

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

FOX WAY COMMONS

THIS DECLARATION, made this 5th day of December, 1994 by South Side Local Development Company (hereinafter referred to as the "Grantor");

WITNESSETH:

WHEREAS, Grantor is the owner of all the parcels of real property in the City of Pittsburgh, Pennsylvania, described in Exhibit "A" attached; and

WHEREAS, the Grantor desires to create in the real property a planned community to be known as Fox Way Commons of high environmental quality, respecting existing natural amenities, in accordance with the Fox Way Commons Standards (as hereinafter defined); and

WHEREAS, the Grantor intends to develop Fox Way Commons in two phases, the first of which is depicted on Exhibit "A" as Development Area I and the second of which is depicted on Exhibit "A" as Development Area II.

WHEREAS, the Grantor desires to provide for the preservation and enhancement of the property values and amenities in said community and for the maintenance of Fox Way Commons and the improvements included therein, and to this end, intends to subject the real property to the covenants, restriction, conditions and

reservations hereinafter set forth, each and all of which are for the benefit of said real property and the owners thereof, and;

WHEREAS, the Grantor has deemed it desirable for the efficient preservation of the values and amenities of Fox Way Commons to create a corporation to which will be delegated and assigned the powers of owning, maintaining and administering the "Common Areas" (as hereinafter defined) and enforcing the covenants and restrictions herein set forth and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, Fox Way Commons Association (hereinafter referred to FWCA) is a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania for the purpose of exercising the functions described in the foregoing paragraph;

NOW, THEREFORE, the Grantor declares that Development Area I as herein defined, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions and reservations (sometimes hereinafter referred to as the "covenants and restrictions") hereinafter set forth and reserves the right to develop and to subject Development Area II to the covenants and restrictions:

ARTICLE I
DEFINITIONS

Section 1.1 "Association" or FWCA shall mean and refer to Fox Way Commons Association, a Pennsylvania nonprofit corporation, its successors and assigns.

Section 1.2 "Board of Directors: shall mean the then duly constituted Board of Directors of FWCA.

Section 1.3 "By-Laws" shall mean and refer to the By-Laws of the Association.

Section 1.4 "Common Areas" shall mean and refer to those areas of land described in Exhibit "B" hereto located within the Development Area I and Development Area II which may hereafter be conveyed to FWCA, together with the improvements thereon, which are intended to be devoted to the common use and enjoyment of all the "Members" as that term is hereinafter defined.

Section 1.5 "Declaration" shall mean this entire document and all of the provisions hereof, as the same may be amended from time to time.

Section 1.6 "Development Area I" shall mean the land described in Exhibit "A" hereto, together with all right, title and interest of Grantor from each property line to the center of all abutting streets and alleys.

Section 1.7 "Development Area II" shall mean the land described in Exhibit "A" hereto, together with all right, title and

interest of Grantor from each property line to the center of all abutting streets and alleys.

Section 1.8 "Dwelling Unit, Single-Family Dwelling, Two-Family Dwelling, and Multiple-Family Dwelling" shall be defined as set forth in Chapter 903.02 (d) of the Revised Code of the City of Pittsburgh (1980), as from time to time amended and shall refer to structures or any part of a structure, located in the Fox Way Commons Development Area.

Section 1.9 "Family" shall be defined as set forth in Chapter 903.02 (f) of the revised Code of the City of Pittsburgh (1980), as from time to time amended.

Section 1.10 "Grantor" shall mean South Side Local Development Corporation.

Section 1.11 "Landscape Maintenance Areas" shall mean and refer to those areas of land located within Development Area I and Development Area II which consist of the Common Areas and the public sidewalks abutting the Development Areas.

Section 1.12 "Member" shall mean each owner of real property.

Section 1.13 "Owner" shall mean and refer to each record owner of real property which has been subjected to the provisions of the Declaration, whether one or more persons or entities, including any unimproved property, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.14 "Parking Areas" shall mean and refer to those areas of land described in Exhibit "C" hereto located within Development Area I and Development area II which are designated as Parking Areas.

Section 1.15 "Voting Member" shall mean each Member who is an Owner who has made at least one payment of assessment pursuant to section 5.3 and is current in such payments. When more than one person resides within the same Dwelling Unit, all of such persons shall be considered one Voting Member for the purposes hereof and the vote to which such Voting Member is entitled shall be exercised in accordance with these covenants and restrictions and the By-Laws of the Association.

Section 1.16 "Fox Way Commons Association Standards" shall mean the Use, Construction and Restoration Standards for Development Area I and Development Area II which are attached as Exhibit "E".

ARTICLE II

PROPERTY SUBJECT

TO THIS DECLARATION

Section 2.1 The Property. Immediately after the recording hereof by the Grantor, the real property located in the City of Pittsburgh, Pennsylvania and herein defined as Development Area I is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Grantor in its sole discretion shall

have the right but not the obligation to subject Development Area II to this Declaration. In the event the Grantor does not subject Development Area II to this Declaration, the provisions hereof shall not apply to Development Area II. Grantor shall have the right to own, convey, develop or manage Development Area II in its sole discretion and neither Fox Way Commons Associates or any of the Owners shall have any rights, title or interest in Development Area II.

ARTICLE III

FOX WAY ASSOCIATES

Section 3.1 Incorporation of Association. Fox Way Commons Associates ("FWCA") has been incorporated under Pennsylvania General Nonprofit Corporation Law.

Section 3.2 Board of Directors. The Board of Directors shall manage and direct the business of the Association except as otherwise specifically provided by this Declaration or the By-Laws.

Section 3.3 Election of Board of Directors. The initial Board of Directors will be appointed by the Grantor. Other than directors serving on the first Board of Directors, there shall be elected no less than three (3) or more than seven (7) directors ("Directors"). Voting Members shall be entitled to elect the Directors. Except for the Directors appointed by the Grantor, all Directors must reside within the Development Area and be a Voting Member. Except as herein stated, the Board of Directors shall be

elected in the manner and serve such terms as are provided in the By-Laws.

Section 3.4 Votes of Voting Members. The Grantor shall be entitled to one vote for each Dwelling Unit or unimproved lot it owns in Development Area I and Development Area II. Each Voting Member other than the Grantor shall be entitled to one vote for each Dwelling Unit owned by such Voting Member.

