

\$ 65.00
27

9552239

Mary A. Clark
RECORDER
HAMILTON CO., IN

95 SEP 18 PM 3:17

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

FOSTER ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 16th day of August, 1995, by Quadrant Development Company, Inc., an Indiana corporation (the "Developer").

Recitals

1. Developer is the owner of all or portions of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Real Estate" or the "Initial Real Estate").
2. Developer desires to subject the Real Estate owned by Developer to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of any part thereof.
3. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the Plat Covenants and Restrictions for Real Estate as recorded in the office of the Recorder of Hamilton County, Indiana and of collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate").

NOW, THEREFORE, Developer hereby declares that the Real Estate owned by Developer as of the date of recording of the Declaration is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

ARTICLE I

HOMEOWNERS ASSOCIATION

Developer has established the entity known as Foster Estates Homeowners Association, Inc. ("Association"). In conjunction with the establishment of the Association, Articles of Incorporation ("Articles") and By-Laws ("By-Laws") have been adopted which are attached hereto and incorporated herein, as Exhibits "B" and "C", respectively.

ARTICLE II

COVENANTS, CONDITIONS AND RESTRICTIONS

The Covenants, Conditions and Restrictions of Foster Estates shall be those as set forth in the Articles and By-Laws. These provisions include the ability of the Association to assess real estate, the establishment of liens and the collection of assessments. The Articles and By-Laws also provide for joining of the Association by existing property owners that may not be members of the Association or subject to these Declaration at the time of recording the Declaration. The Declaration does not replace any covenants that were previously filed with the various plats of the Real Estate, but are made to supplement any existing covenants.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

QUADRANT DEVELOPMENT COMPANY,
INC.

By: *C. William Wright*

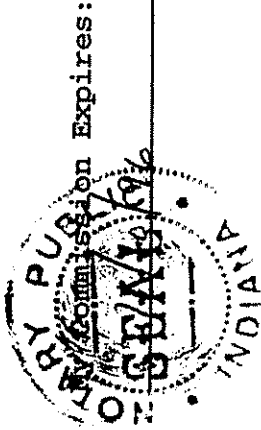
Printed: C. WILLIAM WRIGHT

Title: SFC

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared William W. W. W. W., of Quadrant Development Company, Inc., an Indiana Corporation, who, as Secretary of said corporation, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Foster Estates.

Witness my hand and Notarial Seal this 16th day of August, 1995.



Eggy J. McKinnon
Notary Public
Printed: Eggy J. McKinnon

My Commission Expires: _____
My County of Residence is: Marion

This instrument prepared by Steven C. Robinson, Robinson & Wolenty, 8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240 (317) 587-7820.

EXHIBIT A
LEGAL DESCRIPTION

Part of the Northeast Quarter of Section 19, Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Beginning at the northeast corner of said northeast quarter; thence North 89 degrees 57 minutes 37 seconds West along the north line thereof (basis of bearings is east line of northeast quarter = North 00 degrees 00 minutes 00 seconds East) a distance of 2657.24 feet to the northwest corner thereof; thence South 00 degrees 02 minutes 09 seconds East along the west line of said northwest quarter a distance of 2656.50 feet to the southwest corner thereof (stone found); thence North 89 degrees 54 minutes 15 seconds East along the south line of the said northeast quarter a distance of 1388.27 feet to the north line of the former Indianapolis Northern Traction Company Right-of-Way; thence North 66 degrees 25 minutes 56 seconds East along said north line a distance of 1382.64 feet to the east line of said northeast quarter; thence North 00 degrees 00 minutes 00 seconds East along said line a distance of 2099.51 feet to the Point of Beginning. Containing 153.798 acres, more or less.

ARTICLES OF INCORPORATION

OF

FOSTER ESTATES HOMEOWNERS ASSOCIATION, INC.

The undersigned incorporator, desiring to form a homeowners' association (hereinafter referred to as the "Homeowners' Association") pursuant to the provisions of Indiana Code 23-17-1-1 et. seq., (hereinafter referred to as the "Act"), execute the following Articles of Incorporation:

ARTICLE I

Name and Statement

The name of the Homeowners' Association is Foster Estates Homeowners' Association, Inc. This Homeowners' Association is a mutual benefit association.

ARTICLE II

Purposes and Powers

Section 2.1. Purposes. The purposes for which the Homeowners' Association is formed are:

(a) To maintain, repair, replace, administer, manage, and operate the property owned, leased, managed or used by the Homeowners' Association ("Property") and located within all Sections of Foster Estates Subdivision as now exist or may hereafter be developed, located in Hamilton County, Indiana, ("Development") the current plats ("Plats") of which are recorded under the following Instrument Numbers:

<u>Section</u>	<u>Recording No.</u>
1	Plat Book 16, Pages 35-36
2	Plat Book 16, Pages 37-38
3	Plat Book 16, Pages 39-40
5	Instrument No. 9431057

in the Office of the Recorder of Hamilton County, Indiana. The Plats and any amendments thereto and the covenants contained therein are incorporated herein by reference and all terms and conditions contained therein shall apply to and govern the interpretation of these Articles; and

(b) Solely in furtherance of the aforesaid purpose, to transact any and all lawful business for which non-profit associations may be incorporated under the Act.

