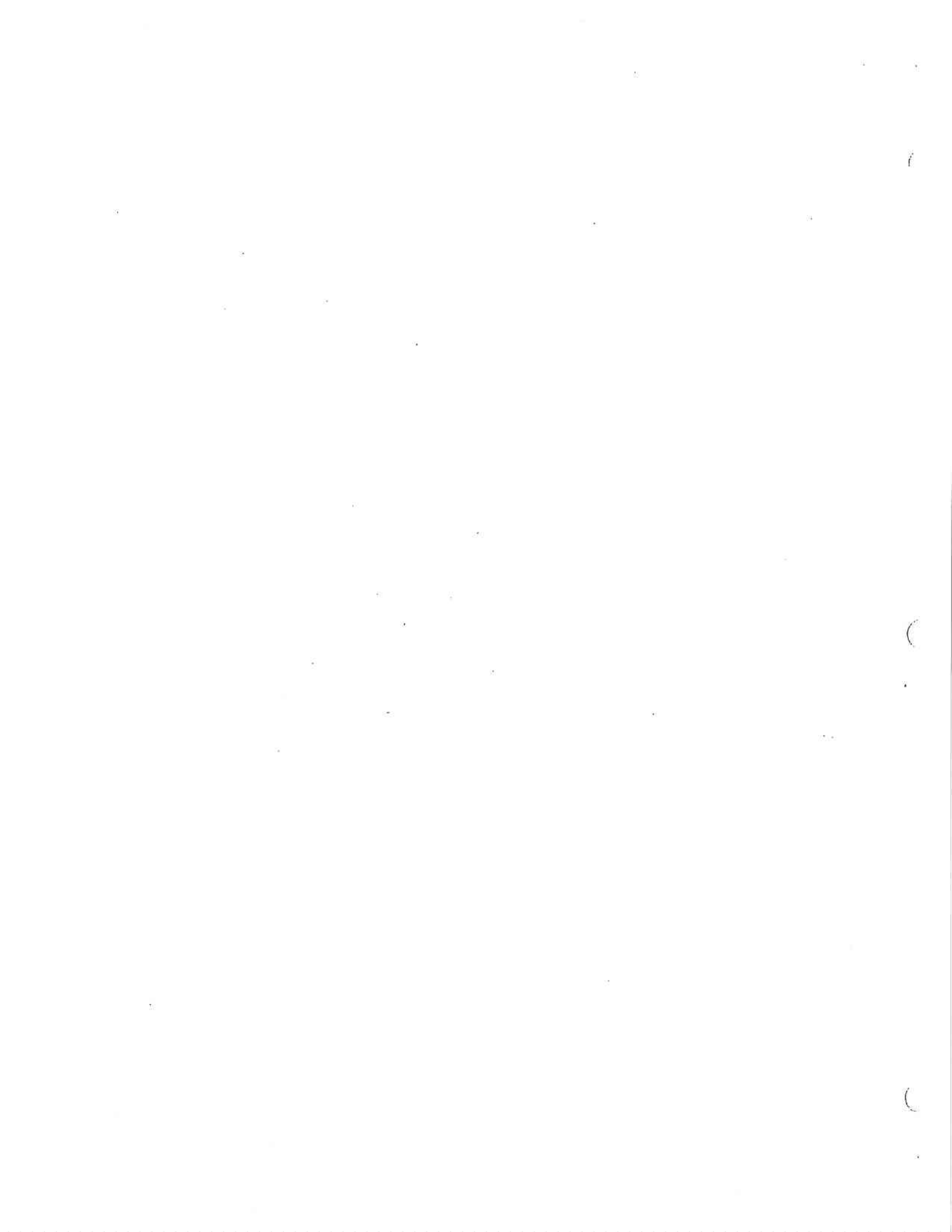


EXHIBIT A

Situated in the County of Montgomery, in the State of Ohio, and in the City of West Carrollton, and bounded and described as follows, to wit:

Being Lots numbered Three Thousand Six Hundred Forty (3640) and Three Thousand Six Hundred Forty-One (3641) of the consecutive numbers of lots on the revised plat of the City of West Carrollton, Ohio, as recorded in Plat Book "91", Pages 101 and 102, of the Plat Records of Montgomery County, Ohio.

John W. Judge Engineering Company

CONSULTANT ENGINEERING

1201 EAST DAVID ROAD DAYTON, OHIO 45429

Description of Land in Indian Creek, Section 1, West Carrollton, Ohio, to be conveyed by Indian Creek Apartments, Phase I

PARCEL 1 - Lot No. 3640

Situate in Sections 13 and 14, Town 1, Range 6 MRs, City of West Carrollton, Montgomery County, Ohio, and being lot numbered 3640, Indian Creek, Section One as recorded in Book 91, Pages 101 and 102 of the Montgomery County Plat Records and being a tract of land more particularly described as follows:

Beginning at an iron pin at the southeast corner of said Indian Creek, Section One, said point also being the northeast corner of Lot Number 3572, Imperial Gardens, Phase Four, as recorded in Book 89, Page 78 of the Plat Records of Montgomery County, Ohio; said point also being on the west right of way line of Interstate Route 75;

thence from said place of beginning with the south boundary of said Indian Creek, Section One N 82° 30' 30" W a distance of 886.27 feet to an iron pin on the easterly right of way line of Elm Street; thence with the east right of way line of Elm Street on the following bearings and distances:

N 54° 51' 20" W a distance of 37.74 feet to an iron pin; thence northwestwardly on a curve to the right having a radius of 240.00 feet an arc distance of 207.65 feet to a chiseled cross in concrete (the chord bearing of said curve being N 30° 04' 10" W and the chord being 201.23 feet); thence N 5° 17' 00" W a distance of 172.35 feet to an iron pin; thence northwardly on a curve to the left having a radius of 300.00 feet an arc distance of 44.39 feet to an iron pin (the chord bearing of said curve being N 9° 31' 21" W and the chord being 44.35 feet); thence northeastwardly on a curve to the right having a radius of 15.00 feet an arc distance of 21.41 feet to a chiseled cross in concrete on the southerly right of way line of Indian Trail (the chord bearing of said curve being N 27° 07' 54" E and the chord being 19.63 feet); thence with the south right of way line of Indian Trail on the following bearings and distances:

N 68° 01' 30" E a distance of 18.81 feet to a chiseled cross in concrete; thence northeastwardly on a curve to the left having a radius of 300.00 feet an arc distance of 268.44 feet to an iron pin (the chord bearing of said curve being N 42° 23' 27" E and the chord being 259.57 feet); thence northeastwardly on a curve to the right having a radius of 50.00 feet an arc distance

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... feet to a chiseled cross in concrete, said point being on the south right of way line of Cherokee Drive (the chord bearing of said curve being N 37° 49' 58" E and the chord being 35.96 feet); thence with the south right of way line of Cherokee Drive eastwardly on a compound curve to the right having a radius of 175.00 feet an arc distance of 160.65 feet to a chiseled cross in concrete (the chord bearing of said curve being N 85° 12' 27" E and the chord being 155.07 feet); thence with the easterly terminus of the dedicated Cherokee Drive N 21° 30' 21" E a distance of 50.00 feet to an iron pin at the southeast corner of a tract of land conveyed to Frank Furlong as recorded in Book 2530, Page 290 of the Deed Records of Montgomery County, Ohio; thence with the east boundary of said Furlong tract N 7° 30' 30" W a distance of 249.96 feet to an iron pin, said pin also being a corner of Indian Creek, Section Two as recorded in Book 99, Page 32 of the Plat Records of Montgomery County, Ohio; thence with the southerly boundary of said Indian Creek, Section Two on the following bearings and distances:

N 57° 59' 53" E a distance of 193.42 feet to an iron pin;
thence N 80° 01' 50" E a distance of 93.00 feet to an iron pin;
thence S 9° 58' 10" E a distance of 180.00 feet to an iron pin;
thence N 80° 01' 50" E a distance of 200.79 feet to an iron pin at the southeast corner of said Indian Creek, Section Two and a point on the west right of way line of Interstate Route 75; thence with the west right of way line of said Interstate Route 75, S 9° 58' 10" E a distance of 1070.96 feet to the place of beginning containing 18.191 acres, more or less, subject, however, to all legal highways and easements of record.

