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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
EAGLE HIGHLANDS  
A PLANNED UNIT DEVELOPMENT

RECEIVED  
Dec 16 10 19 AM '96  
ALBERT J. MOORE  
GREENE CO. RECORDER  
XENIA, O.

This instrument prepared by:  
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Official Records:  
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For Plat See: Book 21, Page 147, 148

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EAGLE HIGHLANDS

THIS AGREEMENT is made by CAMERICON, INC., a corporation, hereafter referred to as the "Declarant", for the purpose of establishing a Plan of Development described herein utilizing the provisions of Chapter 711 of the Revised Code of Ohio.

ARTICLE I

Definitions

Section 1. Association. The term "Association" shall mean Eagle Highland Owners Association, a non-profit corporation, its successors and assigns.

Section 2. Owner. The term "Owner" sometimes called Unit Owner, shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to a Lot, including contract Sellers, but excluding those having an interest as security for the performance of an obligation. Notwithstanding any applicable theory of mortgages, the term shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure.

Section 3. Declarant. This term will refer to Camericon, Inc. and to its successors and assigns.

Section 4. Properties. This term has reference to the land that is not presently submitted to the provisions of this Declaration, but that may be from time to time submitted to the provisions hereof.

Section 5. Parcels. This term refers to the large lot initially submitted to the provisions of this Declaration and parts of the Properties that the Declarant will submit in the future. A Parcel will be improved by constructing thereon one or more Buildings. The term "Parcel," as used herein to distinguish it from the term "Lot," a Parcel contains one or more Buildings; a Lot only contains a single Unit.

Section 6. Lot. The term "Lot" herein used has reference to the real estate that, improved with a Unit, will be conveyed to the Owner.

Section 7. Building. The term "Building" or "Buildings" shall mean and refer to the group of Units that are attached together in a single Building complex. A Building shall contain two or more Units, each Unit being attached to real estate and being a multi-family structure.

Section 8. Unit. The term "Unit" refers to each separate single family living area in the Buildings.

Section 9. Common Area. This term shall mean the remainder and residue of a Parcel that is not platted into Lots. Common Area will include the drives, parking area, lawn space and open areas that are utilized by more than one Owner. Common Area will be owned by the Association.

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Section 10. Common Expense. The term "Common Expense" means those expenses designated as Common Expenses in this Declaration to be shared by all of the Owners and at times referred to as Assessments.

Section 11. Trustees. The term "Trustees" shall mean and refer to the duly elected Board of Trustees of the Association.

ARTICLE II

Method of Proceeding

Section 1. Parcel. The Declarant is the Owner of the following referenced Property:

Situate in the City of Fairborn, County of Greene and State of Ohio and being the 5.047 acre Parcel more particularly described on Exhibit A attached hereto and made a part of this Declaration.

Section 2. Properties. The land described in Exhibit B is the Properties which may become a part of the plan of development. The Declarant will plat Parcels therefrom and construct Buildings and other improvements thereon that will be subjected to the provisions hereof by an amendment to the Declaration. It is understood that the Declarant will limit the area submitted to no more than two hundred fifty (250) Units. This is not intended to limit the Declarant from establishing other planned unit developments that are administered by other Associations.

Section 3. Construction. The Declarant proposes to build on the above referenced Parcel (Exhibit A) six (6) Buildings, with each Building containing four (4) Units.

a. The Buildings will be of such construction so that each Unit (separate living area) will be directly attached to real estate.

b. Each Unit will be so constructed that it is a separate living area independant from every other Unit except for walls that may be common walls to other Units.

Section 4. Replat. The Declarant will re-subdivide the Lot (herein called Parcels) as Buildings are constructed thereon and to separate the Units onto separate Lots. The land of the Parcel replatted and not a part of the Lot shall be Common Area, said Common Area to be conveyed to the Association. The replatted land will be subject to the terms of this Agreement. As additional Parcels from the Properties are added, a similar procedure will be followed.

Section 5. Submission. The land described in Exhibit A is subject to the terms and provisions of this Declaration and shall be held, sold and conveyed subject to the provisions hereof. The terms and provisions hereof shall be binding on all parties acquiring title to the land and shall be covenants and restrictions running with the title to the land.

Section 6. Application. The Declarant reserves the right to submit additional Parcels from the Properties described in Exhibit B to the provisions hereof. Such additional land will be subject to the terms and provisions

hereof only when an amendment hereto is executed and recorded describing the land brought under these provisions.

### ARTICLE III

#### Units and Lots

Section 1. Type of Construction. The Units will be located in what would be considered multifamily Buildings and may be one or two stories in height plus basements. The Units will be side by side, and each Unit will be affixed to real estate and will be separated onto a Lot.

Section 2. Ownership. Each Owner will own the entire Lot and situate on the Lot will be an entire Unit, including its perimeter walls, roof, foundation and one-half of any interior walls or exterior walls or fences that are common to other Units, to the effect that, except for the Unit being attached to other Units, the Owner will have exclusive use and enjoyment thereof as if it was a detached single family home.

Section 3. Design of Lots. The Lots will be so designed that all exterior walls are included within the Lot, that the Lot line will run through the center of any common walls, and so that patio areas, stoops, storage Buildings, air conditioning Units and pads and the like will be situated on the Lot and be part of the real estate conveyed to an Owner. If attached garages are built, they will be a part of the Lot.

Section 4. Size of Lots. A Lot will be at least as wide as the Unit measured from the outside of any perimeter wall to the center of any common walls. The Lot will be as long as it may be designed to include all appurtenances to the Unit, such as patio area, front porch or stoops, and any attached garage. Said Lots being more particularly shown on the record plat of each replatting process.