Section 2.2. Non-profit Purposes. The Homeowners' Association is organized and operated exclusively for non-profit purposes and its activities shall be conducted in such manner that no part of its net earnings shall inure to the benefit of any Member, Director, or officer of the Association, or any other private person, except that the Association shall be authorized and empowered to pay reasonable compensation for service rendered and to make payments and distributions in furtherance of the purposes set forth in Section 2.1.

Section 2.3. Powers. Subject to any limitation or restriction imposed by the Act, any other law, or any other provisions of these Articles of Incorporation, the Homeowners' Association shall have the power:

(a) To do everything necessary, advisable or convenient for the accomplishment of any of the purposes hereinbefore set forth, or which shall at any time appear conducive to or expedient for the protection or benefit of the Homeowners' Association and to do all of the things incidental thereto or connected therewith which are not forbidden by law; and

(b) To have, exercise and enjoy in furtherance of the purposes hereinbefore set forth all the general rights, privileges and powers granted to Homeowners' associations by the Act, as now existing or hereafter amended, and by the common law.

ARTICLE III
Period of Existence

The period during which the Homeowners' Association shall continue is perpetual.

ARTICLE IV
Registered Office and Registered Agent

The address of the Homeowners' Association's Registered Agent is 445 Gradle Drive, Carmel, Indiana 46032 and the Registered Agent at that office is Scott Schutz.

ARTICLE V
Membership

Section 5.1. Classes. The Homeowners' Association shall have two (2) classes of voting Members which classes shall be the following:

Class A. Class A Members shall be all owners subject to these Articles and the Bylaws of the Homeowner's Association with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B Member(s) shall be the Developer, who shall be entitled to Three Hundred Three (303) votes until such time as the Developer owns no lots or such earlier date ("Turnover Date") Developer determines at its sole discretion, at which time it shall surrender its membership to the Class A Members. The Class B membership shall cease and be converted to Class A membership on the Turnover Date.

Class A Members and Class B Members shall hereafter be referred to collectively as "Members" and individually as "Member".

Section 5.2. Voting Rights of Voting Members. Votes shall be exercisable in person or by proxy on each matter submitted to the membership for a vote at each meeting of the membership.

ARTICLE VI Directors

Section 6.1. Number of Directors. The initial Board of Directors is composed of three (3) Members. If the exact number of Directors is not stated, the minimum number shall be three (3) and the maximum number shall be nine (9); PROVIDED, however, that the exact number of Directors shall be prescribed from time to time in the By-Laws of the Homeowners' Association; AND PROVIDED FURTHER THAT UNDER NO CIRCUMSTANCES SHALL THE MINIMUM NUMBER BE LESS THAN THREE (3).

Section 6.2. Names and Post Office Addresses of the Director(s). The names and post office addresses of the initial Board of Directors of the Homeowners' Association are:

<u>Name</u>	<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Scott Schutz	445 Gradle Drive	Carmel	IN	46032
Steve Schutz	445 Gradle Drive	Carmel	IN	46032
Stan Schutz	445 Gradle Drive	Carmel	IN	46032

Section 6.3. Classes. At such time as the Board of Directors consists of nine (9) Members, the By-Laws of the Homeowners' Association may provide that the Directors be divided into two (2)

or more classes whose terms expire at different times; provided that no term shall continue for longer than three (3) years.

ARTICLE VII
Incorporator

The name and post office address of the incorporator of the Homeowners' Association is:

<u>Name</u>	<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
C. William Wright	474 Gradle Drive	Carmel	IN	46032

ARTICLE VIII
Provisions for Regulation of Business
and Conduct of Affairs of Homeowners' Association

Other provisions, consistent with the laws of this state, for the regulation and conduct of the affairs of the Homeowners' Association, and creating, defining, limiting or regulating the powers of the Homeowners' Association, the Directors or the Members are as follows:

Section 8.1. Place of Meetings. Meetings of the Members and meetings of the Board of Directors of the Homeowners' Association shall be held at such place within Hamilton County, Indiana, as shall be specified in the respective calls, notices or waivers of notice of such meetings given in accordance with the By-Laws of the Homeowners' Association.

Section 8.2. Indemnification.

(a) The Homeowners' Association shall indemnify any person as of right who is or was a Director, officer, or employee of this Homeowners' Association, or is or was serving as a Director, officer, or employee of another Homeowners' Association, partnership, or other enterprise at the request of the Homeowners' Association, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement reasonably incurred by such person, to the fullest extent now or hereafter permitted by the Act, in connection with or resulting from any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, or in connection with an appeal relating thereto), in which such person may be involved as a party or otherwise by reason of being or having been a Director, officer, or employee of the Homeowners' Association or of such other organization; provided, such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Homeowners' Association, and, with respect to any criminal action or

proceeding, in a manner which he had no reasonable cause to believe was unlawful or had reasonable cause to believe the action was lawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Homeowners' Association, and, with respect to any criminal action, suit, or proceeding, in a manner which he had reasonable cause to believe was unlawful.