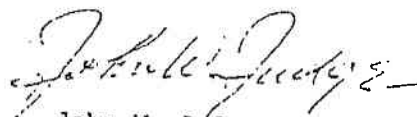
PARCEL 11 - Lot No. 3641

Situate in Section 13, Town 1, Range 6 MRS, City of West Carrollton, Montgomery County, Ohio and being lot numbered 3641, Indian Creek, Section One as recorded in Book 91, Pages 101 and 102 of the Montgomery County Plat Records and being a tract of land more particularly described as follows:

Starting at an iron pin at the southeast corner of said Indian Creek, Section One, said point also being the northeast corner of Lot No. 3572 of Imperial Gardens, Phase Four as recorded in Book 89, Page 78 of the Plat Records of Montgomery County, Ohio; said point also being on the west right of way line of Interstate Route 75; thence with the south boundary of said Indian Creek, Section One, N 82° 30' 30" W a distance of 1000.80 feet to a point on the west right of way line of Elm Street and the true place of beginning of this description;

thence from said true place of beginning N 82° 30' 30" W a distance of 71.86 feet to a point on the east right of way line of Indian Trail; thence northeastwardly with the east right of way line of said Indian Trail on a curve to the left having a radius of 310.00 feet an arc distance of 4.71 feet to a point (the chord bearing of said curve being N 37° 12' 30" E and the chord being 4.71 feet); thence N 36° 46' 47" E continuing with said right of way a distance of 27.60 feet to a point; thence eastwardly on a curve to the right having a radius of 15.00 feet an arc distance of 28.56 feet to a point on the west right of way line of Elm Street (the chord bearing of said curve being S 88° 40' 51" E and the chord being 24.44 feet); thence southeastwardly on a reverse curve to the left having a radius of 300.00 feet an arc distance of 44.26 feet to the place of beginning (the chord bearing of said curve being S 38° 22' 03" E and the chord being 44.21 feet) containing 0.035 acres, more or less, subject, however, to all legal easements of record.

Deed Reference: M.F. 72-28E05


John W. Judge
February 13, 1980

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John W. Judge Engineering Company

CONSULTANT ENGINEERING

1201 EAST DAVID ROAD DAYTON, OHIO 45429

Description of Land in Indian Creek
Condominium, Phase Two

PHASE TWO, PT. LOT NO. 3640

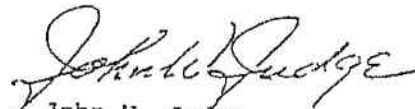
Situate in Sections 13 and 14, Town 1, Range 6 MRs, City of West Carrollton, Montgomery County, Ohio, and being part of lot numbered 3640, Indian Creek, Section One as recorded in Book 91, Pages 101 and 102 of the Montgomery County Plat Records and being a tract of land more particularly described as follows:

Beginning at a point on the easterly terminus of dedicated Cherokee Drive as recorded in Indian Creek, Section One, Book 91, Pages 101 and 102 of the Montgomery County Plat Records, said point of beginning being the southeast corner of a tract of land conveyed to Frank Furlong as recorded in Book 2530, Page 290 of the Deed Records of Montgomery County, Ohio, said Furlong tract also being Lot No. 2275 of the consecutive number of lots in the City of West Carrollton;

thence from said place of beginning with the east boundary of said Furlong tract N 7° 30' 30" W a distance of 249.96 feet to an iron pin, said pin also being a corner of Indian Creek, Section Two as recorded in Book 99, Page 32 of the Plat Records of Montgomery County, Ohio; thence with the southerly boundary of said Indian Creek, Section Two on the following bearings and distances:

N 57° 59' 53" E a distance of 193.42 feet to an iron pin;
thence N 80° 01' 50" E a distance of 93.00 feet to an iron pin;
thence S 9° 58' 10" E a distance of 180.00 feet to an iron pin;
thence N 80° 01' 50" E a distance of 200.79 feet to an iron pin
at the southeast corner of said Indian Creek, Section Two and a point on the west right of way line of said Interstate Route 75,
S 9° 58' 10" E a distance of 511.69 feet to a point; thence
N 62° 30' 45" W a distance of 69.20 feet to a point; thence
S 72° 29' 15" W a distance of 285.00 feet to a point; thence
N 22° 30' 44" W a distance of 226.00 feet to a point of curvature;
thence northwestwardly on a curve to the left having a radius of 220.00 feet an arc distance of 176.56 feet to a point on the said easterly terminus of Cherokee Drive (the chord bearing of said curve being N 45° 30' 11" W and the chord being 171.86 feet);
thence with the said easterly terminus of the dedicated Cherokee Drive N 21° 30' 21" E a distance of 5.00 feet to the place of beginning, containing 5.646 acres, more or less, subject, however, to all legal highways and easements of record.

Deed Reference: M.F. 80-65E06



John W. Judge
March 27, 1980

EXHIBIT A-2

- 80 175D03 -

John W. Judge Engineering Company

CONSULTANT ENGINEERING

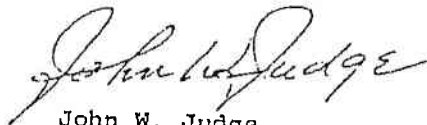
1201 EAST DAVID ROAD DAYTON, OHIO 45429
Description of a 40 Ft. Wide Access
Easement in Indian Creek Condominium
Phase One

PHASE ONE, PARCEL ONE, PT. LOT NO. 3640

Situate in Section 14, Town 1, Range 6 MRS, City of West Carrollton; Montgomery County, Ohio and being part of Lot numbered 3640, Indian Creek, Section One as recorded in Book 91, Pages 101 and 102 of the Montgomery County Plat Records and being a tract of land more particularly described as follows:

Beginning at a point on the easterly terminus of dedicated Cherokee Drive as recorded in Indian Creek, Section One, Book 91, Pages 101 and 102 of the Montgomery County Plat Records, being S 21° 30' 21" W a distance of 5.00 feet from the southeast corner of a tract of land conveyed to Frank Furlong as recorded in Book 2530, Page 290 of the Deed Records of Montgomery County, Ohio, said Furlong tract also being Lot No. 2275 of the consecutive number of lots in the City of West Carrollton;

thence from said place of beginning southeastwardly on a curve to the right having a radius of 220.00 feet an arc distance of 176.56 feet to a point (the chord bearing of said curve being S 45° 30' 11" E and the chord being 171.86 feet) thence S 22° 30' 44" E a distance of 226.00 feet to a point; thence S 72° 29' 15" W a distance of 40.15 feet to a point; thence N 22° 30' 44" W a distance of 222.50 feet to a point of curvature; thence northwestwardly on a curve to the left having a radius of 180.00 feet an arc distance of 144.45 feet to a point on the easterly terminus of the dedicated Cherokee Drive; thence N 21° 30' 21" E a distance of 40.00 feet to the place of beginning.