Section 5. Access. Each Unit shall have a direct access through its Lot and through the Common Area to a public street or highway, and a non-exclusive easement is created over the Common Areas to provide ingress and egress to each Lot.

Section 6. Intention. It is the intention of this Plan that each Lot shall, for all purposes, constitute real property and shall be deemed real estate within the meaning of all provisions of the Revised Code of Ohio.

Section 7. Encroachment. In the event that by reason of 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 Area encroaches or shall hereafter encroach upon any part of a Unit or Lot, or any part of a Unit encroaches or shall hereafter encroach upon another Lot or upon the Common Area, or if by reason of the design or construction of any Unit (including storage shed or privacy fence), it shall be necessary or advantageous to use or occupy any portion of another Lot or of the Common Area consisting of unoccupied space, or by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving any other Unit and Lot either presently encroaches or shall hereafter encroach upon any part of a Unit or Lot, valid easements for the maintenance of such encroachment and for the use of such space

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are hereby established and shall exist for the benefit of each Unit, Lot or Common Areas, as the case may be. Provided, however, in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit for future improvements detrimental to other Owners or to the Common Areas due to the willful conduct of such Owner.

Section 8. Access by Association. The Association shall have the irrevocable right of access to the Lots and Units as follows:

a. To the exterior of a Unit to utilize any fixtures or equipment that is designed and installed for use by more than one Unit, as an example, lighting fixtures, hose bibs, common meters for utilities and to repair, maintain and replace the same.

b. To the exterior of a Unit during reasonable hours and upon prior notice to make any repairs, replacements or improvements to be undertaken by the Association.

c. To the interior of the Unit only in the event of an emergency that will affect other Units, otherwise only after the Board of Trustees or its representative first determine that entry, repair, etc. are necessary for the public safety or in order to prevent damage to or destruction of any other part of the Building, Lot or Common Area.

ARTICLE IV

Common Area

Section 1. Ownership. The Common Area shall be owned by the Association and shall consist of all of the land in each Parcel not platted into a Lot containing a Unit. The Declarant shall convey said Common Area to the Association at or about the time the Lots on said Parcel are conveyed to Owners.

Section 2. Enjoyment. Every Owner shall have a right and easement for the use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot by the way of membership in the Association, subject to the rights of the Association to make reasonable rules and regulations concerning the use of said Common Area. Provided, however, that nothing herein shall limit or restrict the right of the Owner to access, both vehicular and pedestrian, from his Lot or parking area to the nearest public street over such portions of the Common Areas as may be designated for parking and as access ways.

Section 3. Use. Except as otherwise provided herein, the Common Area shall be used for the sole and exclusive use, benefit and enjoyment of the Owners for the following purposes: streets, sidewalks, footways, parkings areas, drives, Common Areas, maintenance areas, utility lines, and like facilities, including Buildings, structures and all personal property incidental thereto and generally serving the Common Area.

Section 4. Assignment. If the Declarant or the Association should build garages, carports, storage facilities or other facilities for the individual use in the Common Area, the Declarant or Association may assign the exclusive right of use thereof to an Owner. The Association shall



have the right to assign parking spaces to the Owners. If a garage is attached to the Unit that will utilize the garage, it will be included as part of that Lot.

ARTICLE V

Property Rights

Section 1. Restrictions as to Uses. The Association, in addition to the rights to make other reasonable regulations, concerning the Common Area, may subject the Common Area to the following provisions:

a. The right of the Association to restrict parking and other uses of the drives, private roadways and parking areas.

b. The right of the Association to control the uses of the Common Area, to make rules and regulations concerning said uses and to generally regulate the Common Areas for the benefit of all of the Owners. ✓

c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that the use is consistent with the purposes herein stated. No such dedication or transfer shall be effective unless an instrument is signed by two-thirds (2/3rd) of each class of Members agreeing to such dedication or transfer and until such instrument has been recorded in the Office of the Recorder of Greene County, Ohio.

Section 2. Easements for Utilities. The easements to generally serve the requirements of the Property are as created and shown on the platting process to create the Parcels and the replatting process to create the Lots. However, the Association may grant such additional easements as may from time to time be required for full use and benefit of the Lot Owners or the Association.

Section 3. Easements for General Welfare. As to the Common Area, there is hereby granted a valid easement to the local political authorities, but not to the public in general, to enter upon said Common Area for the purpose of maintaining and providing for the safety, welfare, police protection, fire protection to the Units and for the benefit of all persons using the same, the Owners and the Association.

Section 4. Reservation. Declarant reserves the right and easement to enter upon the Common Area to do all things necessary to complete construction and to complete the development of the Property, including the Properties that are added hereto. This reservation includes the right for easements over, on and under the Common Area and to any Lots for the purpose of servicing the Properties, which may be submitted hereto. The Declarant shall have the obligation, if it exercises any of the rights reserved, to restore the Property within reason to the condition as it previously existed or to be usable for its intended use.

ARTICLE VI

Protective Covenants and Restrictions

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Section 1. Use. No Lot or Unit shall be used except for residential purposes, except that the Declarant may use the same for construction and sales purposes during the Building and initial sales period.

Section 2. Rental. No Unit or any part thereof shall be rented or used for transient or hotel purposes. If an Owner shall desire to lease his Unit, he will do so by a written lease agreement with a term for not less than one (1) year. The lease agreement will provide for the tenant to abide by the terms and conditions of this Declaration and the provisions and conditions of the articles of incorporation of the Association and the by-laws of the Association, which documents the landlord shall supply the tenant. The Owner shall supply the Association with a copy of the Lease Agreement prior to the commencement of such lease term.