Section 3.5 General Powers and Duties of the Association.

a. The Association shall:

(i) set the amount of the General Annual Assessments;

(ii) collect and disburse assessments for the purposes herein provided; and

(iii) prepare an annual operating budget and an annual financial report, available to Members.

b. As funds are available, the Association shall:

(i) maintain and repair the Landscape Maintenance Areas by providing services including, but not limited to grass cutting, weeding, tree trimming, tree replacement, shrub trimming, shrub replacement, spray treatments for grass, shrubs and trees, street lighting; and

(ii) maintain, repair and administer the Parking Areas; and

(iii) maintain and administer Common Areas which are owned by the Association.

c. At its discretion, the Association may:

(i) determine priorities for the expenditure of available funds;

(ii) enforce these covenants and restrictions;

(iii) provide for security, such as but not limited to: guards, and/or patrolmen;

(iv) provide for general services such as but not limited to snow removal, bulk trash removal, street lighting, and special landscaping or improvements in Common Areas, the Landscaping Maintenance Areas, the Parking Areas, and public rights-of-way located within Fox Way Commons

(v) undertake any other actions deemed necessary or appropriate to promote the recreation, health, safety and welfare, and enhance the environment, of the residents of Fox Way Commons; and

(vi) purchase liability and property insurance for the Common Areas; and

(vii) employ or contract with third parties for the performance of any of the duties to be performed or services to be provided by the Association.

(viii) provide landscape maintenance and other general services for the benefit of the individual Owners at the sole costs of each such individual Owner.

ARTICLE IV

COMMON AREAS AND PARKING AREAS

Section 4.1 Obligations of the Association. The Association, subject to the rights and obligations of the Members set forth in this Declaration, as it may be amended and/or supplemented from time to time, or as set forth in any deed, shall have the right to and shall be responsible for the exclusive management and control of the Common Areas and Parking Areas owned by the Association and all improvements thereon together with the fixtures, equipment and other personal property of the Association related thereto), and the improvements and landscaping placed on the Landscape Maintenance Areas and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 4.2 Members' Rights of Enjoyment. Subject to the provisions hereof, every Member shall have a right of enjoyment in the Common Areas, and every Member may delegate the right of enjoyment in the Common Areas to such Members' family. Except for the Owners of Units C and D, each Member shall have a right of enjoyment only in his or her designated parking space in the Parking Areas.

Section 4.3 Extent of Members' Easements. The Members' easements of enjoyment created hereby shall be subject to the following rights of the Association:

a. to establish reasonable rules and regulations as shall either be set forth in, or provided for in, by the By-Laws and any rules and regulations adopted by the Association for:

(i) the use of the Common Areas and Parking Areas;
and

(ii) the purpose of denying, limiting or permitting access to or enjoyment of the Common Areas and Parking Areas by person(s) other than Members.

b. to suspend the right of a Member (and all persons to whom such rights may have been delegated by such Member) to use any portion of the Common Areas or Parking Areas for any period during which any assessment against such Member's Dwelling Unit or real property remains unpaid for more than thirty (30) days after written notice.

c. To suspend the right of a Member (and all persons to whom such rights may have been delegated by such Member) to use any portion of the Common Areas or Parking Areas for any other infraction of this Declaration or the By-Laws, which remains uncorrected after the last day of a reasonable period for correction established by the Association, such period to be stated in a written notice to the Member together with a statement of the infraction complained of and the manner of its correction;

d. To dedicate or transfer all or any part of the Common Areas and Parking Areas to any non-profit organization, public entity or agency, authority or utility for any of the

foregoing purposes subject to the approval by a vote of at least two-thirds (2/3) of the votes of the Voting Members.

Section 4.4 Regulation of Use. The use of the Common Areas and Parking Areas by Members and others shall be subject to the provisions of the By-Laws and any rules and regulations adopted by the Association.

Section 4.5 Parking Spaces. Except for the Owners of Units C and D, each Dwelling Unit will be assigned one (1) parking space by the Grantor in the Parking Areas. The designated parking space shall not be changed by the Association without the consent of the Owner of the Dwelling Unit.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 5.1 Creation of the Lien of Assessments.

a. The Grantor hereby covenants, and each Owner (whether or not it shall be so expressed in the Deed to such Owner's property) is deemed to covenant and agree, to pay the Association, the following: (i) Initial Assessment provided for in Section 5.2, (ii) Annual General Assessments provided for in Section 5.3 and (iii) Special Assessments provided for in Section 5.4, hereof;

b. All such assessments, together with interest thereon and cost of collection thereof as hereinafter provided,

shall be a charge on the land and shall be a continuing lien upon the real property against which each such assessment is made; provided, however, that any such lien shall be subordinate and junior to any prior recorded mortgage or deed of trust on the land which is subject to any such assessment lien. No Owner may waive or otherwise avoid liability for the assessments provided herein by non-use of the Common Areas or by abandonment of such Owner's real property.

Section 5.2 **Initial Assessment.**

a. The Grantor and each original and each subsequent Owner of a Dwelling Unit which has been subjected to the provisions of the Declaration shall pay an Initial Assessment simultaneously with the receipt of the Deed for the Dwelling Unit.

b. Grantor shall pay an Initial Assessment of \$100.00 for each Dwelling Unit and each original and subsequent Owner shall pay an Initial Assessment of \$100.00.

c. The Initial Assessment shall be used exclusively to establish and supplement the operating fund of the Association.

Section 5.3 **Annual General Assessment.**

a. The Annual General Assessment levied by the Association shall be used exclusively in the exercise and fulfillment by the Association of its powers and duties as set forth in Section 3.5 hereof.

b. Each Owner of real property or Dwelling Unit(s) within the Development Area, by acceptance of a deed therefor,

whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Annual General Assessments to the Association. Until changed as herein provided, the Annual General Assessment for each fiscal year of the Association shall be set by the Board of Directors of the Association, subject to the following:

(i) the initial Annual General Assessment shall not exceed Six Hundred Sixty Dollars (\$660.00) for each Dwelling Unit, which amount shall change as provided for herein.

(ii) There shall be no Annual General Assessment with respect to vacant land.

c. Upon approval of a simple majority of the Directors the amount of the initial Annual General Assessments may be changed; however, only upon approval of two-thirds (2/3) of the Voting Members shall the amount of the Annual General Assessment for a Dwelling Unit exceed One Thousand Dollars (\$1,000.00), adjusted annually from the date hereof to reflect percentage changes in the Consumer Price Index.

d. The Board of Directors shall establish the amount of the Annual General Assessment based upon the total amount of the annual budget established by the Board of Directors for the Association. The Annual General Assessment shall be paid on a monthly basis in advance commencing upon the date of the recording of the Deed for the Dwelling Unit, except as otherwise provided herein.

e. The first monthly payment of the Annual General Assessment on any property shall be adjusted pro rata according to the number of days remaining in the month from the date on which the Annual General Assessment commences for such property.