John W. Judge
March 27, 1980

CERTIFIED STATEMENT

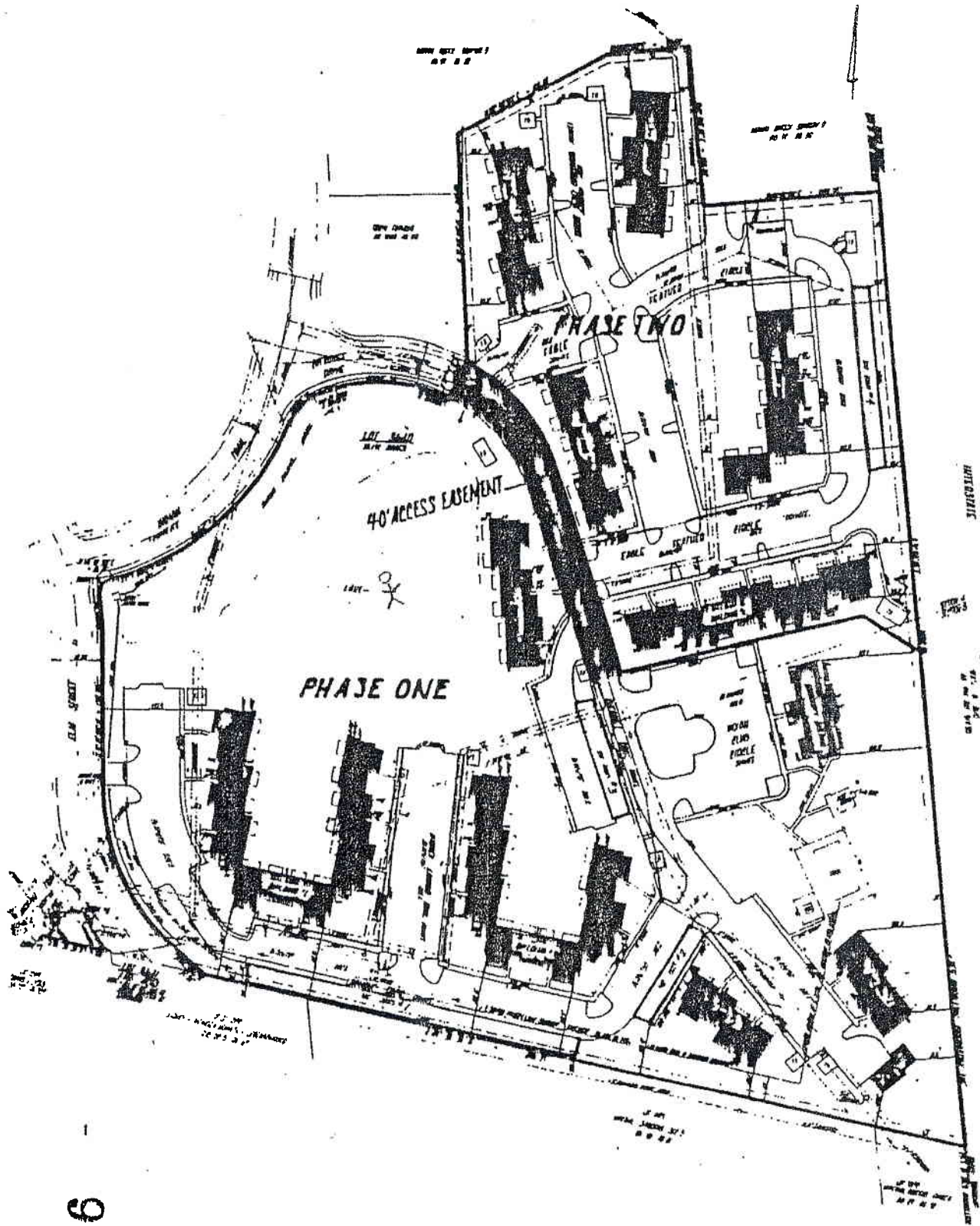
April 14, 1980

The below named Registered Engineer and Registered Surveyor under the laws of the State of Ohio, hereby certify that the drawings attached to the within Declaration for INDIAN CREEK CONDOMINIUM PHASE ONE shown as Exhibits B and C. show graphically all of the particulars of the buildings, the lay-out, location, designation and dimensions of each Residential and Carport Unit and common areas and facilities and limited common areas and facilities insofar as is graphically possible and that said graphic representation shows the buildings as constructed.


John W. Judge, Registered Engineer #20611


Thomas McDougall, Registered Surveyor #6588





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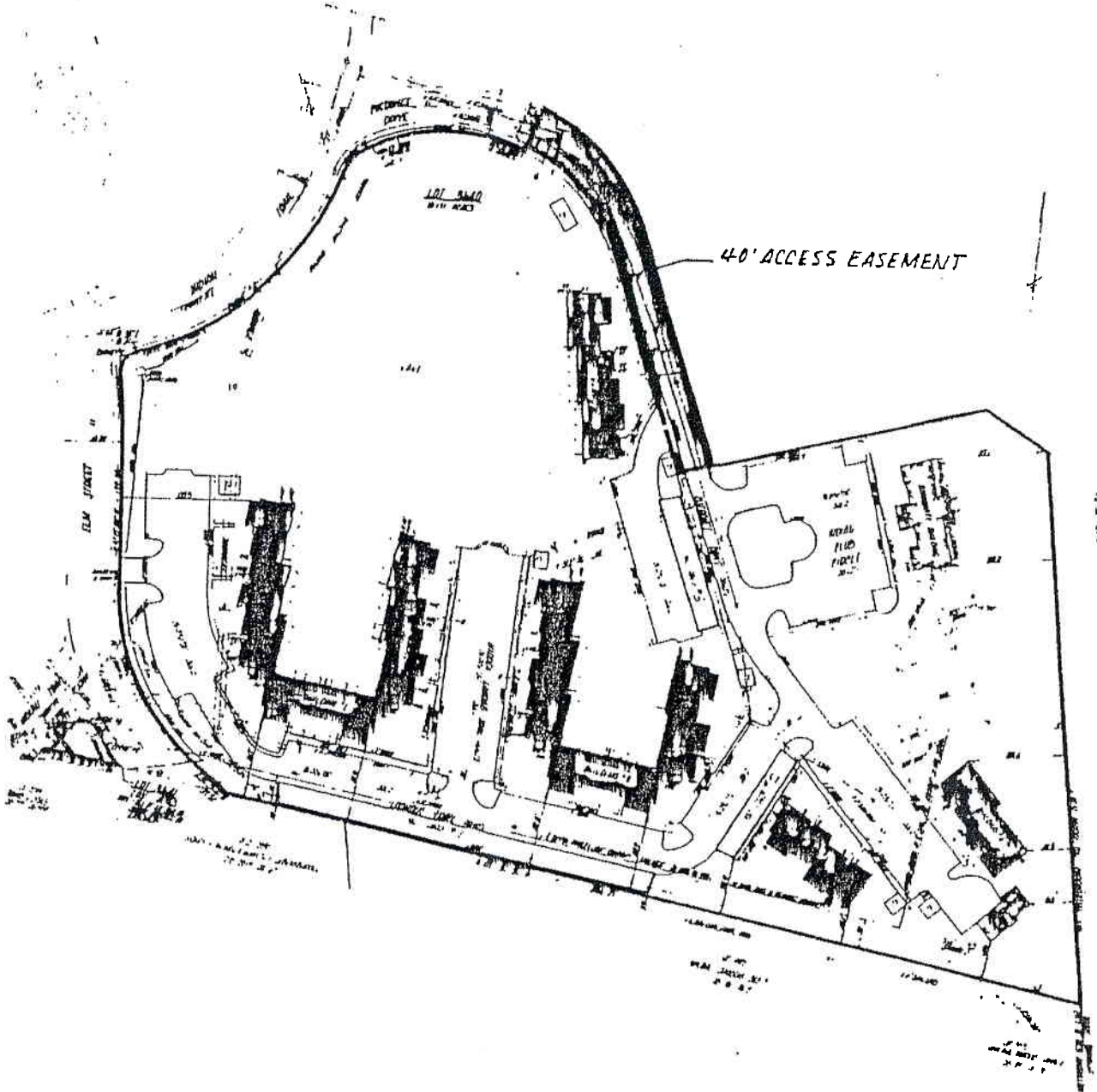