(b) Any Director, officer or employee of the Homeowners' Association who has been successful as a party on the merits or otherwise in his defense of any claim, action, suit, or proceeding referred to in the first sentence of Section 8.2(a) shall be indemnified as of right against expenses (including attorneys' fees) reasonably incurred by him in connection therewith (except to the extent covered by insurance).

(c) Except as provided in Section 8.2(b) above, any indemnification under Section 8.2(a) shall be made by the Homeowners' Association only upon a determination that indemnification of the particular Director, officer, or employee is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 8.2(a). Such determination shall be made (i) by the Board of Directors of the Homeowners' Association by a majority vote of a quorum consisting of Members of the Board of Directors who were not parties to such claim, action, suit, or proceeding, or (ii) if such a quorum is not obtainable or if so directed by a majority vote of a quorum consisting of Members of the Board of Directors who were not parties to such claim, action, suit, or proceeding, by independent legal counsel (who may be regular counsel of the Homeowners' Association or other disinterested person(s), such counsel or person(s) being hereafter called the "referee") in a written opinion. The person claiming indemnification shall, if requested, appear before the referee and answer questions which the referee deems relevant and shall be given ample opportunity to present to the referee evidence upon which he relies for indemnification. The Homeowners' Association shall, at the request of the referee, make available facts, opinions or other evidence in any way relevant to the referee's findings which are within the possession or control of the Homeowners' Association.

(d) The indemnification provided by this Section 8.2 shall not be deemed exclusive of any other rights to which a Director, officer or employee may be entitled under any by-law, resolution, agreement, vote of the Members, or otherwise, and shall continue as to a person who has ceased to be a Director, officer, or employee of the Homeowners' Association, and shall inure to the benefit of the heirs, executors and administrators of such a person. The

indemnification provided by this Section 8.2 shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, arising from any omissions to act occurring whether before or after the adoption hereof.

(e) This Homeowners' Association shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Homeowners' Association, or who is or was serving at the request of the Homeowners' Association as a Director, officer, employee or agent of another Homeowners' Association, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the Homeowners' Association would have the power to indemnify him against such liability under the provisions of this Section 8.2, together with expenses actually and reasonably incurred by him in connection with his defense thereof; provided that when and to the extent that the Homeowners' Association has purchased and maintained such insurance, it shall have no duty under this Section 8.2 to indemnify any such person to the extent such liability is covered by such insurance.

Section 8.3. Compensation of Employees. In order to carry out the purposes and activities of the Homeowners' Association, such individuals as are deemed necessary may be employed, and each such employee may be paid such compensation for services actually rendered in the course of such employment as may be fixed in the manner provided by the Board of Directors of the Homeowners' Association.

Section 8.4. By-Laws. The Board of Directors of the Homeowners' Association shall have the power to adopt and amend the by-laws of the Homeowners' Association, which may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Homeowners' Association.

Section 8.5. Amendment of Articles. Amendment to the Articles of Incorporation shall require consent of at least 75% of the total vote of all the Members.

Section 8.6. Powers of Board of Directors. Subject to any limitation or restriction imposed by law or by these Articles of Incorporation, the Board of Directors of the Homeowners' Association is hereby authorized to exercise, in furtherance of the purposes of the Homeowners' Association, all the powers of the Homeowners' Association without authorization or approval of the members of the Homeowners' Association.

Section 8.7. Distribution of Assets on Dissolution. Upon the dissolution of the Association, the assets shall be distributed to the Members in accordance with their ownership interest in the Association.

ARTICLE IX
Covenant For Assessments.

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any developed lot subject to these Articles ("Lot Owner"), excluding the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Homeowners' Association and, (2) special assessments for capital improvements and operating deficits. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 9.2. Purpose of Assessments. The assessments levied by the Homeowners' Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Development and for the improvement and maintenance of the areas owned, leased, managed, used or operated by the Homeowners' Association ("Association Property"), including any recreational areas, buildings, improvements, fixtures and equipment.

Section 9.3. Pro-rata Share. Each Lot Owner shall pay a pro-rata share of any assessments or special assessments fixed, established or determined from time to time as hereinafter provided. The pro-rata share of each owner for purposes of this paragraph shall be the percentage obtained by dividing one by the total number of lots in the Development that are owned by Members in the Homeowners' Association.

Section 9.4. Basis of Annual Assessments. The Board of Directors of the Homeowners' Association shall establish an annual budget prior to the beginning of each calendar year, setting forth all anticipated expenses for the coming fiscal year (with appropriate allocations for expenses attributed to any shared facilities), together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Homeowners' Association Property. A copy of this budget shall be delivered to each owner within thirty (30) days prior to the beginning of each calendar year of the Homeowners' Association.