Section 5.4 Special Assessments. The Association may levy in any fiscal year a Special Assessment (which may, in the discretion of the Board be payable over a period not to exceed the balance of such fiscal year and the five next succeeding fiscal years) for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and Parking Areas, including equipment, fixtures and personal property related thereto; and/or (ii) the cost of any other activity within the powers and duties of the Association as set forth in Section 3.5 hereof; provided that any such Special Assessment shall have the approval of a simple majority of the Voting Members. All Special Assessments shall be pro-rated among Dwelling Units in the manner set forth in Section 5.3.d hereof with respect to the Annual General Assessment.

Section 5.5 Notices of Assessments. Notices of all assessments shall be given by mail, addressed to the last known or usual post office address of the holder of legal title of the assessable property and deposited with the United States Postal Service with postage prepaid and said notice shall be considered given when mailed.

Section 5.6 Collection of Assessments and Lien therefor.

Every assessment authorized hereunder (whether an Initial Assessment, Annual General Assessment or a Special Assessment) shall become a lien upon the real property to which it relates if it remains unpaid thirty (30) days after the date it is due; provided, however, that any such lien shall be subordinate and junior to any prior recorded mortgage or deed of trust on the land which is subject to any such assessment lien. Such lien shall be so declared by the Association by instrument in writing, executed, acknowledged and recorded in the office of the Recorder of Deeds for Allegheny County, Pennsylvania, in the manner provided for conveyances affecting real estate. All assessments shall bear interest at the rate of ten percent (10%) per annum, beginning thirty (30) days after the date of recording thereof as aforementioned. At the request of any Owner whose assessment(s) has or have been paid, the Association shall execute and deliver an instrument acknowledging the payment and satisfaction of such of the assessments relating to the property of such Owner as have been paid, and the Owner may record same at his expense. Whenever any assessment is delinquent for a period of ninety (90) days after the filing and recording thereof as aforementioned, the Association may take any legal steps necessary or appropriate for the collection thereof, including the institution and prosecution of a suit, and the delinquent Owner shall be liable for the reasonable attorney's fees incurred by the Association in the collection thereof, which said fees, together with the interest above provided for, shall be

superior to any and all other charges, liens or encumbrances which may hereafter arise or be imposed upon the property whether arising from or imposed by judgment or decree or any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

Section 5.7 Annual Budget. The Association shall adopt an annual budget for each fiscal year, which shall provide for allocation of expenses in such manner that the obligations imposed by the Declaration will be met. A copy of each annual budget shall be mailed to each member prior to the commencement of each fiscal year and within thirty (30) days after the date of such budget is adopted.

ARTICLE VI

CONTROL OF ARCHITECTURE AND USE

Section 6.1 Purpose. In accordance with the provisions of the Declaration, the Fox Way Commons Association Standards, and the By-Laws, the Association shall regulate the external design, appearance,, use, location and maintenance of real property in Development Area I and Development Area II and of improvements thereon in such a manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the vegetation and topography.

Section 6.2 Architectural Control.

a. No improvements, alterations, repairs, change of paint colors, excavations or other work which in any way materially alters the exterior appearance of any real property from its natural or improved state shall be made or done without the prior approval of two-thirds (2/3) of the Voting Members of the Association, except as otherwise expressly provided in the By-Laws. No sign, antenna, satellite dish, solar panel, awning, light, building, fence, wall, residence or other structure shall be commenced, erected, externally improved or altered, or otherwise affected without the prior written approval of the Association. Neither shall there be any change in the grade of any property without the prior written approval of two-thirds (2/3) of the Voting Members of the Association.

b. In the event that the Association fails to approve, modify or disapprove in writing an application within forty-five (45) days after plans and specifications have been submitted in writing to it, in accordance with procedures established by it, approval will be deemed granted.

c. The Board of Directors may appoint an Architectural Review Committee or Board to administer the architectural control provided for in this Section 6.2 which Committee or Board shall operate in the manner and with the authority determined by the Board of Directors.

Section 6.3 Control of Use.

a. Restriction. All real property and improvements thereon within Fox Way Commons shall be used and maintained in accordance with this Declaration, Fox Way Commons Association Standards, and the By-Laws. In addition, the following restrictions on use and maintenance shall apply:

(i) All real property within Fox Way Commons shall be used, improved, and devoted exclusively to residential use as such term may be defined from time to time in the Code of the City of Pittsburgh.

(ii) No Dwelling Unit may be rented or contracted to be rented within one (1) year following any purchase thereof.

(iii) Each parcel of real property within the Development Area shall contain no more than one Dwelling Unit.

(iv) No nuisance or any other activity, use, structure, improvement, or personal property detrimental to any other real property in the vicinity thereof or to its occupants shall be permitted to exist or operate upon any real property. The determination that a nuisance exists shall be at the discretion of the Board of Directors, which shall cause the Association to notify and offending Owners or occupants of its determination. Not later than ten (10) days after receiving such notice, a Member may file written objections with the Association. If such objections are filed, the determination of the Board must be approved by a Majority Vote

of the Voting Members. Only pursuant to such approval, the Association may take appropriate action to abate the nuisance. If no objections are filed within the permitted time, the Association may take action to abate the nuisance without a vote of the Members.

(v) No animals shall be kept or maintained within Development Area I and Development Area II other than domestic dogs, cats and pets maintained exclusively within the Dwelling Unit. No Owner shall run a kennel or be engaged in breeding for profit within Development Area I and Development Area II. Not more than three (3) pets shall be kept or maintained at any Dwelling Unit.