Section 3. Architectural Control. No exterior additions or alterations of any Building situated on the Lots, nor changes in the colors of the exterior portions of the Buildings, nor changes in fences, hedges, walls or other structures and appurtenances to the Units shall be commenced, erected or maintained unless and until the construction, plans and specifications are approved by the Trustees of the Association or by an Architectural Control Committee appointed by said Trustees.

Section 4. Prohibited Parking. The parking of trucks, campers, trailers, boats, mobile homes, recreational vehicles and the like are prohibited on any Lot or on the Common Area unless the Trustees designed a specific area therefor on the Common Area. All vehicles, including automobiles, must be operative, must have current license plates and shall not be stored on the Common Area on a permanent or semi-permanent basis.

Section 5. Building on Easements. Within the easements for the installation and maintenance of utilities and drainage facilities, no structure, planting or other materials shall be placed or permitted to remain which will damage or interfere with the installation and maintenance of the utilities or which may change the flow of drainage channels or which may obstruct or retard the flow of surface water from its proper course of flow.

Section 6. Nuisances. No noxious or offensive activity shall be permitted on any Lot, Unit or Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Nothing shall be done that will create any waste, that will increase the costs of insurance or result in the cancellation of insurance on the Buildings or Common Area.

Section 7. Temporary Structures. No structures of a temporary character, tents, garages, barns or outbuildings shall be permitted on any Lot. No structures of any kind shall be erected on the Common Area unless placed or erected by the Declarant or upon the approval of the Architectural Committee of the Association.

Section 8. Signs. No sign of any kind shall be displayed to the public view on the Property except (a) on the Common Area, signs regarding and regulating the use of the Common Area that are erected by the Association; (b) on a

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ARTICLE VI. PROTECTIVE COVENANTS AND RESTRICTIONS

Section 8. Signs

Add Subparagraph a. --

a. One "Condo For Sale" sign, administered by the EHHOA Board of Trustees, will be permitted adjacent to the large Eagle Highlands Sign at the corner of Zink Rd. & Eagle Highlands Dr. The sign may be requested by any Unit Owner when his/her unit is put on the market, to help advertise the sale.

Section 9. Livestock and Poultry

Add Subparagraph a. --

a. Each pet owner must keep all pets on a leash at all times. The pet owner must clean up any mess that the pet makes or does within one hour after the occurrence. A fine of \$10.00 will be levied against any Unit Owner who fails to obey this regulation. A fine of \$25.00 will be levied for each violation after the first one. The EHHOA will not clean up after your pet! Nor will it permit the community to be littered by your pets. This rule applies to the grass immediately adjacent to the units as well as to the common areas. ✓

Section 12. Common Areas

Add Subparagraph a. --

a. Trash may be placed at the pick up point for each unit not earlier than 2:00 p.m. on the day prior to trash pick-up by the City of Fairborn. Trash pick-up is currently on Friday mornings. 6:00

MONDAYS

Lot, except one sign displayed in the window of a Unit, advertising the Property for sale or lease; (c) signs used by the Declarant for the advertisement of the Property during the construction and initial sales period.

Section 9. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Common Area, except dogs, cats and other usual household pets, provided that they are not kept, bred or maintained for any commercial purposes. No animal shall be permitted to run loose on the Common Area or become a nuisance to any other Owner. The Association may regulate and control the use of the Common Area by such household pets as from time to time it deems necessary.

Section 10. Water and Sewer. No individual water supply systems or sewage disposal systems shall be permitted on any Lot or Common Area.

Section 11. Exterior Appearance. No clothes, sheets, blankets, laundry or other articles shall be hung out or exposed from any Unit or in the Common Area, and the Lot and Common Area shall be kept free and clear of rubbish, debris and other unsightly material. Nothing shall be hung or displayed on the outside wall of any Unit and no awning, canopy, shade, window guard, ventilator, fan air conditioning device, radio or television antenna may be affixed to or placed upon the exterior walls or roof or any part thereof without the consent of the Architectural Control Committee.

Section 12. Common Areas. Except as otherwise provided herein, the Common Area shall be used for the sole and exclusive use, benefit and enjoyment of the Owners. The Trustees of the Association may establish and enforce reasonable rules and regulations as to the use of all Common Areas and the same, as promulgated from time to time, shall be enforceable in the same manner and to the same extent as if originally part of this Declaration.

ARTICLE VII

Maintenance, Repair and Replacement

Section 1. Owners. Each Owner will have the primary responsibility to maintain his Lot and Unit and covenants with the Declarant, the Association and other Owners that he will maintain the same in good condition and repair.

- a. The Owner will make no changes in the colors or material of the exterior of the Unit, fences, hedges, or other exterior appearance of the Lot and Unit; will not make additions, alterations or changes to his Lot and Unit unless and until he has the approval of the Architectural Control Committee.
- b. The Architectural Control Committee may require the Owner to supply plans and specifications for the proposed improvements showing the nature, kind, shape, height, material and location of the proposed work, it being understood that the workmanship, materials and design must be in harmony with the rest of the Building and Property.
- c. All repairs, maintenance and replacement to the interior of the Unit shall be the sole responsibility of the Owner. Unless it involves a structural change,

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the Owner does not need any prior consents for any work done on the interior of the Unit.

d. The Association shall provide exterior maintenance for the Units, but such responsibility shall not include any glass surfaces, doors, door frames, windows or window frames, or patio area, which will be the responsibility of the Owner. Any mechanical equipment (including parts of any HVAC System) on the exterior of a Unit or in the Lot which services the Unit will be the responsibility of the Owner.