Section 9.5. Basis of Special Assessments. Should the Board of Directors of the Homeowners' Association at any time during the

calendar year determine that the assessments levied for such year may be insufficient to pay the expenses of the Homeowners' Association for such year the Board of Directors shall call a special meeting of the Homeowners' Association to consider imposing special assessments as may be necessary for meeting the expenses for such year. A special assessment shall be imposed only with the approval of two-thirds (2/3) of all of the Members of the Homeowners' Association entitled to vote, and shall be due and payable on the date(s) determined by such Members, or if not so determined, then as may be determined by the Board of Directors.

Section 9.6. Date of Commencement of Assessments; Due Dates. The monthly assessments on each lot in the Development shall commence on the first day of the first month following the month in which Developer first conveys ownership of any lot to a Lot Owner or a Lot Owner becomes subject to these Articles; provided, that if any lot is first occupied for residential purposes prior to being conveyed by Developer, assessments shall be payable with respect to such lot commencing on the first day of the first month following the date of such occupancy. However, the Developer shall be liable for and shall make up any deficit in the budget for the expenses for any year which Developer controls the Homeowners' Association. Assessments shall be due and payable on the first day of each calendar year. Assessments for a partial year shall be prorated from the date the assessments become payable by an Owner. An Owner may request to make monthly payments of assessments but shall pay a processing fee in such amount as required by the Association. The Homeowners' Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Homeowners' Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Homeowners' Association regarding the status of assessments for any lot shall be binding upon the Homeowners' Association as of the date of its issuance.

Section 9.7. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments and authorized above, the Homeowners' Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Homeowners' Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all of the Members.

Section 9.8. Effect of Nonpayment of Assessments; Remedies of the Homeowners' Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the lot, binding upon the then Lot Owner, his heirs, devisees, successors and assigns. The personal obligation

of the then Lot Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments, but, in no event, less than 12% per annum, and the Homeowners' Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as obtained, provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action.

No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

Section 9.2. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Homeowners' Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

Section 9.10. Initial Assessments. During the first year following the date of recordation of the Articles of Incorporation, the total assessments per lot per year shall not exceed Three Hundred Fifty Dollars (\$350.00) exclusive of any monthly processing fees. Thereafter, the annual assessment per lot shall be determined by the budget duly approved at the annual meeting of the Homeowners' Association.

Section 9.11. Notice and Quorum for Any Action to Increase Assessments. Written notice of any meeting called for the purpose of increasing the regular or special assessments of the Homeowners' Association shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice, requirement and the required quorum at the same meeting shall be one-half (1/2) of the required quorum at the

preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9.12. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Homeowners' Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Homeowners' Association together with the right to use the facilities of the Homeowners' Association, of any Member (i) for any period during which any of the Homeowners' Association's charges or any fines assessed hereunder owed by the Member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Homeowners' Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Homeowners' Association.

ARTICLE X
Existing Property Owners

Section 10.1 Consent to Membership. The Board may allow property owners in Foster Estate Subdivision who are not subject to these Articles of Incorporation to become Members of the Homeowners' Association by executing a consent form under such terms and conditions as determined by the Board in its sole discretion.

Section 10.2 Initiation Fees. The Board may require property owners who become Members pursuant to this Article X to pay an initiation fee in such amounts as shall be determined by the Board in its sole discretion, but not in an amount less than the current annual assessment fee.

The undersigned, being one or more persons, do hereby adopt these Articles of Incorporation.

IN WITNESS WHEREOF, I the undersigned do hereby execute these Articles of Incorporation and certify the truth of the facts herein stated, this 16 day of August, 1995.

C. William Highley, Sec

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Steven C. Robinson and acknowledged the execution of the foregoing Articles of Incorporation.

Witness my hand and Notarial Seal this 16th day of August, 1995.

My commission expires:

11/10/96

Steven C. Robinson
(Signature)
Steven C. Robinson Notary Public
(Printed)

This instrument prepared by Steven C. Robinson, Attorney at Law, ROBINSON & WOLENTY, 8838 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240.

c:\scr\corp\fostart2.cln

"EXHIBIT C"

BY-LAWS

OF

FOSTER ESTATES HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
Association

Section 1.1. Association. Foster Estates Homeowners' Association, Inc. ("Homeowners' Association") has been formed, as a not-for-profit corporation under the General Not-for-profit Corporation Act of the State of Indiana, and shall be the governing body for all of the Lot Owners (as defined in Section 9.1 hereof) for the maintenance, repair, replacement, administration and operation of the property owned, leased, managed or used by the Homeowners' Association and located in Foster Estates Subdivision ("Property"), located in Hamilton County, Indiana. The Homeowners' Association shall not be deemed to be conducting a business of any kind, and all funds received by the Homeowners' Association shall be held and applied by it for the use and benefit of Lot Owners in accordance with the provisions contained herein. The Homeowners' Association has been established in conjunction with the filing of various Plats ("Plats") of Foster Estates Subdivision ("Development") as may be amended by Quadrant Development Company, Inc. ("Developer") filed as Plat Book 16, Pages 35-36; Plat Book 16, Pages 37-38; Plat Book 16, Pages 39-40; Instrument No. 9431057 in the office of the Recorder of Hamilton County, Indiana which instruments are incorporated herein by reference and such additional Plats as may be filed in the future in conjunction with the development of Foster Estates Subdivision.