(vi) No Owner shall park or permit any tenant or guest to park any recreational vehicle, boat, truck or other vehicle other than a passenger car or pickup truck overnight in the Parking Areas or in front of or on the property owned by such Owner. No Owner shall park or permit any tenant or guest to park or locate any abandoned or unlicensed vehicle in the Parking Areas or in front of or on the property owned by such Owner.

b. Temporary Non-Compliance. The Association may issue renewable temporary permits of one year or less in duration to except property from any prohibitions express or implied by this Section 6.3, provided that the Association shows good cause for such permit and acts in accordance with guidelines and procedures approved by a Majority Vote of the Voting Members.

c. Maintenance. Each Owner shall keep all property in Development Area I and Development Area II owned by such Owner, and all improvements thereon free of debris and in good repair in accordance with the Fox Way Commons Association Standards, including, but not limited to the seeding, watering and mowing of lawns, the pruning and cutting of all trees and shrubbery and the painting (and other appropriate external care) of all buildings or other improvements, all in a manner and with such frequency as is consistent with good property management and so as not to detract from the overall beauty of Fox Way Commons Association and the health and safety of its residents. In the event an Owner shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after thirty (30) days written notice to the Owner as provided in the By-Laws, shall have the right to enter upon said property to correct any violation of this subsection stated in such notice. All costs related to such correction, repair or restoration shall become a Special Assessment upon such property in the discretion of the Association, which shall notify the Owner in writing in the event of the imposition of any such Special Assessment.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of

thirty (30) years from the date this Declaration is recorded. Thereafter, the term of this Declaration shall be automatically renewed for consecutive twenty-five (25) year periods unless the Association (acting by a vote of at least two-thirds (2/3) of the votes of the Voting Members) terminates this Declaration by executing an appropriate instrument and recording such instrument at least six (6) months prior to the expiration of the original thirty (30) year or then current twenty-five (25) year term, as the case may be.

Section 7.2 Amendment. All amendments to this Declaration shall be by instrument of record executed on behalf of the Association pursuant to approval by a vote of at least two-thirds (2/3) of the votes of the Voting Members. However, no amendments shall be made which shall adversely affect present or future owners and occupants of properties within the Development Area, wither by levying of inequitable assessments or by restrictions that unreasonably restrict access to either the public improvements or the Common Areas.

Section 7.3 Enforcement. The Association, any Owner or the Grantor shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.4 Severability. The covenants, restrictions, conditions, reservations, and rules and regulations provided or provided for herein shall be considered as, and are hereby declared to be, independent of each other, and in the event any of them shall be held unenforceable to invalid, or shall otherwise fail, the validity or binding effect of the others shall not thereby in any way be affected. If any covenant, restriction, condition or reservation hereof would be valid and binding if construed only as a By-Law adopted by the Association pursuant hereto, it shall be constructed as such a By-Law.

Section 7.5 Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference:

EXHIBIT A - Description of the Development Areas

EXHIBIT B - Description of the Common Areas

EXHIBIT C - Plan showing Parking Areas.

EXHIBIT D - Plan showing Subdivision Plan of the Development Areas

EXHIBIT E Fox Way Commons Association Standards

IN WITNESS WHEREOF, the Grantor has caused this Declaration to be executed on its behalf as of the day and year first above written.

ATTEST:

SOUTH SIDE LOCAL DEVELOPMENT
COMPANY

President

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this ___ day of _____, 1994, before me a notary public, the undersigned officer, personally appeared CYNTHIA ESSER, who acknowledges herself to be the President of South Side Local Development Company, a corporation, and that she as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as President.

Notary Public

My Commission Expires:

EXHIBIT "A"

Description of the Development Areas

Development Area I

All those lots or pieces of ground, and all buildings and such improvements located thereon and permanently annexed thereto, situated in the 17th Ward of the City of Pittsburgh, County of Allegheny, and Commonwealth of Pennsylvania, bounded and described as follows:

Beginning at a point on the Southwest corner of the right-of-way of the intersection of Wharton Street and South 18th Street, being the point of beginning,

thence	S 04 20'57"W,	120.57 feet
thence	N 85 36'07"W,	188.98 feet
thence	N 04 20'57"E,	12.31 feet
thence	N 37 54'09"W,	5.77 feet
thence	N 04 20'57"E,	10.84 feet
thence	N 47 21'42"E,	5.78 feet
thence	N 04 20'57"E,	19.27 feet
thence	N 41 11'16"W,	2.81 feet
thence	N 85 36'07"W,	1.17 feet
thence	N 04 20'57"E,	67.68 feet
thence	S 85 36'07"E,	192.11 feet

to the point of beginning; consisting of Parcels A-1 through A-11, B, C-1 through C-3, and H in the Improvement Subdivision Site Plan, Revision 1, for Fox Way Commons as recorded in the Recorder's Office of Allegheny County, Plan Book Volume 198, Pages 1 and 2.

Together with that certain Easement for Parking from the City of Pittsburgh as shown on said Improvement Subdivision Site Plan, Revision 1, for Fox Way Commons and presented in this Declaration as Exhibit "D".

Development Area II

All that property identified as "Development Area Two" as shown on the attached Plan Exhibit A, "Development Areas", dated December 6, 1994, and to be more fully described when and if such property is subjected to this Declaration by Grantor.

DEVELOPMENT AREA TWO

DEVELOPMENT AREA ONE

WHARTON STREET

SOUTH 17TH STREET

SOUTH 18TH STREET

FOX WAY

LEGEND

- DEVELOPMENT AREA BOUNDARY
- - - BOUNDARY BETWEEN DEVELOPMENT PHASES
- COMPLETED HOUSING UNITS
- ▨ PROPOSED HOUSING UNITS
- ⊗ EXCLUDED PRIVATE PROPERTY

EXHIBIT A

**DEVELOPMENT AREAS
FOX WAY COMMONS**

DECEMBER 6, 1994
SCALE: 1/16" = 1' 0"