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e. The reasonable cost of repair and maintenance to a party wall or party fence shall be shared by the Owners who make use of the wall or fence in proportion to such use.

f. Notwithstanding any other provision of this Declaration, an Owner who by his neglect or willful act causes damages to a party wall or fence or causes the same to be exposed to the elements shall bear the whole cost of repairing and furnishing the necessary protection against the elements.

g. The Association shall have the right to recover any costs expended for repairs and replacements that were due to the willful neglect or negligence of the Owner.

Section 2. Association. The Association shall assume all responsibility for the maintenance and repair of the entire Common Area and the cost thereof shall be a common charge against all of the Owners.

a. The Association shall provide exterior maintenance upon each Unit, i.e., paint, repair, replace and care of the roofs, gutters, downspouts, exterior surfaces and other improvements. Such repairs that are required by the negligence of an Owner shall be charged directly to the Owner and be reimbursed to the Association. It is understood that such maintenance, repair and replacements will be at the discretion of the Association and only after determining that it has made provision to cover the costs.

b. The Association shall make provision for the care of any lawns and other landscaping, snow removal and other maintenance responsibilities of such nature.

c. If done on a uniform basis, the Association may provide such other services as they from time to time determine to be beneficial to all of the Owners in the complex.

d. If the Architectural Control Committee permits an Owner to make exterior changes to the Owner's Unit only, the Association will make arrangements with the Owner as to the sharing of the cost of such improvements.

Section 3. Managing Agent. The Association by its Trustees may delegate all or any portion of its authority to discharge its maintenance and repair responsibilities to one or more independent contractors or to a managing agent. Such delegation shall be evidenced by a management contract for a term not to exceed one (1) year in duration, which

shall provide for the payment of reasonable compensation to such managing agent as a Common Expense. Upon the expiration of the initial term of any such management contract, the Trustees may renew such contract from time to time for successive periods, no one of which shall exceed one (1) year in duration or enter into a new contract for a like period. The Declarant, after the filing of this Declaration, may enter into the contract with the Managing Agent on behalf of the Association for the initial term of one (1) year. Such agreements shall provide for termination without cause and without payment of a termination fee on ninety (90) days notice.

## ARTICLE VIII

### Party Walls and Fences

Section 1. General Rules of Law Apply. Each wall and fence which is built as part of the original construction of the Units on the Property and common to any other Unit or Lot shall be considered a party wall or party fence. Each Owner shall own so much thereof as stands upon his land, subject to the easement of the other, and has a right to use that wall for any purpose not inconsistent with its use as a party wall.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in the proportion of such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, it shall be repaired or replaced by the Association.

Section 4. Weatherproofing. The benefiting Owners will weatherproof and otherwise maintain any party walls or fences in good order and repair.

Section 5. Runs With the Land. The party wall rights shall be appurtenant to the land of each Owner and shall pass to such Owner's successor in title subject also to the easement of such other using Owner.

Section 6. Arbitration. The Board of Trustees of the Association shall act as Arbitrators over any disputes concerning party walls or fences and it shall decide as to requirements of maintenance, repair, replacement and proportion of cost among the benefiting Owners, including whether or not any amounts expended by the Association for the repair, etc. of the common walls or fences should be recovered from any of the Owners thereof. The Association will also act as the Arbitrator over any disputes that arise concerning the use and repair of driveways that may be shared by adjoining Unit Owners.

## ARTICLE IX

### Insurance

Section 1. Carried by Association. The Association shall carry fire and extended coverage, vandalism and malicious mischief liability insurance and workers' compensation insurance, if applicable, on the Buildings, Units, Lots, structures or other improvements now or at any time here-

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after constituting a part of the Property and the costs thereof shall be a Common Expense.

Section 2. Fire and Extended Coverage. The Buildings and other improvements on the Lots and Common Area shall be insured against fire and other perils covered by a standard extended coverage endorsement in an amount equal to the maximum insurable replacement value excluding foundation and excavation costs. Such coverage shall also include interior walls within any Unit and the pipes, wires, conduits and ducts contained therein and further include all fixtures, equipment and trim within a Unit which were furnished with the Unit as standard items.

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a. Such policy of insurance shall provide for the issuance of certificates of insurance to mortgagees of Units and to provide at least ten (10) days notice prior to any cancellation of insurance.

b. Any mortgagee may to remedy any lack of insurance, but shall not be required to, advance premiums to keep the insurance in effect or obtain new insurance policies in place thereof, and the amount so advanced shall be a Common Expense due immediately from the Association and a special assessment against all Unit Owners.

c. The insurance policies shall provide for the release by the insurer thereof of any and all rights of subordination, assignment or other rights of recovery against any Unit Owner, his family, tenants and all other persons lawfully in possession, for recovery against any one of them for any loss occurring to the Buildings, Units, Lots or Properties from any of the perils insured against by such insurance coverage.

d. Proceeds of all insurance policies owned by the Association shall be paid to the Association, and shall be held in a separate account and in trust for the purposes of repair or construction as provided herein, for the benefit of the Unit Owners and their mortgagees, as their interests may appear.

e. It shall be the responsibility of each Unit Owner to obtain individual contracts of insurance for his personal property located within the Unit or elsewhere on the Property.

f. An Owner shall not purchase an individual fire and extended coverage insurance policy on his Unit and Lot as real property. If, irrespective of this prohibition, an Owner purchases an individual policy insuring real property, said Owner shall be responsible to the Association for loss or expense that the policy may cause in adjusting the Association's insurance, and such amount of loss shall be a special lien on his Lot.

g. Such insurance, purchased by the Association, may have a reasonable deductible as determined by the Board of Trustees and such deductible shall be considered as a Common Expense of the Association.

h. Each Owner at the time of acquisition may be required to pay to the Association a lump sum (not to exceed one (1) year pro-rata insurance premium) that will pay the pro-rata share of the existing insurance cov-

erage, it being understood that the payment of Common Expenses includes only future insurance premiums.