ARTICLE II
Membership

Section 2.1. Duration of Membership; Withdrawal. Membership in the Homeowners' Association shall terminate upon the relinquishment, whether voluntarily or otherwise, of Lot Ownership in Foster Estates, Hamilton County, Indiana. All rights and privileges of a Member in the Homeowners' Association shall cease on the termination of membership.

Section 2.2. Dues, Fees, and Assessments. The amount of any membership fees, dues, and assessments, or waiver thereof, applicable to membership in the Homeowners' Association or to any class of such membership and the time and manner of payment thereof shall be determined by the Board of Directors.

Section 2.3. Classes. The Homeowners' Association shall have two (2) classes of voting Members, which classes shall be the following:

Class A. Class A Members shall be all Lot Owners subject to these By-laws with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B Member(s) shall be the Developer, who shall be entitled to Three Hundred Three (303) votes until such time as the Developer owns no lots or such earlier date ("Turnover Date") Developer determines at its sole discretion, at which time it shall surrender its membership to the Class A Members. The Class B membership shall cease and be converted to Class A membership on the Turnover Date.

Section 2.4. Voting Rights of Voting Members. Votes shall be exercisable in person or by proxy on each matter submitted to the membership for a vote at each meeting of the membership.

ARTICLE III Meetings of Members

Section 3.1. Quorum. Meetings of the Members shall be held at the Property or at such other place in Hamilton County, Indiana, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Members having thirty percent (30%) of the total votes shall constitute a quorum. Unless otherwise expressly provided by law, the Articles of Incorporation or these By-Laws, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having majority of the total votes present at such meeting except as provided by law, the Articles of Incorporation or these By-laws.

Section 3.2. Initial and Annual Meetings. The initial meeting of the Members shall be held upon ten (10) days written notice given by the Board of Directors. Thereafter, there shall be an annual meeting of the Members during the first week in March following such initial meeting, and during the first week in March of each succeeding year thereafter at 7:00 p.m., or at such other reasonable time or date as may be designated by written notice of the Board of Directors delivered to the Members.

Section 3.3. Special Meetings. Special meetings of the Members may be called by the president, by a majority of the Board of Directors, or by a petition in writing of at least one-half (1/2) of the voting Members of the Homeowners' Association.

Section 3.4. Notice of Meetings. Written notice stating the place, day and hour of any meeting of Members and, in the case of special meetings or when otherwise required by law, in the case of which any such meeting is called, shall be delivered or mailed by the secretary of the Homeowners' Association to each voting Member of record, at such address as appears upon the records of the Homeowners' Association, and at least ten (10) days before the date of such meeting.

Section 3.5. Waiver of Notice. Notice of any meeting may be waived by any voting Member in writing filed with the secretary of the Homeowners' Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 3.6. Voting Rights. Each Member of the Homeowners' Association shall have the voting rights specified in the Articles of Incorporation.

Section 3.7. Voting by Proxy. A Member entitled to vote at any meeting of Members may vote either in person or by proxy executed in writing by the Member or a duly authorized attorney-in-fact of such Member. (For purposes of this section, a proxy granted by telegram or facsimile by a Member shall be deemed "executed in writing by the Member.")

Section 3.8. Voting List. The secretary or assistant secretary of the Homeowners' Association shall at all times keep at the principal office of the Homeowners' Association a complete and accurate list of all Members entitled to vote by the Articles of Incorporation. Such list may be inspected by any Member for any proper purpose at any reasonable time.

Section 3.9. Conduct of Meetings. Meetings of Members, including the order of business, shall be conducted in accordance with Roberts' Rules of Order, Revised, except insofar as the Articles of Incorporation, these By-Laws, or any rule adopted by the Board of Directors or Members may otherwise provide. The Members may, by unanimous consent, waive the requirements of this section, but such waiver shall not preclude any Member from invoking the requirements of this section at any subsequent meeting.

Section 3.10. Action of Consent. Any action required to be taken at a meeting of Members, or any action which may be taken at a meeting of Members, may be taken without a meeting but with the same effect as a unanimous vote at a meeting, if, prior to such action, a consent in writing, setting forth the action so taken, shall be signed by all Members entitled to vote with respect thereto, and such consent is filed with the minutes of the proceedings of the Members.

ARTICLE IV
Board of Directors

Section 4.1. Duties and Qualifications. The business and affairs of the Homeowners' Association shall be managed by the Board of Directors. Each Director shall be a Member or a person designated by a Member of the Homeowners' Association.