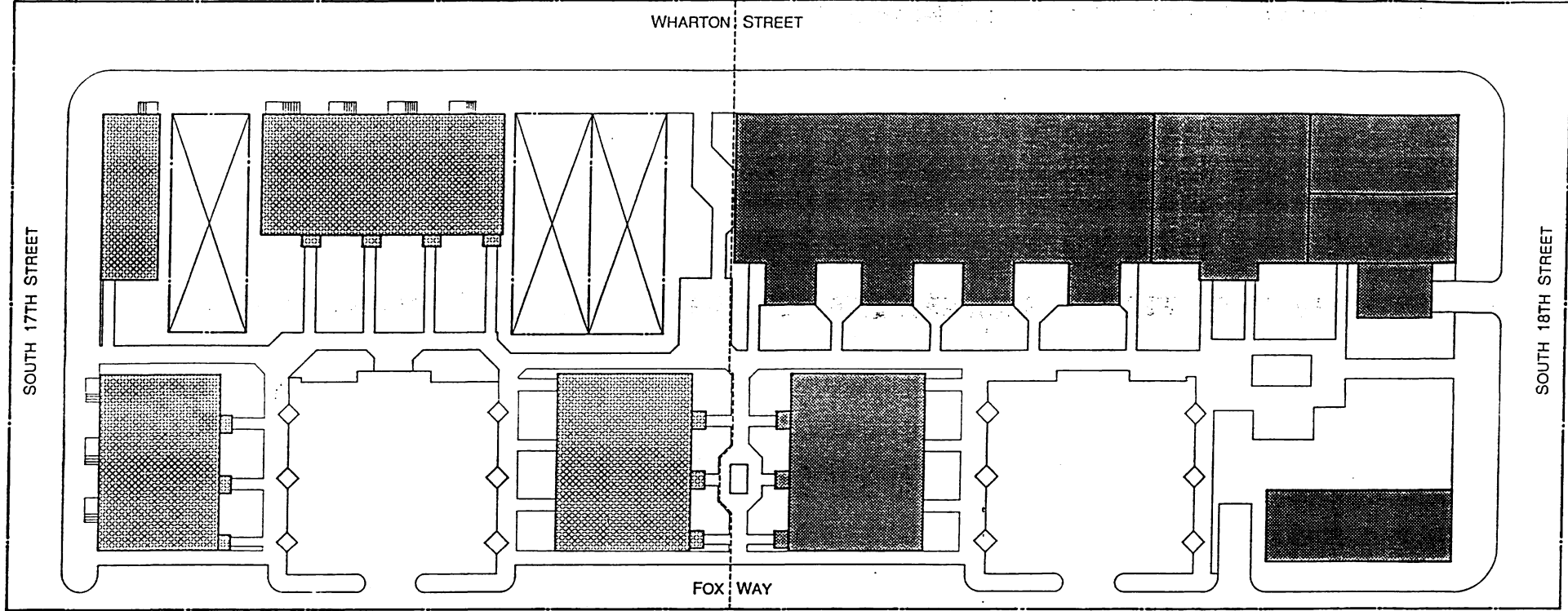


EXHIBIT "B"

Description of the Common Areas

Common Area - Development Area I

All that lot or piece of ground, and improvements located thereon and permanently annexed thereto, situated in the 17th Ward of the City of Pittsburgh, County of Allegheny, and Commonwealth of Pennsylvania, bounded and described as follows:

Beginning at a point on the Southwest corner of the right-of-way of the intersection of Wharton Street and South 18th Street, S 04 20'57"W, 56.29 feet to the point of beginning,

thence S 04 20'57"W, 21.33 feet
thence N 85 36'07"W, 28.81 feet
thence S 04 20'57"W, 2.62 feet
thence N 85 36'07"W, 3.00 feet
thence S 04 20'57"W, 12.00 feet
thence N 85 36'07"W, 31.77 feet
thence S 04 20'57"W, 28.33 feet
thence N 85 36'07"W, 125.40 feet
thence N 04 20'57"E, 12.31 feet
thence N 37 54'09"W, 5.77 feet
thence N 04 20'57"E, 10.84 feet
thence N 47 21'42"E, 5.78 feet
thence N 04 20'57"E, 19.27 feet
thence N 41 11'16"W, 2.81 feet
thence N 85 36'07"W, 1.17 feet
thence N 04 20'57"E, 3.86 feet
thence S 85 36'07"E, 109.26 feet
thence N 04 20'57"E, 9.65 feet
thence S 85 36'07"E, 57.20 feet
thence S 04 20'57"W, 2.11 feet
thence S 85 36'07"E, 25.64 feet

to the point of beginning; excepting therefrom,

All that lot or piece of ground, and improvements located thereon and permanently annexed thereto, situated in the 17th Ward of the City of Pittsburgh, County of Allegheny, and Commonwealth of Pennsylvania, bounded and described as follows:

Beginning at a point on the Northwest corner of the right-of-way of the intersection of Fox Way and South 18th Street, N 85 36'07"W 120.48 feet, thence N 04 20'57"E 3.07 feet, thence N 85 36'07"W 5.92 feet to the point of beginning,

thence N 04 20'57"E, 49.67 feet
thence N 85 36'07"W, 56.69 feet
thence S 50 20'18"W, 2.70 feet
thence S 04 20'57"W, 19.17 feet
thence S 39 20'28"E, 5.77 feet
thence S 04 20'57"W, 11.10 feet
thence S 48 25'26"W, 5.78 feet
thence S 04 20'57"W, 9.19 feet
thence S 85 36'07"E, 54.76 feet

to the point of beginning; consisting of Parcel H in the Improvement Sub-division Site Plan, Revision 1, for Fox Way Commons as recorded in the Recorder's Office of Allegheny County, Plan Book Volume 198, Pages 1 and 2.

Common Area - Development Area I (cont'd.)

Together with that certain Easement for Parking from the City of Pittsburgh as shown on said Improvement Subdivision Site Plan, Revision 1, for Fox Way Commons and presented in this Declaration as Exhibit "D".

Common Area - Development Area II

All that property contained within "Development Area Two", as shown on the Plan Exhibit A, "Development Areas", dated December 6, 1994, which are to be fully described and identified as "Common Area when and if such property is subjected to this Declaration by Grantor.

DEVELOPMENT AREA TWO

DEVELOPMENT AREA ONE

WHARTON STREET

FOX WAY

SOUTH 17TH STREET

SOUTH 18TH STREET

COMMON AREA

LEGEND

- DEVELOPMENT AREA BOUNDARY
- - - BOUNDARY BETWEEN DEVELOPMENT PHASES
- COMPLETED HOUSING UNITS
- ▨ PROPOSED HOUSING UNITS
- ⊗ EXCLUDED PRIVATE PROPERTY
- ◊ COMMON AREA