Section 3. Liability Insurance. The Association, as a Common Expense, shall insure itself, the Board of Trustees, all Unit Owners and Members of their respective families and other persons residing with them in the Unit, their tenants, and all persons lawfully in possession or control of any part of the Properties, against liability for bodily injury, disease, illness or death and for injury to or destruction of Property occurring upon, in or about, or arising from the Common Areas. Such insurance to afford protection to a limit of not less than \$300,000.00 in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than \$500,000.00 in respect to any one occurrence and to the limit of not less than \$25,000.00 in respect to damage to or destruction of Property arising out of any one accident.

a. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots or Units.

b. It shall be each Unit Owner's responsibility to obtain insurance coverage at his own expense upon his Unit and Lot for his personal liability for occurrences within said Unit or upon his Lot and also for alternative living expenses in event of fire or other damages or destruction.

Section 4. Association to Act. Each Owner does hereby appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of fire and extended coverage, vandalism and malicious mischief, liability insurance and, if applicable, worker's compensation insurance pertinent to the Properties, the Buildings, Unit and Lot with such insurer as may from time to time provide insurance. Without limitation to the generality of the foregoing, the Association as said attorney-in-fact shall have full power and authority to purchase and maintain such insurance, to collect proceeds and to distribute the same, to execute releases of liability and to execute all documents and to do all things on behalf of the Unit Owners as shall be necessary or convenient in dealing with any insurance purchased by the Association.

#### ARTICLE X

#### Reconstruction or Repair

Section 1. Sufficient Insurance. In the event of any damage or destruction from any cause or peril insured against and the proceeds of any policies shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied in payment therefor.

Section 2. Insufficient Insurance. In the event the improvements forming a part of the Properties, or any part thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the costs of repair, restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken as follows:

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ARTICLE IX. INSURANCE

Section 2. Fire And Extended Coverage

Modify the first paragraph to read as follows:

Section 2. Fire and Extended Coverage. The buildings and other improvements on the Lots and Common Areas shall be insured against fire and other perils covered by a standard extended coverage endorsement in an amount equal to the maximum insurable replacement value excluding foundation and excavation costs. Such coverage shall also include interior walls within any Unit and the pipes, wires, conduits and ducts contained therein and further include all fixtures, equipment and trim which were furnished with the Unit by Camericon at the time of closing with the exception of the washer and dryer (if any), refrigerator (if any) and any carpet pads or carpet upgrades purchased. These items are considered personal property and should be covered by your own personal insurance. The insurance will only reimburse for the base carpet with no pad in the event of damage. the common insurance policy will also cover the damage due to earthquakes.

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a. The cost of repair, restoration or reconstruction in excess of the insurance proceeds to a Unit and Lot shall be borne by the Owner of the Units. Where more than one Unit is involved, the work shall be undertaken by the Association.

b. If the damage is only a single Unit or part thereof, it shall be the responsibility of the Unit Owner to repair such damage and the Association shall make available any insurance proceeds relative to such damage to the Owner for that purpose.

c. Any repairs, restoration or reconstruction of the Common Area shall be undertaken by the Association and the costs in excess of the insurance proceeds to the Common Area shall be a Common Expense.

d. Should any Owner refuse or fail to pay after reasonable notice his share of such cost in excess of the insurance proceeds, the amount thereof shall be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner and if not paid, may be enforced in the same manner as herein provided for the non-payment of assessments.

Section 3. Procedure for Reconstruction or Repair. Immediately after a casualty causing damage to any portion of the Property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for bonds, permits, licenses, etc. The insurance proceeds and the sums deposited from collections of special assessments, shall constitute a construction fund which shall be disbursed to the payment of cost of reconstruction and repair from time to time as the work progresses. Any remaining moneys after the repairs, restoration or reconstruction shall be paid to the Association.

ARTICLE XI

Real Estate Taxes

Section 1. Owner. The Owner of each Lot shall pay the real estate taxes and assessments that are from time to time levied against his individual Lot.

Section 2. Association. The Association shall be responsible for the payment of all taxes and assessments, if any, that are from time to time levied against the Common Areas.

ARTICLE XII

Association

Section 1. Formation. In order to carry into effect the purpose of this Declaration and to own the Common Areas a nonprofit corporation, Eagle Highland Owners Association, has been formed under and pursuant to the nonprofit corporation act of Ohio.

Section 2. Membership. Each Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Ownership of a Lot shall be the sole qualification for membership. Upon the sale or other disposition of a Lot that vests title in a new Owner, the new Owner shall automatically become a member of the Association and the previous Owner will cease to be a member of the Association, unless he owns other Lots.

Section 3. Membership Classes and Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, except the Declarant, of Lots upon which is constructed a Living Unit, and shall be entitled to one (1) vote for each such Lot so owned.

Class B. The Class B member shall be the Declarant, and shall be entitled to three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

a. When Class A is in existence and the total votes outstanding equals or exceeds the total votes outstanding in the Class B membership; provided, however, that if at any time or from time to time the Declarant does not annex Additional Properties as provided in this Declaration so as to maintain Class B membership in existence, due to no fault of its own (either because of governmental or quasi-governmental action or inaction or otherwise), then Class B membership shall not cease, but shall continue in order to allow the Declarant a reasonable time after the impediment has been eliminated to annex additional Properties as provided herein; or

b. On December 31, 1996.