Indian Creek

CONDOMINIUM

21814, 17, 26 1975 - CITY OF WEST CARROLL TOWNSHIP - HARRISBURG OH - 45422

John W. Judge Engineering Co.
 1201 E. David Road
 KETTERING, OHIO 45429

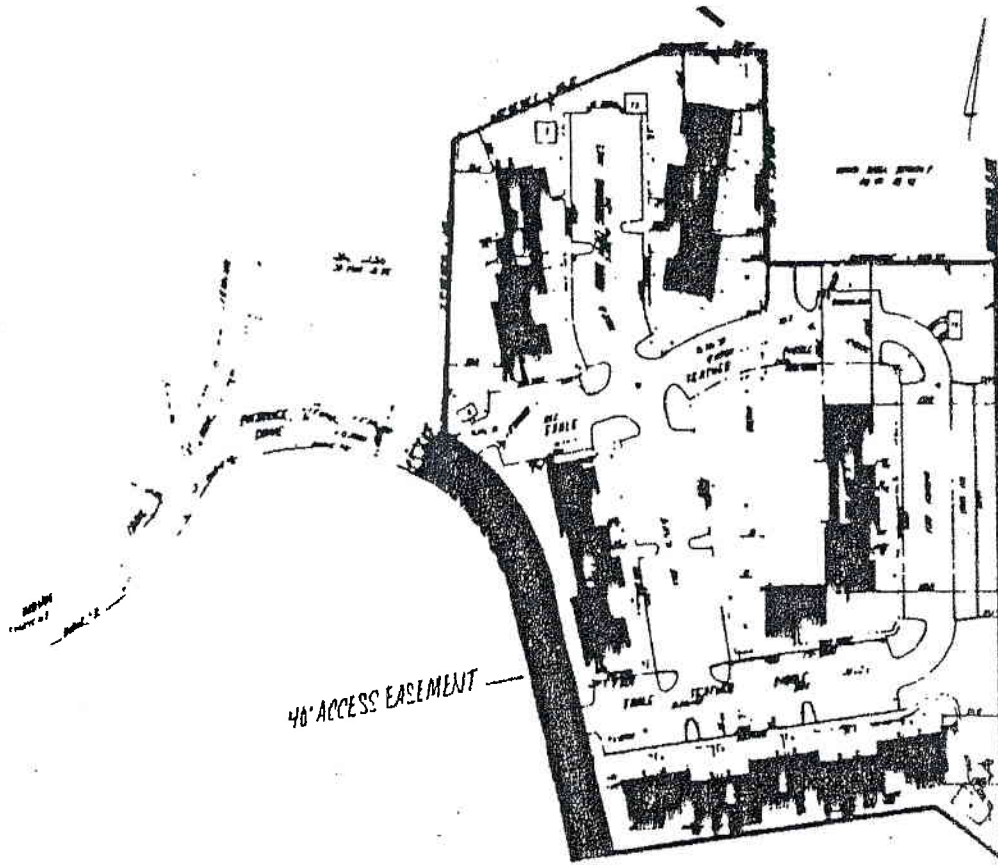


Indian Creek

CONDOMINIUM PHASE ONE

8 1/2 IN. 11.25 INCHES - CITY OF WEST CARROLL TOWNSHIP - MUNICIPALITY OF JESS

John W. Judge Engineering Co.
 1201 E. David Road
 KETTERING, OHIO 45429

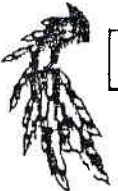
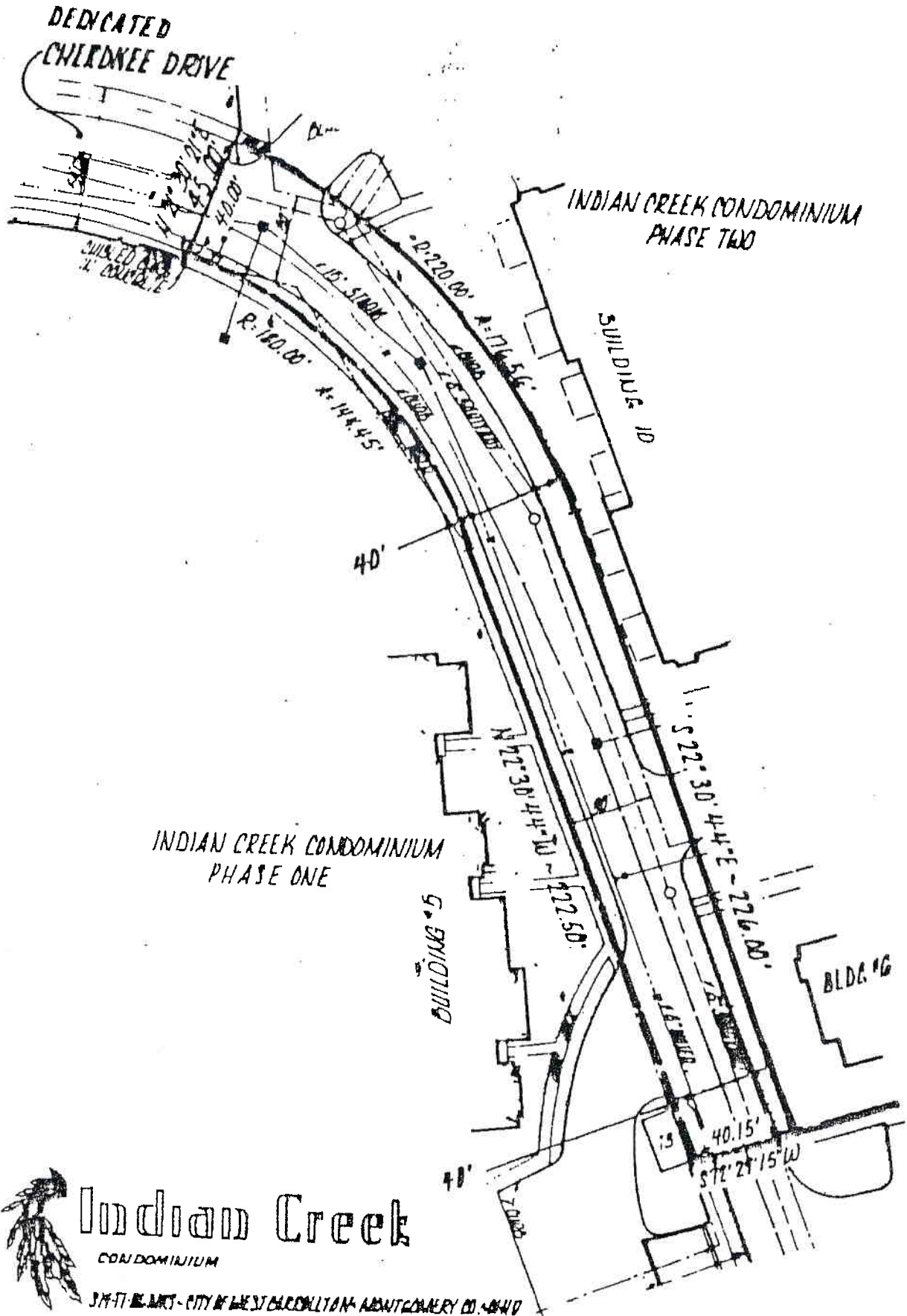


Indian Creek

CONDOMINIUM PHASE TWO

2017 AS, 71, 86 4000 - CITY OF WEST CHESTER, OHIO - ARCHITECTURE 01-2017

John W. Judge Engineering Co.
 1201 E. David Road
 KETTERING, OHIO 45429



Indian Creek

CONDOMINIUM

3/4-71-16-100-1 CITY OF WEST BUCKLEY OHIO MONTGOMERY CO. OHIO

DETAIL OF 40' WIDE
ACCESS EASEMENT

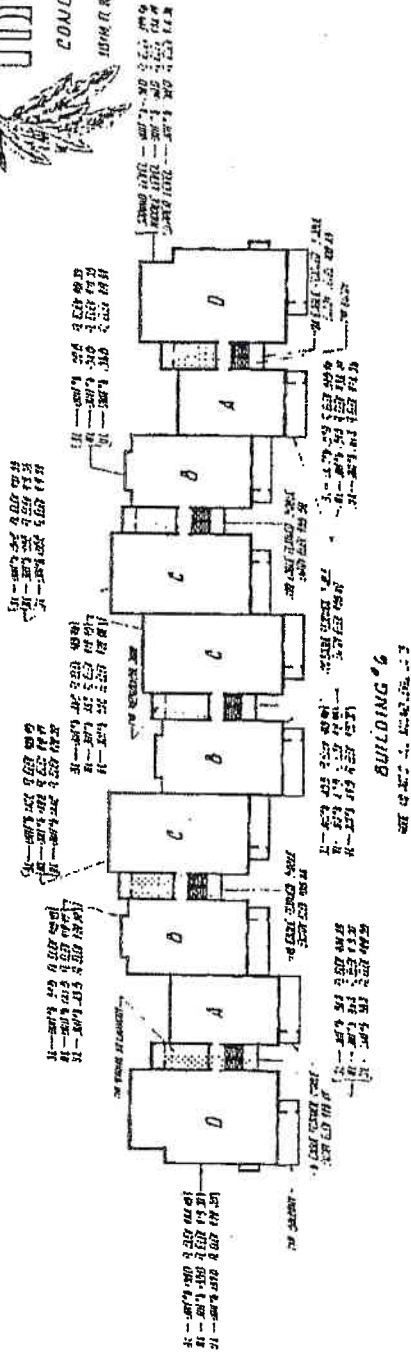
- 80 105 000

John W. Judge Engineering Co.
1201 E. David Road
KETTERING, OHIO 45429

EXHIBIT B-3

Indian Cree CONDOMINIUM PHASE TWO

1074 U.S. HIGHWAY 101, S.W. CORNER OF 10TH AVENUE AND 10TH STREET, S.W., CALGARY, ALBERTA T2C 1K5



- KEY TO UNIT NUMBERS
- A - 11' x 11'
 - B - 11' x 11'
 - C - 11' x 11'
 - D - 11' x 11'