EXHIBIT B

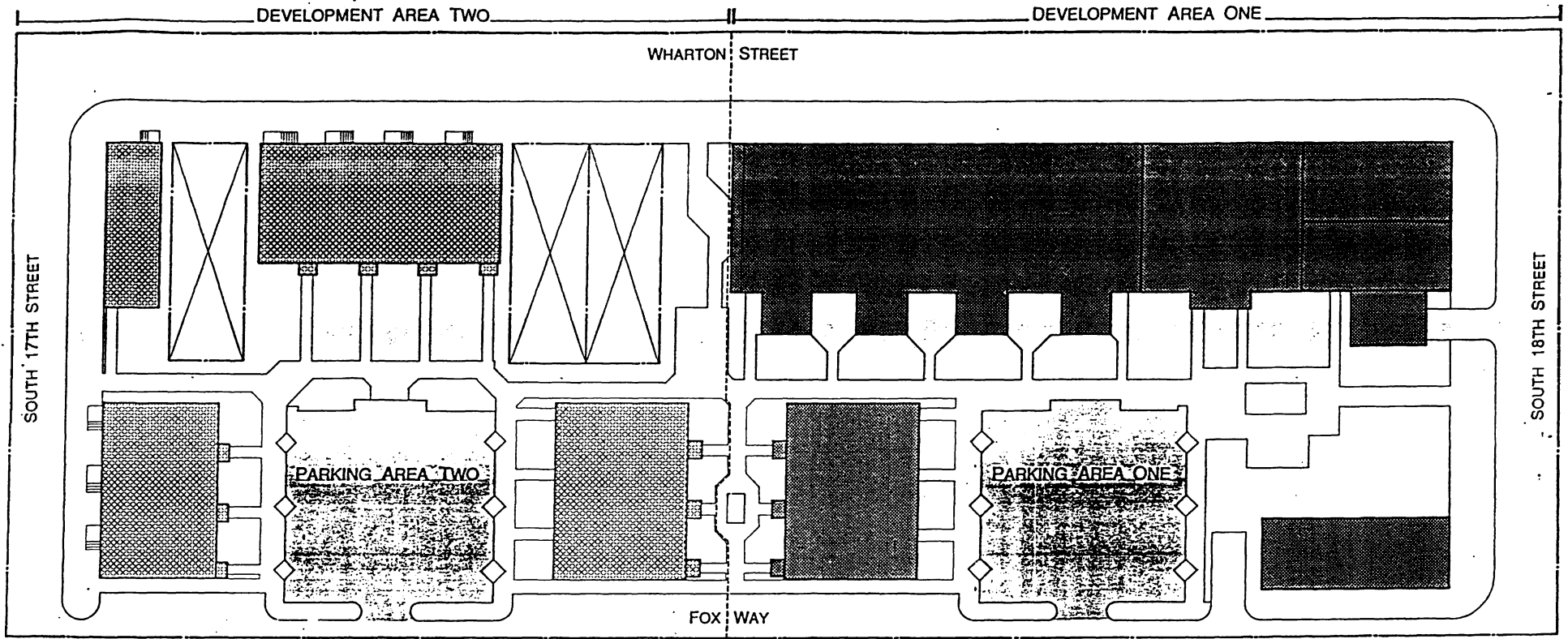
COMMON AREAS
DEVELOPMENT AREA ONE
FOX WAY COMMONS

DECEMBER 6, 1994
SCALE: 1/16" = 1' 0"

EXHIBIT "C"

Plan of the Parking Areas

See Plan Exhibit C following.



LEGEND

- DEVELOPMENT AREA BOUNDARY
- - - BOUNDARY BETWEEN DEVELOPMENT PHASES
- COMPLETED HOUSING UNITS
- ▨ PROPOSED HOUSING UNITS
- ⊗ EXCLUDED PRIVATE PROPERTY

EXHIBIT C

**PARKING AREAS
FOX WAY COMMONS**

DECEMBER 6, 1994
SCALE: 1/16" = 1' 0"

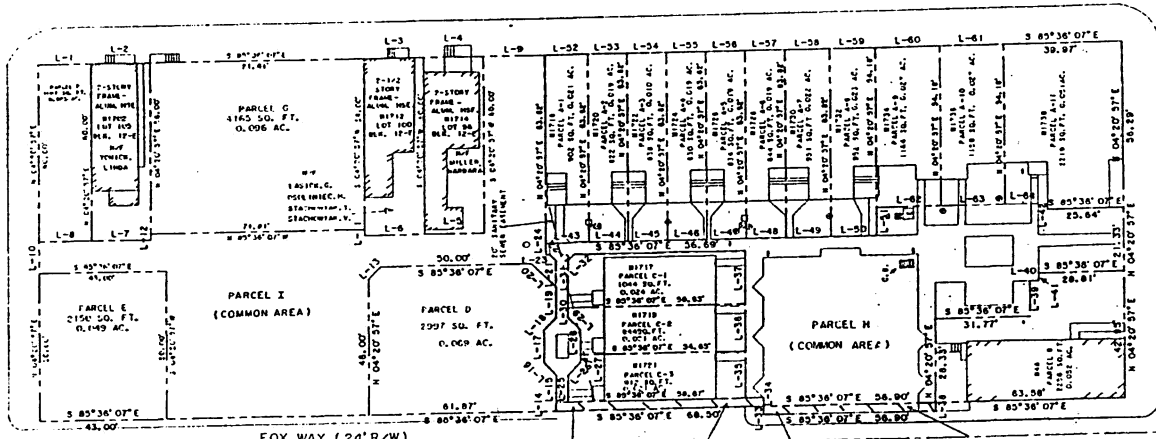
EXHIBIT "D"

Subdivision Plat of the Development Areas

See Plan Exhibit D following.

MIRIEL STREET

S. 17TH STREET (60' R/W)



FOX WAY (24' R/W)

S. 18TH STREET (60' R/W)

COURSE	BEARING	DISTANCE
L-1	S 85°36'07"E	17.78
L-2	S 85°36'07"E	20.00
L-3	S 85°36'07"E	20.00
L-4	S 85°36'07"E	20.00
L-5	S 85°36'07"E	20.00
L-6	S 85°36'07"E	20.00
L-7	S 85°36'07"E	20.00
L-8	S 85°36'07"E	20.00
L-9	S 85°36'07"E	20.00
L-10	S 85°36'07"E	20.00
L-11	S 85°36'07"E	20.00
L-12	S 85°36'07"E	20.00
L-13	S 85°36'07"E	20.00
L-14	S 85°36'07"E	20.00
L-15	S 85°36'07"E	20.00
L-16	S 85°36'07"E	20.00
L-17	S 85°36'07"E	20.00
L-18	S 85°36'07"E	20.00
L-19	S 85°36'07"E	20.00
L-20	S 85°36'07"E	20.00
L-21	S 85°36'07"E	20.00
L-22	S 85°36'07"E	20.00
L-23	S 85°36'07"E	20.00
L-24	S 85°36'07"E	20.00
L-25	S 85°36'07"E	20.00
L-26	S 85°36'07"E	20.00
L-27	S 85°36'07"E	20.00
L-28	S 85°36'07"E	20.00
L-29	S 85°36'07"E	20.00
L-30	S 85°36'07"E	20.00
L-31	S 85°36'07"E	20.00
L-32	S 85°36'07"E	20.00
L-33	S 85°36'07"E	20.00
L-34	S 85°36'07"E	20.00
L-35	S 85°36'07"E	20.00
L-36	S 85°36'07"E	20.00
L-37	S 85°36'07"E	20.00
L-38	S 85°36'07"E	20.00
L-39	S 85°36'07"E	20.00
L-40	S 85°36'07"E	20.00
L-41	S 85°36'07"E	20.00
L-42	S 85°36'07"E	20.00
L-43	S 85°36'07"E	20.00
L-44	S 85°36'07"E	20.00