Section 4. Joint Owners or Occupants. When more than one person holds an interest in any Lot, all such persons shall be members of the Association; provided, however, that Owners' vote shall be exercised as all such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by the Class A member.

Section 5. Organizational Meeting. The Declarant may call an organizational meeting of the Association, and at said meeting, the members shall elect the initial Board of directors and officers, along with adopting By-Laws for the Association.

Section 6. Election of Board. The Declarant, as long as Class B membership exists, shall have the right to elect or appoint a majority of the Board of Trustees of the Association. In the event that there shall be vacancy in the office of any Board Member appointed by the Declarant, at any time, then the provisions of the By-Laws to the contrary notwithstanding, the successor or substitute Board Member shall be appointed or elected by the Declarant. During such time as the Declarant shall have the right to appoint or elect the majority of said Board, the Declarant shall not vote its memberships in the election of the balance of the Board, to-wit, the minority thereof. Said minority of the Board shall be elected by the members exclusive

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of the Declarant. The Declarant's presence shall, however, be included for the purpose of determining a quorum at any meeting of the members at which the election of Board Members takes place. The Declarant shall, at the annual meeting of members, advise the Chairman of the annual meeting of the persons whom it desires to have appointed or elected Board Members, not exceeding a majority of the whole Board of Trustees, and such persons shall be deemed elected Board Trustees of the Association. The Board Members appointed or elected by the Declarant hereunder need not be members of the Association, provisions of the By-Laws of the Association to the contrary notwithstanding, and need not be officers or directors of the Declarant.

Section 7. Declarant's Rights. Until such time as the sale of seventy-five percent (75%) of all Units to Owners, or for a period of five (5) years from the date hereof, whichever first occurs, the powers, rights, duties and functions of the Association shall be exercised by a Board of Trustees selected by the Declarant. The Declarant may relinquish such right at any time and in such event will forthwith organize the corporation to be managed by Trustees elected by the members.

ARTICLE XIII

Common Expenses

Section 1. Binding. Each Owner by his acceptance of a deed to a Lot, for himself, his heirs, administrators, executors, personal representatives, successors and assigns, whether or not it shall be expressed in such deed, covenants and agrees to pay the assessments that are levied from time to time to pay his allocated share of the Common Expenses provided for herein and as levied by the Association.

Section 2. Payment. The Declarant, commencing on the first day of the month following the transfer of title of the first Unit will pay to the Association, its aliquot monthly assessment for each Lot it owns that contains a completed Unit and until it sells same and the assessment is assumed by the new Owner. No assessments will accrue until a Building is completed and the first Unit therein is conveyed.

a. Commencing on the first day of the month after acceptance of his deed, each Owners will pay 1/12th of the then current annual assessment charges that are due the Association. The previous Owner will be responsible for such charges until that date.

b. In a voluntary conveyance of a Lot, the Grantee of the Lot shall be jointly and severally liable with the Grantor for all unpaid assessments due the Association up to the time said Grantee is to assume such obligation without prejudice to the Grantee's right to recover from the Grantor such amounts paid by the Grantee to the Association that is the obligation of Grantor.

c. The Grantor or Grantee, upon the payment of a reasonable fee, will be entitled to a statement from the Trustees or their agent setting forth the amount of the unpaid assessments due Grantor's Lot as of a specified date and the Grantee shall not be liable for any assessments of the Grantor in excess of that amount set forth as of the date specified.

d. The Trustees of the Association may impose a late charge for any assessment not paid within five (5) days after they are due. ✓

Section 3. Pro-Rata Share. Each Owner of a Unit will pay an equal share of the Common Expenses. Each share will be computed by dividing the total expense for any period by the number of Lots then a part of this Plan and subject to the Declaration. Such Common Expenses will include the cost of insurance, real estate taxes on the Common Area, the cost of maintaining the exterior of the Units and Common Area, administration of the Association, such services provided for by the Association and any management fees that are due under any management contract entered into by the Association, being all costs necessary to properly maintain the Common Area and the Association. In addition, the Owner may be required to pay an amount equal to not more than two (2) months of the Common Expense charges plus a lump sum amount for current insurance charges.

Section 4. Preparation of Budget. The Association shall on or before December 1st of each year, prepare an estimate of the total amounts that will be necessary to pay the Common Expenses for the ensuing calendar year and shall forthwith supply each Unit Owner a copy thereof and his estimated share of the Common Expense.

a. The budget prepared shall take into consideration the projected addition of Lots to this Plan; the necessity of setting up a reserve for repair and replacement of the Buildings and Common Areas and other matters that could affect the Common Expenses of the Properties.

b. Provided, however, the failure to prepare a budget shall not be a waiver or release of the obligation of each Owner to pay his pro-rata share of the Common Expenses.

Section 5. Review and Adjustment. In June of each year and more often as necessary, the Association shall review the budget and shall make adjustments to the assessments for Common Expenses to the actual expenses incurred or projected for the balance of the calendar year and the amount of the individual assessment for the Common Expense, if necessary, shall be adjusted. Any amounts paid by an Owner in excess of his pro-rata share shall be a credit against the next assessment due for Common Expense. It is initially believed that the services provided by the Association and the Common Expenses required will be prorated equally among the Units irrespective that there may be some variances in the size of the Units and the sales price of the Units. Provided, however, should it be determined that because of size, because of architectural style or construction that some Units generate more Common Expense than others, adjustments shall be made in the allocation of common expenses to fairly apportion this expense. ✓

Section 6. Mandatory Requirement. The Association shall at all times budget and collect, and each Owner shall be obligated to pay an amount necessary to keep and maintain the Buildings and Common Areas in a good state of maintenance and repair, and as the same are necessary to create reserve for replacement for the Common Area facilities. ]

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Section 7. Limitation on Disbursements. The Association shall not authorize any structural alterations, capital additions to, or capital improvements of the Common Area requiring an expenditure in excess of One Thousand Dollars (\$1,000.00) without, in each case, the prior approval of the members of the Association exercising a majority of the voting power of the association.