Section 4.2. Number and Election. The initial Board of Directors designated by the Developer shall consist of three (3) Directors who shall serve without compensation. Such initial Board shall serve for a period commencing on or as soon as possible thereafter the date the Articles of Incorporation are recorded and ending upon the qualification of the Directors elected at the initial meeting of voting Members held as provided in Section 3.2 hereof. Said initial Board may, on behalf of the Developer, exercise the rights reserved in the Plats and Articles of Incorporation. At the initial meeting of voting Members held as provided in Section 3.2 hereof, the voting Members shall elect the Board which shall consist of three (3) Members. In all elections for Directors of the Board, each voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Directors elected at the initial meeting shall serve until the first annual meeting at the first annual meeting three (3) Board Directors shall be elected. The Board Directors elected at the annual meeting shall serve for a term of one (1) year or until their successors are duly elected and qualified. The voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board Directors at any annual or special meeting, provided that such number shall not be less than three (3) nor more than nine (9), that the terms of at least one-third (1/3) of the persons on the Board shall expire annually and that no Director nor officer of the Homeowners' Association shall be elected for a term of more than three (3) years, but that officers and Directors may succeed themselves. Directors shall receive no compensation for their services.

Section 4.3. Vacancies. Any vacancy among the Directors caused by death, resignation, removal or otherwise shall be filled by the remaining Directors. A Director chosen to fill a vacancy shall hold office until the expiration of the term of the Director causing the vacancy and until that Director or his successor shall be elected and qualified.

Section 4.4. Annual Meetings. Unless otherwise agreed upon, the Board of Directors shall meet immediately following the annual meeting of the Members, at the place where such meeting of Members

was held, for the purpose of election of officers of the Homeowners' Association and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of such annual meeting.

Section 4.5. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect. No notice shall be necessary for any regular meeting. Special meetings of the Board of Directors may be held upon the call of the president or of any two (2) Directors of the Board and upon forty-eight (48) hours' notice specifying the time, place and general purposes of the meeting, given to each Director either personally or by mail, telegram or telephone. Notice of a special meeting may be waived in writing or by telegram. Attendance at any special meeting shall constitute waiver of notice of such meeting.

Section 4.6. Meetings Open to Lot Owners. All meetings of the Board of Directors shall be open to attendance by any Member.

Section 4.7. Meetings May be Attended by Electronic Voice Communication. Any meeting of the Board of Directors may be attended by means of any form of electronic voice communication, provided that all Directors can simultaneously hear the proceedings, and be heard by all the other Directors in attendance at the meeting. A quorum for the meeting so held shall be computed on the basis of all persons in voice contact with each other. Any meeting so held shall be a formal meeting of the Board of Directors for all purposes, and any business may be transacted at such meeting that could be transacted if the Directors were assembled in physical proximity to each other.

Section 4.8. Quorum. A majority of the entire Board of Directors shall be necessary to constitute a quorum for the transaction of any business, and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation, or these By-Laws.

Section 4.9. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all Directors of the Board and such consent is filed with the minutes of proceedings of the Board of Directors.

Section 4.10. Committees. The president or the Board of Directors may from time to time create and appoint standing, advisory and special committees of Members and other appropriate individuals to undertake studies, make recommendations and carry on

functions for the purpose of efficiently accomplishing the purposes of the Homeowners' Association.

Section 4.11. Removal of Director. Any Director may be removed from office at any time after the election of Directors at the initial meeting of voting Members pursuant to Section 3.2 hereof, by affirmative vote of the voting Members have at least two-thirds (2/3) of the votes of the Members in attendance by person or proxy, at any special meeting called for the purpose. A successor to fill the unexpired term of a Director removed may be elected by the voting Members at the same meeting or any subsequent meeting called for that purpose.

Section 4.12. General Powers and Duties of the Board. The powers and duties of the Board shall include but are not limited to the following:

(a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Association Property (as defined in Section 9.2), as and to the extent not otherwise provided herein.

(b) The Board shall prepare, adopt and distribute the annual budget for the Homeowners' Association and provide the manner of assessing and collecting from the Lot Owners their respective shares of the estimated expenses.

(c) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Association Property and to delegate any such powers to a manager or managing agent and to any such employees or other personnel as may be employees of the managing agent).

(d) The Board shall have the power to own, convey, encumber, lease or otherwise deal with Lots conveyed to or acquired by Homeowners' Association.

(e) The Board by unanimous vote and without approval from any of the voting Members except as hereinafter set forth, may adopt and amend such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Association Property, and health, comfort, safety and general welfare of the Lot Owners and occupants of the Development. Written notice of such rules and regulations shall be given to all voting Members; and if within thirty (30) days from the date of such notice: (1) voting Members holding at least one-half (1/2) of

(k) The Board may allow persons who are not Lot Owners to use the recreational facilities belonging to the Homeowners' Association subject to such fees and requirements as shall be determined by the Board. The Board shall establish an annual fee for non-member users, which fee shall never be less than the annual assessments charged to Members. The membership for the recreational facilities by non-Member users shall be for one (1) year terms which shall continue for the entire year of the membership, even if the Board decides to discontinue allowing non-Member users. The fees generated pursuant to this Section shall be used solely for the maintenance and operation of the Property.

ARTICLE V OFFICERS

Section 5.1. Officers and Qualifications Therefor. The officers of the Homeowners' Association shall consist of a president, one (1) or more vice presidents, a secretary and a treasurer. The officers shall be chosen from among the Directors. Any two (2) or more offices may be held by the same person except that the duties of president and secretary shall not be performed by the same person.