- LEGEND
- TRANSFORMER
 - LIGHT POLE
 - SANITARY MANHOLE
 - ELECTRICAL SERVICE
 - CABLE TO RISER
 - TELEPHONE RISER
 - CLEANOUT

- NOTES:
- HOUSE NOS. 1714 TO 1716 - 2 STORY ALUMINUM DWELLING
 - HOUSE NOS. 1717 TO 1721 - 2 STORY ALUMINUM DWELLING
 - HOUSE NO 48 - 2 STORY BRICK DWELLING

NOTE: THIS PLAN IS A REPRESENTATION OF PART OF THE RECORDS OF THE CITY OF PITTSBURGH. THE CITY ENGINEER HAS REVIEWED THIS PLAN AND HAS DETERMINED THAT IT CONFORMS WITH THE RECORDS OF THE CITY OF PITTSBURGH.

RECORDS CLERK, CITY OF PITTSBURGH

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CITY OF PITTSBURGH
DEPARTMENT OF PUBLIC WORKS

APPROVED: DECEMBER 4, 1924
CITY ENGINEER
Wm. H. Dwyer
CITY OF PITTSBURGH

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IMPROVEMENT SUBDIVISION
SITE PLAN REVISION NO. 1
FOX WAY CORRIDOR
SUBMITTED FOR
SOUTH SIDE LOCAL DEVELOPMENT
COMMISSION
17TH WARD, CITY OF PITTSBURGH
PREPARED BY
OFR ENGINEERING ASSOCIATES,
INC.
NOVEMBER 23, 1924

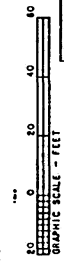


EXHIBIT "E"

Fox Way Commons Association Standards

**STANDARDS AND CRITERIA
FOR THE
USE, CONSTRUCTION, AND MAINTENANCE
OF
IMPROVEMENTS**

**Fox Way Commons
Wharton Street between 17th and 18th Streets
Pittsburgh, Pennsylvania**

1. Purpose and Scope

The purpose of the Fox Way Commons Association Standards is to establish a framework of standards and criteria for the use, alteration or construction, and maintenance of property improvements at Fox Way Commons, a planned residential development intended to consist of 26 units developed or proposed to be developed by the South Side Local Development Company in two sequential phases designated herein as Development Area I and Development Area II and located on the southerly side of Wharton Street between South 17th and South 18th Streets in Pittsburgh, Pennsylvania.

The primary objective of the standards and criteria is to guide and insure the preservation of the development's intended functional and physical character and its contextural relationship to the surrounding neighborhood so as to maintain its quality, attractiveness, and value to the common benefit of its residents and as an enhancement to its community.

The standards and criteria set forth here are in amplification of or in addition to covenants, restrictions, and other provisions contained elsewhere in the Declaration and are intended to apply to all property located within Development Area I and, if subjected to the Declaration, Development Area II whether such property is owned by Fox Way Commons Association or by the residents of Fox Way Commons. The standards and criteria shall not apply to property that is not owned by Fox Way Commons Association or by the residents of Fox Way Commons except to the extent that such owners may be legally responsible for the use or maintenance of any such property.

To the extent that any provision hereof or under Article VI of the Declaration conflicts with any ordinance, regulation, or power of any governmental body or regulated public utility having authority over any such matter, then any such ordinance, regulation or power shall govern.

2. General Criteria

The character and quality of property improvements which are a part of Fox Way Commons are intended to provide (1) certain functional services that are appropriate to residential use and to the basic needs and interests of the residents individually and in common; and, (2) certain aesthetic features which are deemed to be pleasing individually, harmonious as a whole, and broadly sympathetic to the physical context of the surrounding neighborhood.

The use, alteration or construction, and maintenance of property at Fox Way Commons as well as the future provision for any regulations or standards therefor shall be consistent with the dual objectives of (1) maintaining the functional utility of any and all property components serving, benefitting or materially affecting more than one Owner (hereinafter called "shared components"); and, (2) preserving the aesthetic attributes of the property which are visible to the public and which, individually and as a whole, materially

affect the character of the development, the general interests of the residents with respect to that character, and the relationship of that character to the surrounding neighborhood (hereinafter called "public attributes").

By way of illustration but not limitation, shared components shall include driveways, public or private sidewalks, parking areas, retaining walls and other landscape walls or fences, exterior entry stoops, party walls or the structural parts of any building containing more than one dwelling unit, the exterior parts of any building (including its walls, roof, windows, and trim), gutters and downspouts serving more than one dwelling unit, all exterior lighting, and any utility service benefitting more than one Owner. An improvement or installation may be a shared component whether it is owned by an individual Owner or by the Fox Way Commons Association.

By way of illustration but not limitation, public attributes shall include all improvements and installations within the Common Areas; the public sidewalks and any improvements thereto or installations therein which are the responsibility of any Owner or the Fox Way Commons Association; the location, size, and shape of any building on any part of the land contained within Development Area I and Development Area II; the yard or other exterior area of any Owner which is visible to the public, including all sidewalks, stoops, fencing, planting, and other landscaping improvements therein; the roof, windows, doors, and exterior facade materials, including any attachments thereto, of all buildings contained within the Development Areas; and the interior treatments of any window, glass door, or other trans-parent facade opening that is a part of any building within the Development Areas and is visible to the public. An improvement or installation may be a public attribute whether it is owned by an individual Owner or by the Fox Way Commons Association.

The Fox Way Commons Association shall have the right to establish reasonable rules and regulations for or to otherwise provide for or oversee the use, alteration or construction, and maintenance of all shared components and public attributes of the property contained within Fox Way Commons. With respect to such activities, the rights and the general objectives of the Fox Way Commons Association shall be to provide for the proper maintenance of the shared components as well as the preservation of the public attributes that are a part of the the Common Area and, further, through the establishment and enforcement of rules and regulations and/or standards, to assure the proper maintenance of the shared components as well as the preservation of the public attributes that are the property of the individual Owners. The exercise of the Association's rights with regard to the property of Owners shall be consistent with the provisions of the Declaration and shall respect the health, safety, and general welfare of the Owners. Within this framework, the exercise of the Association's rights with regard to the property of Owners shall be fair, equitable and even as to treatment of individual Owners to the fullest extent possible without compromising the general welfare and interests of all Owners or the intent of the Declaration.