Section 8. Non-Use of Facilities. No Owner of a Unit or Lot may exempt himself from liability for his contribution toward the Common Expense by waiver of the use of any of the Common Area or by the abandonment of his Unit.

Section 9. Unimproved Parcels. With reference to the application of this Article, Lots or Parcels owned that are not improved by a completed Building shall not be assessed until a Building is completed and the first Unit therein is sold.

ARTICLE XIV.

Other Assessments

The assessment for the payment of common charges shall be such to provide the funds necessary for the normal expenses of the Association to carry out its responsibilities herein outlined. Under the following circumstances, the Association may adopt the following additional assessments:

- a. For capital improvements only by the affirmative vote of 66% of the voting power of the Association.
- b. A special individual Unit and Lot assessment only if the Trustees find the same is necessary to any individual Unit in their opinion for public safety or in order to prevent damage or destruction of any other part of the Properties and such assessments will be only for the reasonable expense of such repairs.
- c. A special individual Lot assessment to cover the cost of repairs, replacements and other remedial action resulting from the willful neglect or negligence of an Owner.
- d. A special assessment against all Unit Owners in the event that the Association fails to maintain the insurance coverage required aforesaid and the cost thereof is advanced by a mortgagee of any Unit.

ARTICLE XV.

Lien for Non-Payment

Section 1. Certificate. The Association shall have a lien upon the estate or interest of any Owner in a Lot for the payment of the portion of the Common Expenses or other assessment chargeable against such Lot which remains unpaid for ten (10) days after the same has become due and payable and a certificate therefor or an affidavit thereabout has been filed with the Recorder of Greene County pursuant to authorization given by the Trustees of the Association.

- a. Such certificate or affidavit shall contain a description of the Lot, the name of the record Owner

ARTICLE XIII. COMMON EXPENSES

Section 3. Pro-Rata Share

Modify the first paragraph to read as follows:

Section 3. Pro-Rata Share. Each Unit Owner shall pay an equitable share of the Common Expenses. The insurance portion of the Association Fee shall be determined based upon the replacement cost of each type of unit as determined by the insurance agent. The maintenance and operating expenses portion of the Fee shall be determined based upon the size of each type of unit. The Bayberry Units are hereby fixed at 1883.6 square feet (including garage), and the Aspen Units are fixed at 1721.4 square feet (including garage). The 22 Bayberry's thus share 74.7% of the general expenses and the six Aspen's shall share 25.3% of the maintenance and operating expenses. Such common expenses shall include the cost of insurance, real estate taxes on the Common Area, the cost of maintaining the exterior of the Units and the Common Area, administration of the Association, such services provided for by the Association and any management fees that are due under any management contract entered into by the Association, the sum total being all costs necessary to maintain the Association and the Common Area. In addition, the Owner may be required to pay an amount equal to not more than two (2) months of the Common Expenses plus a lump sum amount for the current insurance charges.

thereof, and the amount of such unpaid portion of the Common Expense and other assessments and shall be subscribed by the President or other chief officer of the Association. Such lien may include late penalties and shall draw interest at the rate of ten percent (10%) per annum.

b. Such a lien shall remain valid for a period of five (5) 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 on real property or discharged by final judgment or order of a court in an action brought to discharge such lien.

Section 2. Priority. The lien provided for herein shall take priority over any lien or encumbrances subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages which have been filed for record. Said lien may be foreclosed in the same manner as a mortgage on real property in an action on behalf of the Association by the President or other chief officer pursuant to the authority given him by the Trustees. In any such foreclosure action, the Owner of the Lot affected, agrees to pay a reasonable rental for said Unit during the pendency of such action and the Owner agrees that the plaintiff in such action is entitled to the appointment of a receiver to collect the same.

Section 3. Association as Purchaser. If approved by seventy-five percent (75%) of the voting power of the Association, the Association may be the purchase of the Lot at the foreclosure sale.

Section 4. Discharge of Lien. Any Owner who believes that the portion of the Common Expenses or other assessments has been improperly charged against him or his Lot, may bring an action in the Court of Common Pleas of Greene County for the discharge of such lien. In any such action, if it is finally determined that such portion of the Common Expense or other assessment has been improperly charged to such Owner or his Lot, the court may make such order as is just, which may provide for a discharge of record of all or a part of such lien. The Association agreeing to such an action and authority of the Court to make any such orders.

Section 5. Mortgage. It is agreed that where the mortgagee of a first mortgage of record or other purchaser at a foreclosure acquires title to a Lot, such acquirer of title shall not be liable for the assessments of the Owner or Lot that accrued prior to the transfer of title. Such unpaid expense, if not collected from the previous Owner, will be deemed a Common Expense against all other Lots, including the Lot of the acquirer according to their percentage of responsibility for Common Expense.

#### ARTICLE XVI.

##### Statutory Agent

The person to receive service of process for the Association will be Thomas H. Peebles, whose business address is 1227F Lyons Road, Centerville, Ohio 45459. The statutory agent for the Association may be changed by the affirmative action of the Board of Trustees of the Association. Such change shall be reflected by a change of statu- ✓

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tory agent with the Secretary of State of Ohio on such forms prescribed for the subsequent appointment of statutory agents for non-profit Ohio corporations.