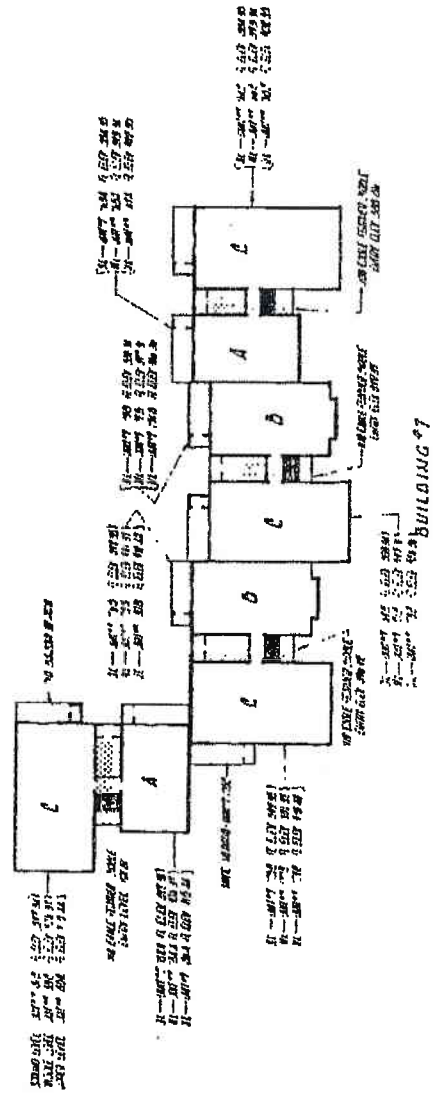
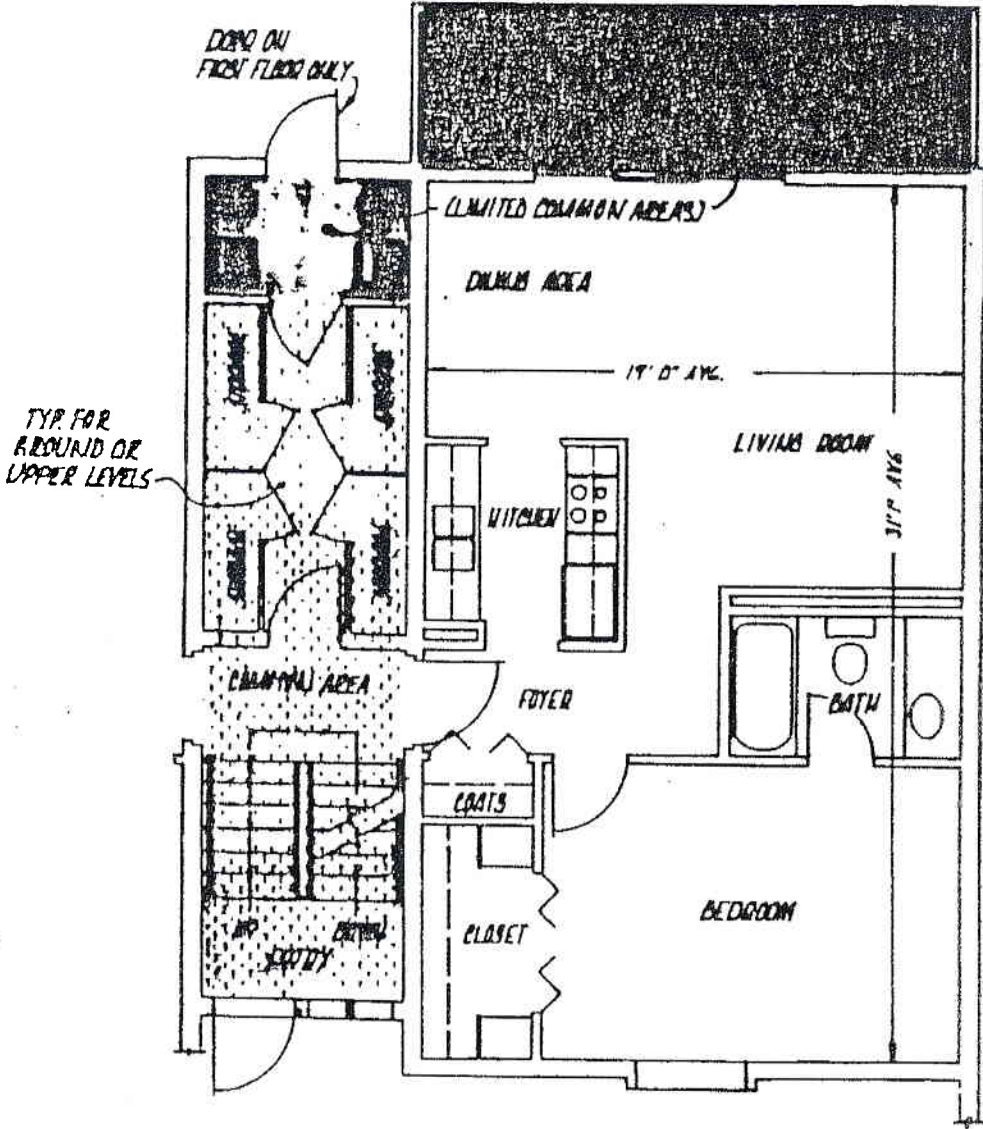


EXHIBIT C-1
UNIT LOCATIONS - BUILDINGS 6 & 7

Exhibit C-1



UNIT A - 1 BEDROOM (RIGHT)
590 SF

80 175D12

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

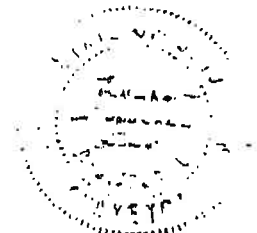
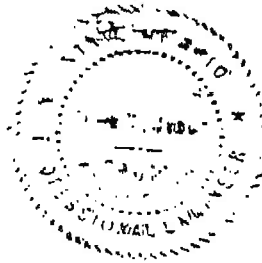
JOHN W. JUDGE ENGINEERING CO.

John W. Judge

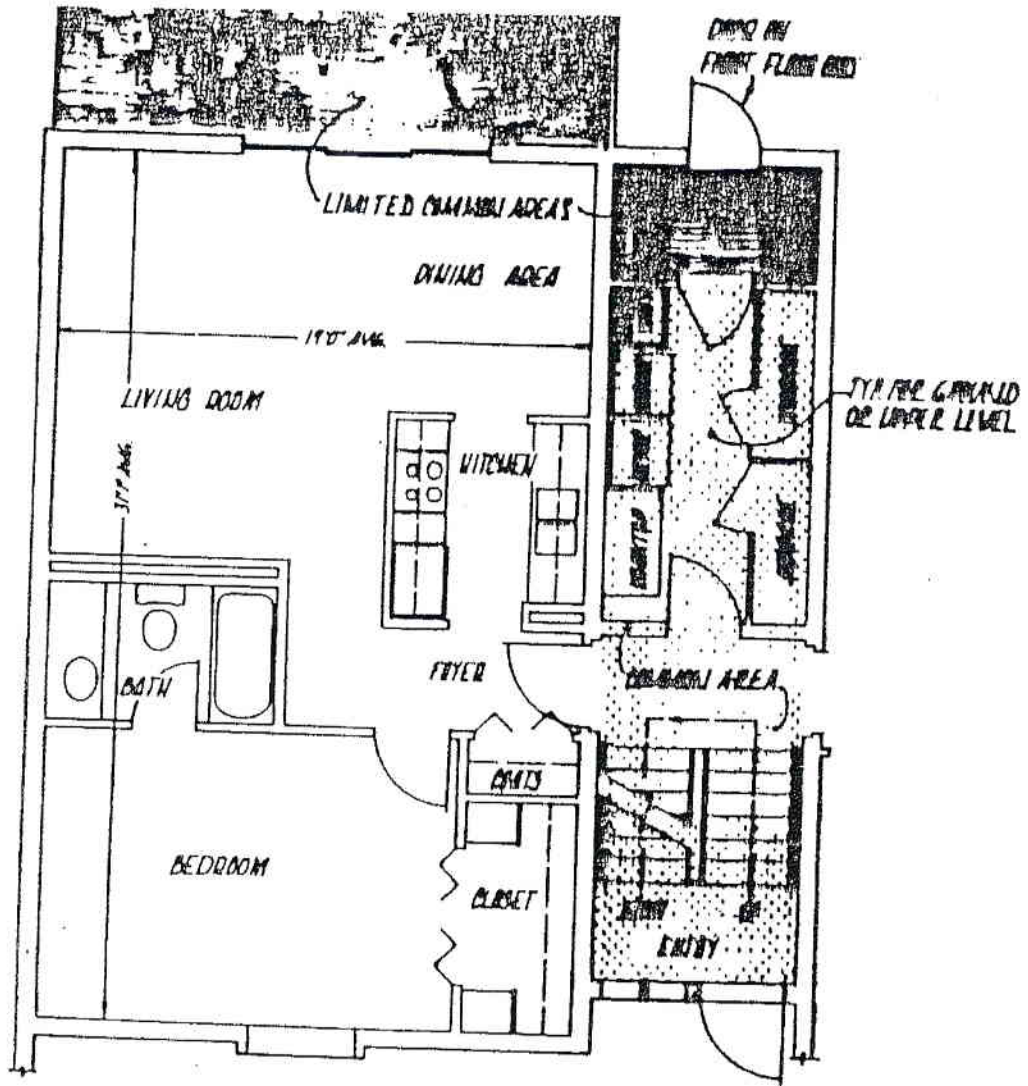
JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas McDougall

THOMAS MCDUGALL, REG. SURVEYOR # 6563



INDIAN CREEK CONDOMINIUM
EXHIBIT C-4a



UNIT A - 1 BEDROOM (LEFT)
590 S.F.