Section 5.2. Terms of Office. Each of the officers of the Homeowners' Association shall be elected by a majority vote of the Board of Directors at its annual meeting and shall hold office for a term of one (1) year and until his successor shall be duly elected and qualified, or until resignation, removal or death.

Section 5.3. Vacancies. Whenever any vacancies shall occur in any of the offices of the Homeowners' Association for any reason, the same may be filled by the Board of Directors at any meeting thereof, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until his successor shall be duly elected and qualified.

Section 5.4. Removal. Any officer of the Homeowners' Association may be removed, with or without cause, by the Board of Directors whenever a majority of the Board shall vote in favor of such removal.

ARTICLE VI Powers and Duties of Officers

Section 6.1. President. The president, if present, shall preside at all meetings of the Members and the Board of Directors. Subject to the general control of the Board of Directors, the president shall perform all of the usual duties of the chief executive officer of a corporation.

Section 6.2. The Vice-President. Subject to the general control of the Board of Directors, the vice president shall discharge all the usual functions of the president if the president is not present and shall have such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 6.3. Secretary/Treasurer. The secretary shall attend all meetings of the Members and of the Board of Directors, and keep, or cause to be kept, a true and complete record of the proceedings of such meetings, and he/she shall perform a like duty, when required, for all committees appointed by the president or the Board of Directors. If required, he/she shall attest the execution by the Homeowners' Association of deeds, leases, agreements and other official documents. He/she shall attend to the giving and serving of all notices of the Homeowners' Association, and in general shall perform all duties pertaining to the office of secretary and such other duties as these By-Laws or the Board of Directors may prescribe.

The treasurer shall keep or cause to be kept correct and complete records of account, showing accurately at all times the financial condition of the Homeowners' Association. He/she shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Homeowners' Association. He/she shall deposit, or cause to be deposited, all funds of the Homeowners' Association with such depositories as the Board of Directors shall designate. He/she shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Homeowners' Association, and in general shall perform all duties pertaining to the office of treasurer.

ARTICLE VII
Miscellaneous

Section 7.1. Corporate Seal. The Homeowners' Association shall have no seal.

Section 7.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Homeowners' Association shall be executed on behalf of the Homeowners' Association by the president and, if required, attested by the secretary.

Section 7.3. Fiscal Year. The fiscal year of the Homeowners' Association shall begin on January 1 of each year and end on the immediately following December 31.

ARTICLE VIII
Amendments

Subject to law and the Articles of Incorporation and the various Plats of Foster Estates Subdivision and Covenants and Restrictions, filed with the Recorder of Hamilton County as may be amended, and subsequent plats recorded pursuant to the Plats, the power to make, alter, amend or repeal all or any part of these By-Laws is vested in the Board of Directors. The affirmative vote of a majority of the entire Board of Directors shall be necessary to effect any such changes in these By-Laws. Where the amendment of the By-Laws would affect the terms and conditions contained in the Plat that are subject to approval by the Lot owners or first Mortgagees, then such amendment of the By-Laws shall be subject to the same percentage requirements of Lot owners or first Mortgagees as contained in the Plat.

ARTICLE IX
Covenant For Assessments.

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any developed lot subject to these By-laws ("Lot Owner"), excluding the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Homeowners' Association and, (2) special assessments for capital improvements and operating deficits. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the lot, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 9.2. Purpose of Assessments. The assessments levied by the Homeowners' Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Development and for the improvement and maintenance of the areas owned, leased, managed, used or operated by the Homeowners' Association ("Association Property"), including any recreational areas, buildings, improvements, fixtures and equipment.

Section 9.3. Pro-rata Share. Each Lot Owner excluding the Developer shall pay a pro-rata share of any assessments or special assessments fixed, established or determined from time to time as

hereinafter provided. The pro-rata share of each owner for purposes of this paragraph shall be the percentage obtained by dividing one by the total number of lots in the Development that are owned by Members of the Homeowners' Association excluding the Developer.

Section 9.4. Basis of Annual Assessments. The Board of Directors of the Homeowners' Association shall establish an annual budget prior to the beginning of each calendar year, setting forth all anticipated expenses for the coming calendar year (with appropriate allocations for expenses attributed to any shared facilities), together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Association Property. A copy of this budget shall be delivered to each owner within thirty (30) days prior to the beginning of each year of the Homeowners' Association.

Section 9.5. Basis of Special Assessments. Should the Board of Directors of the Homeowners' Association at any time during the calendar year determine that the assessments levied for such year may be insufficient to pay the expenses of the Homeowners' Association for such year subject to the Developer's obligation in Section 9.6, the Board of Directors shall call a special meeting of the Homeowners' Association to consider imposing such special assessments as may be necessary for meeting the expenses for such year. A special assessment shall be imposed only with the approval of two-thirds (2/3) of all of the Members of the Homeowners' Association entitled to vote, and shall be due and payable on the date(s) determined by such Members, or if not so determined, then as may be determined by the Board of Directors.