ARTICLE XVII.

Mortgage Provisions

Section 1. Benefit. The following provisions are included herein for the benefit of the holders of first mortgages on any Lot which is subject to the provision of this Declaration, in order to permit compliance with the requirements of First Mortgage Insurers or First Mortgage Acquirers as a condition to the purchase of loans on Units and Lots on the Property. The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders, and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Board or the Association, but only without such approval to the extent that such alterations, amendment, revision or rescission is necessary to comply with the requirements of such first mortgage holders.

Section 2. First Mortgage Provisions. It is provided as follows:

a. Unless at least sixty-six and two-thirds percent (66 2/3%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual Units in the Property have given their prior written approval, the Association shall not be entitled to:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by such Association for the benefit of the Units on the property (the granting of easements for public utilities or for other public purposes consistent with the intended use of common Property by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner;

(iii) by act or omission, change, waiver or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, the maintenance of the common property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the Property;

(iv) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and

(v) use hazard insurance proceeds for losses to any Common Area for other than the repair, re-

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placement or reconstruction of such common property.

b. First mortgagees of Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

c. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual Unit borrower of any obligation under the Declaration constituent documents which is not cured within sixty (60) days.

d. Any agreement for professional management of this Planned Unit Development, or any other contract providing for services of the Declarant may not exceed one (1) year and such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less notice.

#### ARTICLE XVIII

##### Addition of Land

Section 1. Property. As indicated above, the Declarant has submitted the described Parcel to this Plan of development and the Declarant, at its sole discretion, may add to the Plan as it deems desirable (said Parcels sometimes referred to as the "Properties").

Section 2. Subject to Plan. Said Properties will be subject to this Plan only if and when said land is added by an amendment to this Declaration and recorded by the Greene County Recorder.

#### ARTICLE XIX.

##### Rehabilitation

The Association may, by the affirmative vote of the Owners entitled to exercise seventy-five percent (75%) of the voting power, decide that the Properties are obsolete in whole or in part and elect to have the same renewed and rehabilitated.

a. The Trustees shall thereupon proceed with such renewal and rehabilitation and the cost shall be a Common Expense.

b. Any Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him or the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his Lot, less the amount of any liens and encumbrances thereon as of the date such vote is taken, in return for a conveyance of his Lot, subject to the liens and encumbrances thereon to the Association.

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c. In the event of such election, such conveyance and payment of the consideration thereof, which shall be a Common Expense to the Owners who have not so elected, shall be made within ten (10) days thereafter.

d. If such Owner and a majority of the Trustees cannot agree upon the fair market value of said Lot, such determination shall be made by the majority of a Board of three (3) appraisers. One of such appraisers shall be appointed by such Owner, one shall be appointed by the trustees and the third shall be appointed by the first two.

ARTICLE XX.

Architectural Control

Section 1. Appointment. The Trustees shall appoint an Architectural Control Committee or upon their failure to so appoint, shall themselves act as such a Committee. The Committee shall have the responsibility of maintaining the scheme or architecture and development of the Properties as originally laid out and constructed.

Section 2. Approval. No changes, modifications, enlargements or additions may be made to the Buildings or Common Areas beyond the improvements installed by the Declarant unless first approved by such Architectural Committee.

a. As otherwise provided herein, they shall review all such plans, specifications, nature, kind, shape, height, materials and location of the same to determine that they are in harmony with the existing structures and improvements to the Property.

b. Provided, however, if said Committee shall have failed to approve or disapprove such alterations or additions within sixty (60) days after their submission, then approval will not be required and this Article will be deemed to be complied with.

ARTICLE XXI.

Prohibition

The Association shall have no right to mortgage or otherwise encumber the Common Areas and Facilities.

ARTICLE XXII.

Amendment

Section 1. Original Plan. Any amendments to this Declaration that are made for the purpose of adding Properties to the Plan may be made by the Declarant without approval of the Owners of the Association.

Section 2. Otherwise. In order to otherwise amend this Declaration, the President and the Secretary of the Association shall execute and record an amendment in writing only after the same has been approved by the Owners exercising seventy-five percent (75%) of the voting power of the Association.

Section 3. Corrections. Provided, however, prior to the conveyance of any Lots, the Declarant may make corrections of any errors and omissions to this Declaration and other amendments that may be required to satisfy any lender or title insurance requirements.

ARTICLE XXIII.

Binding

By the acceptance of a deed to a Lot or Common Area, the Grantee for himself, his heirs, administrators, executors, personal representatives, successors and assigns, whether or not it shall be expressed in such deed, covenants and agrees to be bound by the terms and conditions of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the said Declarant, CAMERICON, INC., has hereunto subscribed its name this 10 day of DECEMBER, 1986.

In the presence of:

CAMERICON, INC.

Benjamin F. Allbery

By [Signature]

Thomas H. Peebles, President

[Signature]

STATE OF OHIO, COUNTY OF GREENE, SS:

The foregoing instrument was acknowledged before me this 10 day of December, 1986, by Thomas H. Peebles, President of CAMERICON, INC., an Ohio corporation, on behalf of said corporation.

[Signature]  
Notary Public

This instrument prepared by:  
Benjami F. Allbery  
Attorney at Law  
18 W. First Street  
Dayton, Ohio 45402

JOAN M COCHRAN, Notary Public  
In and for the State of Ohio  
My Commission Expires Aug. 29, 1988

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