80 175E01 10E21 08

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

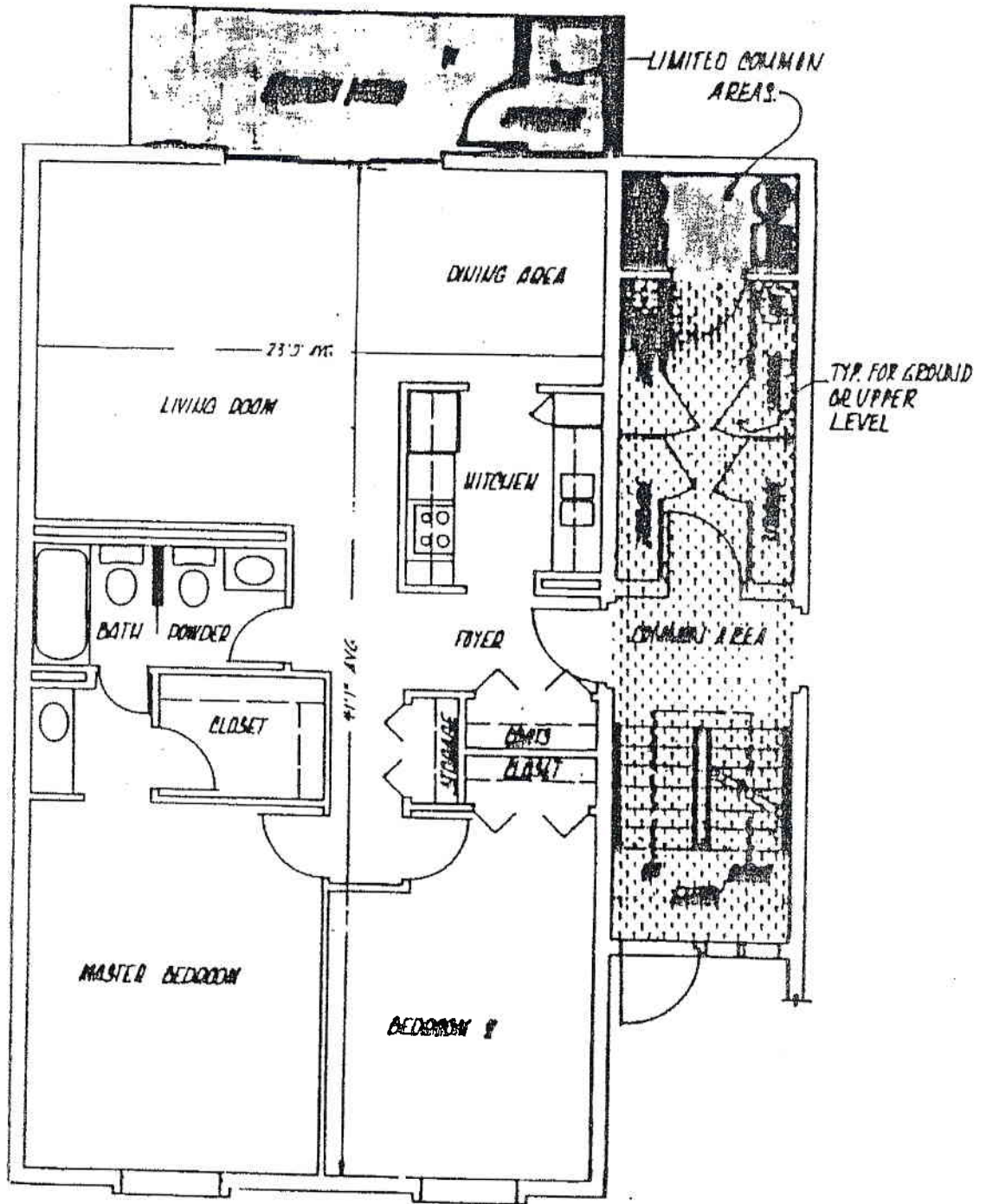
JOHN W. JUDGE ENGINEERING CO.

John W. Judge
JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas M. Dougall
THOMAS M. DOUGALL, REG. SURVEYOR # 6508



INDIAN CREEK CONDOMINIUM
EXHIBIT C-4b



UNIT C - 2 BEDROOM (LEFT)
945 SF

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

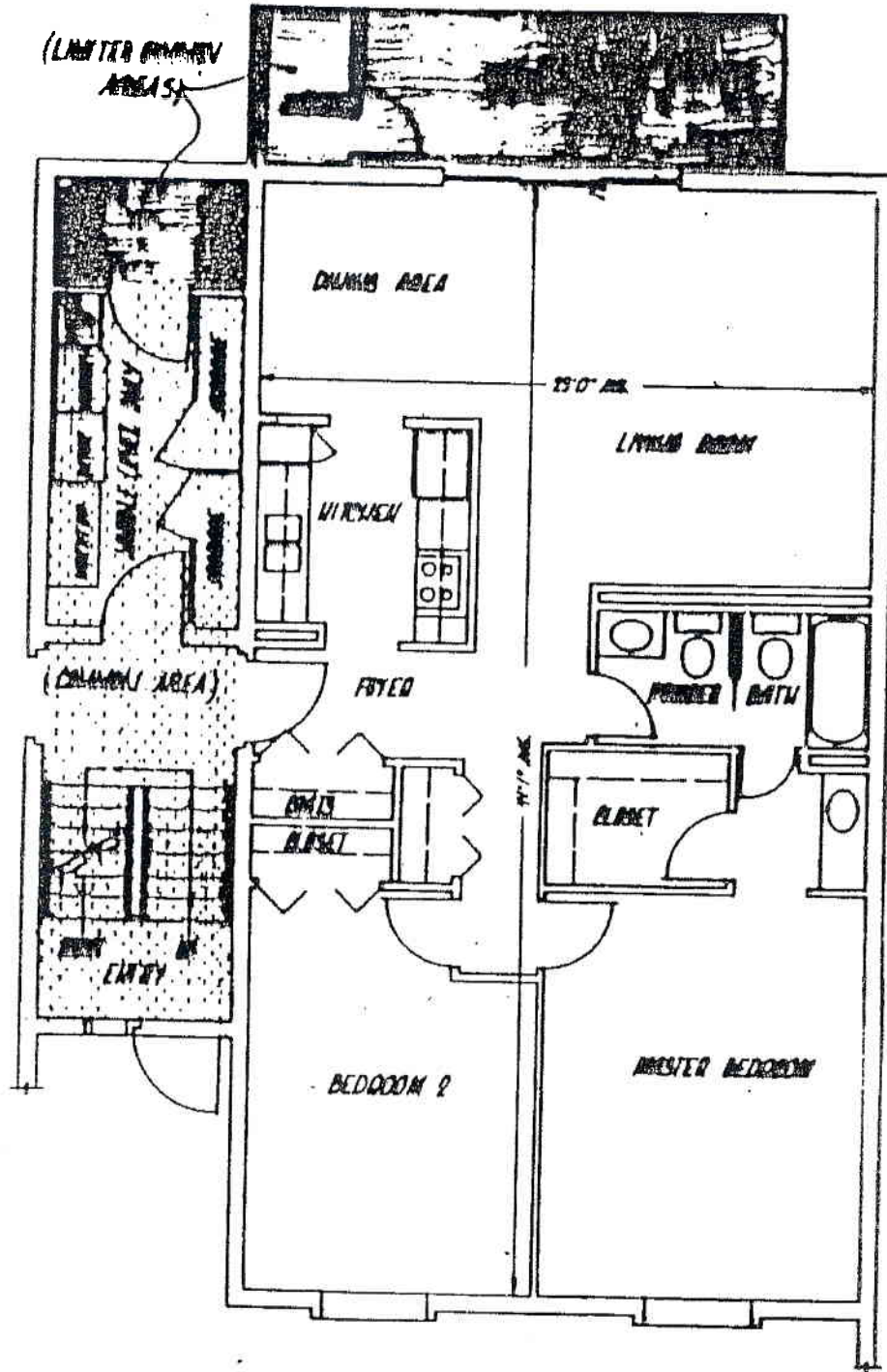
JOHN W. JUDGE ENGINEERING CO.

John W. Judge
JOHN W. JUDGE, REG. ENGINEER # 20611



INDIAN CREEK CONDOMINIUM
EXHIBIT C-4B

30 175E05



UNIT C - 2 BEDROOM (RIGHTS)

945 S.F.

80 175E04

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

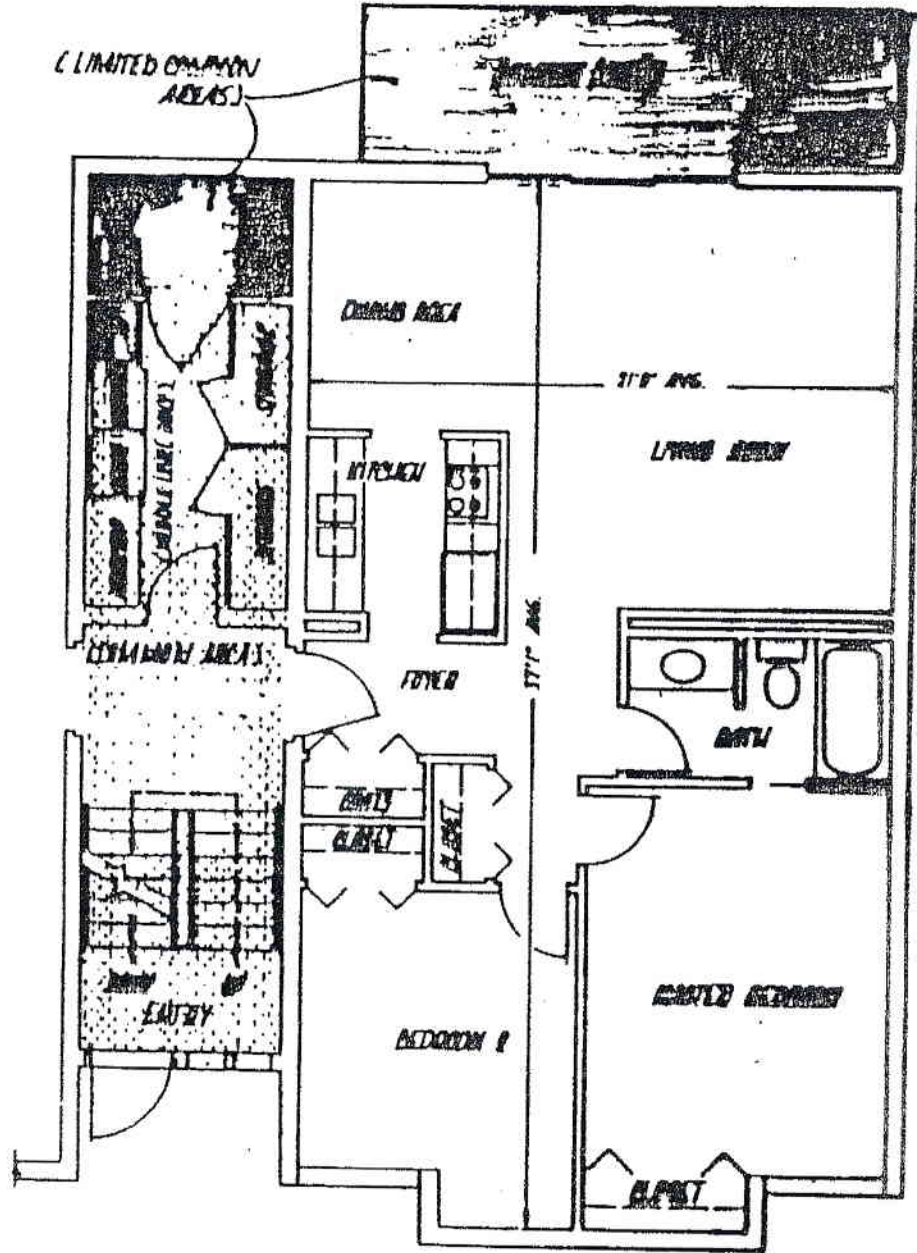
JOHN W. JUDGE ENGINEERING CO.