3. Maintenance Standards

In general, standards and criteria to be applied to the maintenance of the functional utility of shared components shall seek to assure that all such components are maintained in good repair, in a general condition that supports and permits the operations or functions that were originally intended for them, and in a manner that is not deleterious to the condition or the appearance of other shared components or of the public attributes of Fox Way Commons.

In general, standards and criteria to be applied to the preservation of the aesthetic character of public attributes shall seek to assure that all such attributes are maintained in good repair and condition, are used in a manner that is not deleterious to their condition, and are not altered in a manner that is harmful to the pleasing and harmonious relationship among them or between them and the context of the surrounding neighborhood.

4. Standards for Alteration or Construction

No alteration, replacement, or other modification or construction of shared components or public attributes shall be permitted except pursuant to the provisions of the Declaration.

Any alteration, replacement, or modification or construction of shared components or public attributes shall be in compliance with all zoning codes, building codes, and other applicable rules, regulations, or ordinances of any municipal or other governmental body having proper jurisdiction thereover. Any alteration, replacement, or modification or construction that may be required for the purposes of complying with such codes or such other rules, regulations, or ordinances shall be permitted provided that any such change to the shared components or the public attributes of Fox Way Commons shall be consistent with the specific provisions and general intentions of the Declaration to the fullest extent possible.

In general, there shall be no enlargement of existing buildings; nor shall there be any erection of new structures except for the purpose of replacing existing buildings. Similarly, in general, there shall be no change to the location, size or configuration of the Parking Areas, sidewalks, planting areas, or other site improvements which are a part of the Common Area except as may be required by public ordinance or other proper governmental action or except as may be consistent with the maintenance of safe, secure, and sanitary conditions to the benefit of all Owners.

In general, there shall be no alteration to or reconstruction of shared components or public attributes except as may be required for the purposes of maintaining such components and preserving such attributes on a basis that is consistent with the objectives, intentions, and provisions hereof. Alterations or reconstruction of such elements for such purposes shall, to the fullest extent possible, use materials and installation methods of a type and character that are the same as that of those being altered or replaced. Where a matching type and character is not possible on a reasonable basis, like or similar materials and installations shall be used so as to maintain the functional utility and aesthetic attributes of the original materials and installations to the fullest extent possible. Likeness shall be determined based on material type, color, finish, size, shape, method of installation, and functional character.

Any change as to the original material or the original installation method of any shared component or public attribute shall provide equal or better functional utility and aesthetic quality. Aesthetic quality shall be based on type, color, size, shape, and finish of the substituted material as compared to the original material as well as in relation to the material type, quality, and character of other architectural features of the property of which the substituted material is a part. Wherever a changed element is a part of a series of similar elements, the compatibility of the changed element to the series shall be considered and respected.

In determining the aesthetic quality of any change to original materials or installations, consideration shall be given to such concepts as mass, scale, proportion, rhythm, and texture as they apply to the changed element as compared to the original element and as they apply to the relationship of the

changed element to its context as compared to the relationship of the original element to its context.

Alteration or reconstruction by any one Owner of any public attribute in a manner that is incompatible with any series of elements of which that attribute is a part shall be permitted provided that all Owners of the properties of which the series is a part agree either to make the same change uniformly or to make similar changes on a basis that maintains essential distinguishing characteristics of the series as well as harmony among the elements of the series; and provided, further, that the changed elements are of a functional utility and offer an aesthetic quality that is comparable to or better than the original elements.

Alteration or construction of property that is not deemed to be a shared component or a public attribute shall not be prohibited or otherwise unduly restricted provided, however, that any such change shall not directly or indirectly adversely affect either the shared components or the public attributes of Fox Way Commons. Additionally, the rights of the Fox Way Commons Association with respect to the property of the Owners is not intended to unreasonably restrict or diminish the opportunity for personal expression or for the preservation and enhancement of the comfort, enjoyment, or value afforded to each Owner by its property provided that the pursuit of such opportunity by an Owner does not conflict with or diminish the individual rights, or impose a material adverse effect on the general interests of other Owners with respect to their respective properties, the property of the Association, or the shared components and public attributes of Fox Way Commons.

5. Easements for Maintenance and Alteration or Construction

The property of the Fox Way Commons Association and the individual property of the Owners shall be subject to the following:

- A. An easement or easements for the present and future installation and maintenance of gas, electric, water, drainage, telephone and television utility services and appurtenances thereto which easement or easements shall run in favor of the Fox Way Commons Association and the entity or entities owning or operating such facilities.
- B. An easement in favor of the Fox Way Commons Association to enter on the property of any Owner for the purpose of enforcing the provisions of the Declaration, such entry to be subject to the provision of reasonable notice and to be during normal working hours except in the event of an emergency.
- C. Where sidewalks, entry steps, and/or entry stoops are shared by adjacent Owners, the Owner of the property on which such facilities are built or each Owner of such property shall afford to the other Owner an easement for the use of such facilities for access purposes and, with regard thereto, responsibility for maintenance thereof shall be shared equally by the parties to such easement.
- D. An easement to Owners of adjacent properties permitting each to enter on, over, or through the property of the other for the purpose of performing maintenance and/or other work on their respective properties, such entry to be at such times as the parties thereto may reasonably agree.
- E. An easement in favor of the Fox Way Commons Association permitting entry onto the property of each Owner for the limited purpose of performing maintenance of planting areas thereon on behalf of such Owner.

F. If any of the property subject to the Declaration encroaches on the property of any Owner or of the Fox Way Commons Association by reason of original construction, a valid easement appurtenant to the encroaching property for the encroachment and for maintenance thereof shall exist for so long as the encroachment shall exist and, in the event that the encroaching property is replaced, shall be continued if required in order to permit replacement consistent with the standards and provisions hereof.

Any damage to the property of any Owner caused by the use of an easement granted from such Owner to another Owner shall be promptly repaired by and at the sole expense of the party using such easement so as to restore the property so damaged to its prior condition.

Any Owner using an easement granted from any other Owner or the Fox Way Commons Association shall hold the granting Owner or the Association, as the case may be, harmless against claims that may arise in connection with any damage, injury or loss that may arise from use of such easement by such Owner.

6. Plans, Specifications and Records

The Fox Way Commons Association shall maintain such plans, specifications and records as may be appropriate to the establishment, administration and enforcement of its rights hereunder and each Owner shall provide such plans, specifications, samples or other information as the Association may reasonably require pertaining to the property of such Owner and any proposed or completed alterations thereto.