John W. Judge
 JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas McDougall
 THOMAS MCDUGALL, REG. SURVEYOR # 6588



INDIAN CREEK CONDOMINIUM
 EXHIBIT C-4e



UNIT B - 2 BEDROOM (RIGHT)
779 S.F.

80 175E02

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

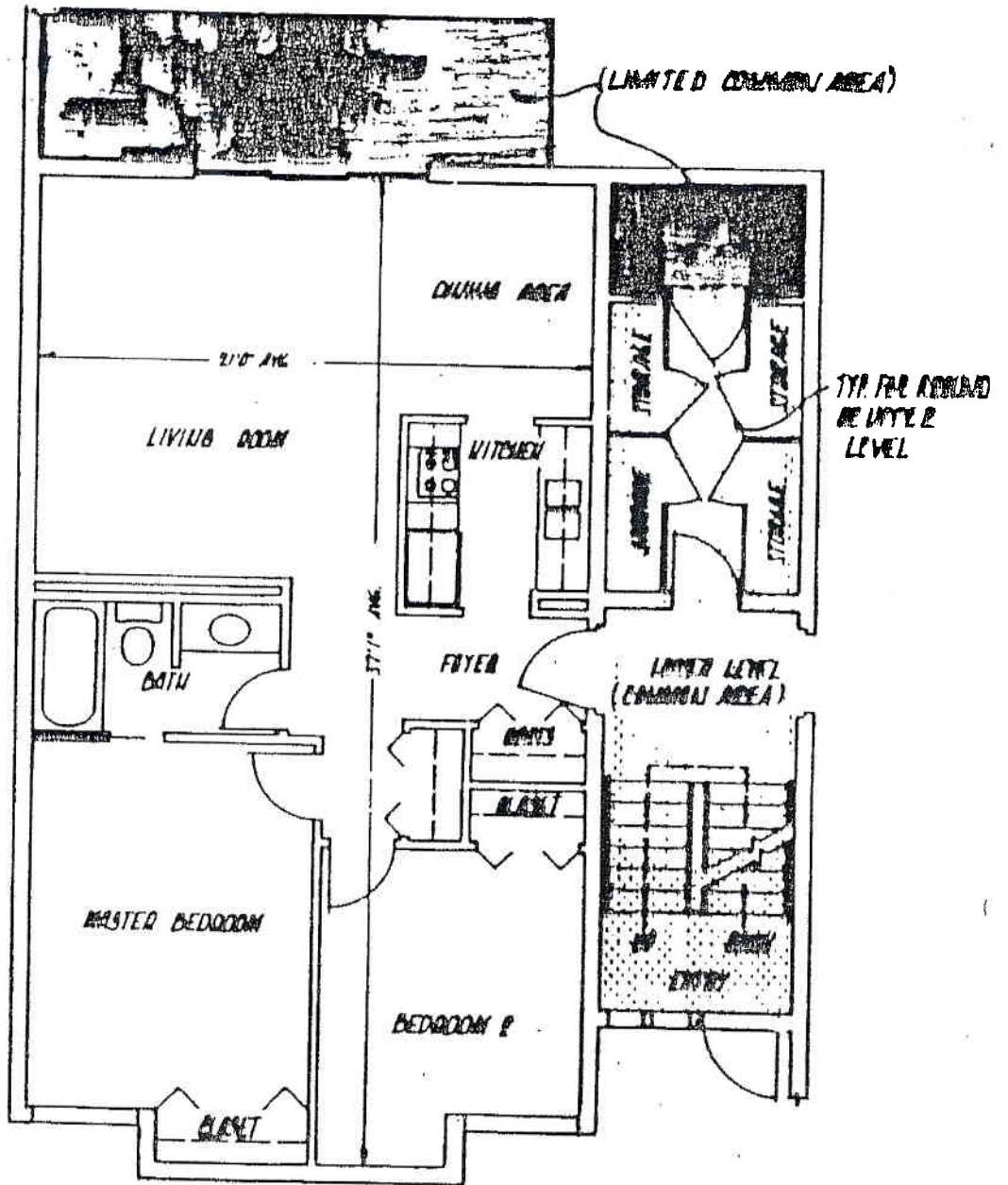
JOHN W. JUDGE ENGINEERING CO.

John W. Judge
JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas M. Dougall
THOMAS M. DOUGALL, REG. SURVEYOR # 6588



INDIAN CREEK CONDOMINIUM
EXHIBIT C-4c



UNIT D - 2 BEDROOM (LEFT)
779 S.F.

80 175E03

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

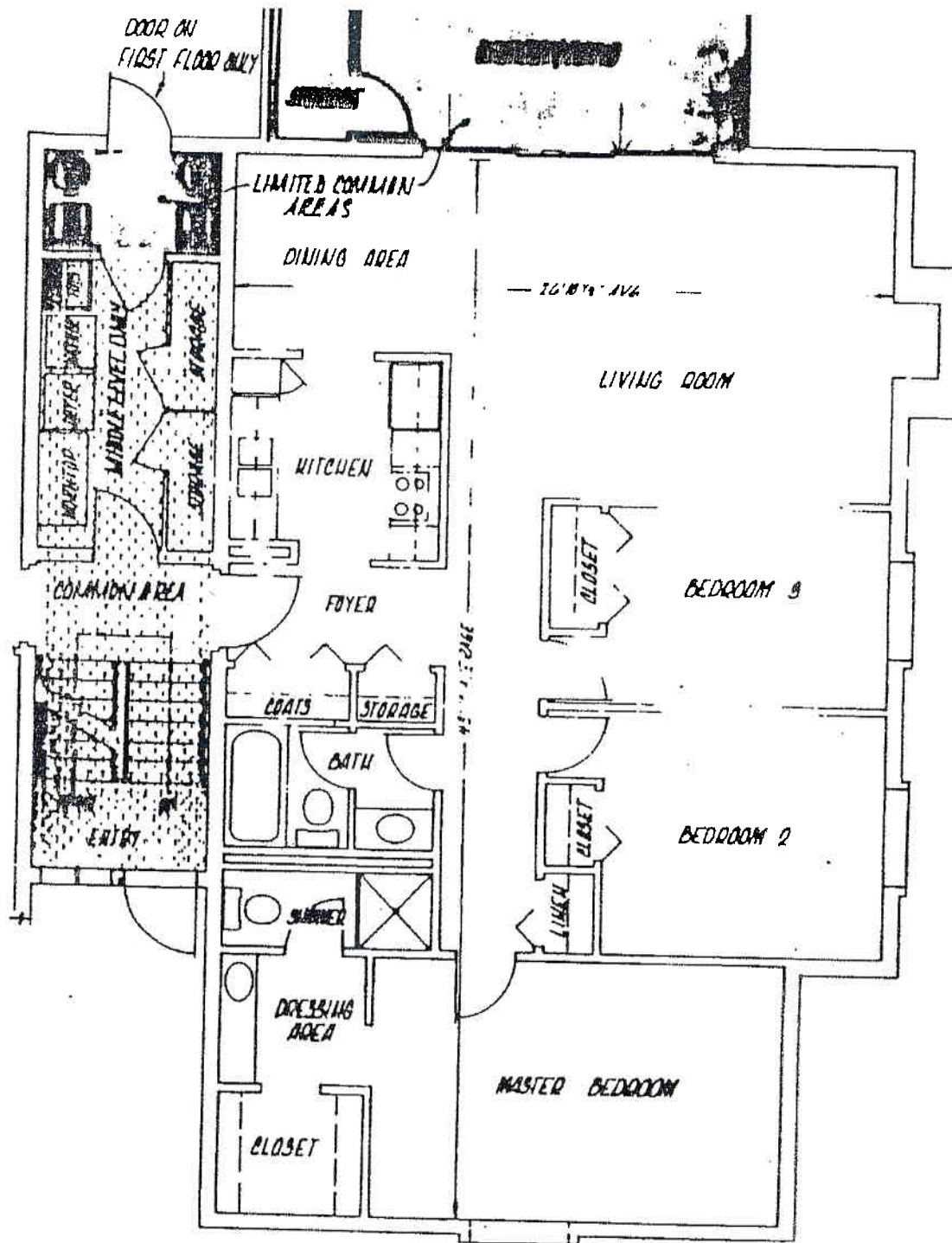
JOHN W. JUDGE ENGINEERING CO.

John W. Judge
JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas M. Dougall
THOMAS M. DOUGALL, REG. SURVEYOR # 6588



INDIAN CREEK CONDOMINIUM
EXHIBIT C-4d



UNIT D - 3 BEDROOM (RIGHT)

1157 S.F.

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

JOHN W. JUDGE ENGINEERING CO.

John W. Judge

JOHN W. JUDGE, P.E., ENGINEER # 20611

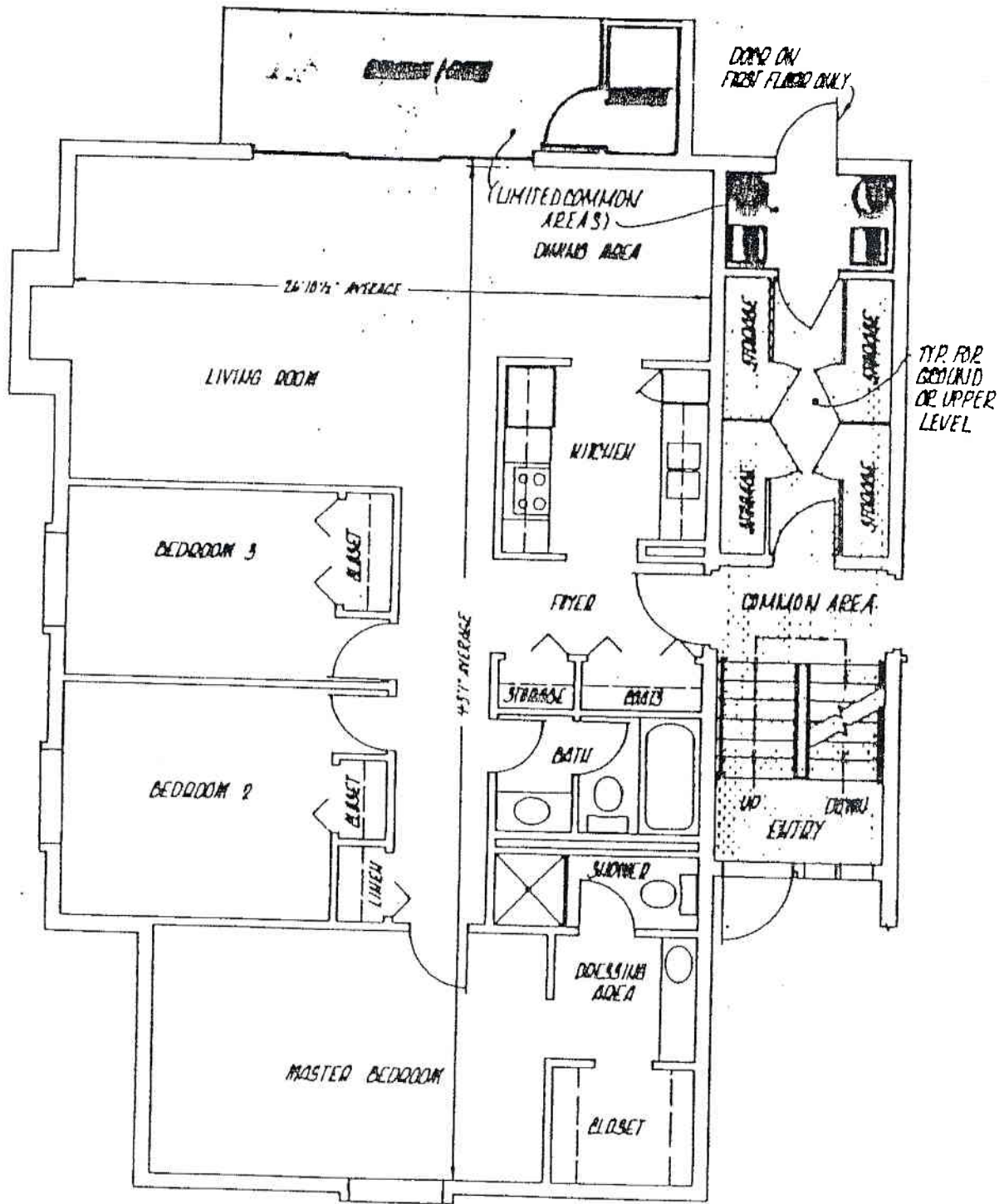
Thomas M. Drueggell

THOMAS MCDONNELL, P.E., CIVIL ENGINEER # 1008



**INDIAN CREEK CONDOMINIUM
EXHIBIT C-49**

80 175E06



UNIT D - 3 BEDROOM (LEFT)

1157 SF

I CERTIFY THAT THIS DRAWING SHOWS GRAPHICALLY THE LAYOUT AND DIMENSIONS OF THE UNIT AS CONSTRUCTED.

JOHN W. JUDGE ENGINEERING CO.

John W. Judge
 JOHN W. JUDGE, REG. ENGINEER # 20611

Thomas M. Doucett



INDIAN CREEK CONDOMINIUM
 EXHIBIT C-4A

INDEX TO BY-LAWS
INDIAN CREEK CONDOMINIUM
PROPERTY OWNERS ASSOCIATION

- I. Definitions
 - 1. Association
 - 2. Declaration
 - 3. Property
 - 4. Common Area & Facilities
- II. Location
- III. Membership, Classes of Membership, Voting and Other Rights
- IV. Board of Managers
 - 1. Action prior to Organizational Meeting
 - 2. Creation and Election
 - 3. Powers
 - 4. Duties
 - 5. Compensation
- V. Managers Meetings
 - 1. Annual
 - 2. Special
 - 3. Conduct of Business
- VI. Members Meetings
 - 1. Regular
 - 2. Special
 - 3. Notice
 - 4. Conduct of Business
- VII. Officers
 - 1. Titles
 - 2. Appointment
 - 3. Term
 - 4. Duties
- VIII. The Business Management
 - 1. Contracts
 - 2. Loans
 - 3. Checks
 - 4. Deposits
 - 5. Books & Papers
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ASSOCIATION

* * * * *

BY-LAWS

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to INDIAN CREEK CONDOMINIUM PROPERTY OWNERS ASSOCIATION, a non-profit corporation organized and existing under the laws of the State of Ohio.

Section 2. "Declaration" shall mean and refer to INDIAN CREEK CONDOMINIUM Declaration of Covenants, Conditions and Restrictions of ownership recorded in the Deed Records of Montgomery County, Ohio, to which these By-Laws are attached and incorporated as an Exhibit.

Section 3. "Property" shall mean and refer to land located in the City of West Carrollton, County of Montgomery, State of Ohio, more particularly described on Exhibit A, Indian Creek Condominium.

Section 4. "Common Areas and Facilities" shall mean and refer to all properties owned or maintained by the Association for the common benefit and enjoyment of the residents within the Property, including but not limited to the Commons and Limited Commons referred to and established by the Declaration and including specifically the Club House, Swimming Pool, Lake, and any recreation areas.

ARTICLE II

Location

The principal office of the Association shall be located at:

5 Indian Club Circle
Dayton, Ohio 45449
(City of West Carrollton)

ARTICLE III

Membership, Classes of Membership, Voting and Other Rights

All Owners of Units are members of the Association, whose voting rights and property rights are set forth in the Association's Articles of Incorporation, the Declaration, and these By-Laws.

There are two classes of members, Residential Unit Owners and Carport Unit Owners. All matters affecting the maintenance, repair, replacement, assessment, and rules concerning use and occupancy of Carports not in conflict with general rules for conduct adopted by the Board of Managers shall be voted on by Carport Owner Members only. All other matters concerning the Condominium not affecting the Carport Units exclusively, shall be voted on by Residential Unit Members only.

The members entitled to vote on the membership on the Board of Managers are Residential Unit Owners only.

ARTICLE IV

Board of Managers

Section 1. Action prior to Organizational Meeting.

Prior to the First meeting of the Association at which the Board of Managers shall be elected, the Declarant shall appoint and remove all members of the Board of Managers and exercise the powers and responsibilities of the Association. This authority shall extend for a period of five years or until thirty (3) days after 50% of the ownership of the undivided interest in the Commons are sold, whichever is earlier.