Section 9.6. Date of Commencement of Assessments; Due Dates. The assessments on each lot in the Development shall commence on the first day of the first month following the month in which Developer first conveys ownership of any lot to a Lot Owner or the Lot Owner becomes subject to these Bylaws; provided, that if any lot is first occupied for residential purposes prior to being conveyed by Developer, assessments shall be payable with respect to such lot commencing on the first day of the first month following the date of such occupancy. However, the Developer shall be liable for any year which Developer controls in the budget for the expenses Assessments shall be due and payable on the first day of each calendar year. Assessments for a partial year shall be prorated from the date the assessments become payable by an Owner. An Owner may request to make monthly payments of assessments but shall pay a processing fee in such amount as required by the Association. The Homeowners' Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Homeowners' Association setting forth whether the assessments on a specified lot have been paid. A properly exe-

cuted certificate from the Homeowners' Association regarding the status of assessments for any lot shall be binding upon the Homeowners' Association as of the date of its issuance.

Section 9.7. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Homeowners' Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Homeowners' Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all of the Members.

Section 9.8. Effect of Nonpayment of Assessments; Remedies of the Homeowners' Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the lot, binding upon the then Lot Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Lot Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments, but, in no event, less than 12% per annum, and the Homeowners' Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action.

No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

Section 9.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Homeowners' Association in any such foreclosure action) or any proceedings or deed in lieu

thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

Section 9.10. Initial Assessments. During the first year following the date of recordation of the Articles of Incorporation, the total assessments per lot per year shall not exceed Three Hundred Fifty Dollars (\$350.00), exclusive of any monthly processing fees. Thereafter, the annual assessment per lot shall be determined by the budget duly approved at the annual meeting of the Homeowners' Association.

Section 9.11. Notice and Quorum for Any Action to Increase Assessments. Written notice of any meeting called for the purpose of increasing the regular or special assessments of the Homeowners' Association shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice, requirement and the required quorum at the same meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9.12. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Homeowners' Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Homeowners' Association together with the right to use the facilities of the Homeowners' Association, of any Member (i) for any period during which any of the Homeowners' Association's charges or any fines assessed hereunder owed by the Member or associate Member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Homeowners' Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Homeowners' Association.


ARTICLE X
Existing Property Owners


Section 10.1 Consent to Membership. The Board may allow property owners in Foster Estates Subdivision who are not subject to these By-Laws to become Members of the Homeowners' Association by executing a consent form under such terms and conditions as determined by the Board in its sole discretion.

Section 10.2 Initiation Fees. The Board may require property owners who become Members pursuant to this Article X to pay an initiation fee in such amounts as shall be determined by the Board in its sole discretion, but not in an amount less than the current annual assessment fee.

CERTIFICATE

The foregoing Code of By-Laws constitutes a true record of the Code adopted by the Board of Directors on 8/16, 1995.


President


Secretary

18.00
2.00
(5) NONE

Instrument
9809823545

FIRST AMENDMENT OF
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF FOSTER ESTATES

THIS FIRST AMENDMENT is made this 27th day of April 1998, by QUADRANT DEVELOPMENT COMPANY, INC., an Indiana corporation (the "Developer") and FOSTER ESTATES HOMEOWNERS ASSOCIATION, INC., an Indiana not-for-profit corporation (the "Association").

Recitals

- A. The Developer made a Declaration of Covenants, Conditions and Restrictions of Foster Estates dated August 16, 1995, recorded September 18, 1995 as Instrument No. 9552239 in the Office of the Recorder of Hamilton County, Indiana (the "Declaration"), with respect to a residential subdivision known as Foster Estates located in Hamilton County, Indiana.
- B. The Association, by proper vote of a majority of its members, amended the Articles of Incorporation and By-Laws of the Association to provide for the exemption of certain builders with respect to the payment of annual and special assessments assessed against the lots in Forest Estates.
- C. The Developer and the Association desire to amend the Declaration to reflect the amendment of the Articles of Incorporation and By-Laws of the Association.

Agreement

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Amendment of the Articles. Section 9.1 of the Articles attached to the Declaration as Exhibit "B" is hereby deleted in its entirety and the following is substituted in lieu thereof:

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any developed lot subject to these Articles ("Lot Owner"), excluding the Developer and Builders as provided herein, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred

by the Homeowners' Association, and (2) special assessments for capital improvements and operating deficits. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Exempt "Builders" shall be defined as (1) a builder who has commenced construction of a speculative house within six (6) months of the date of closing on the subject Foster Estates lot, or (2) a builder who is constructing a house on contract and owns the subject lot. In either case, the property will become non-exempt when the Builder conveys ownership of the subject property.

2. Amendment of the By-Laws. Section 9.1 of the By-Laws attached to the Declaration as Exhibit "C" is hereby deleted in its entirety and the following is substituted in lieu thereof.

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any developed lot subject to these By-Laws ("Lot Owner"), excluding the Developer and Builders as provided herein, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Homeowners' Association, and (2) special assessments for capital improvements and operating deficits. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Exempt "Builders" shall be defined as (1) a builder who has commenced construction of a speculative house within six (6) months of the date of closing on the subject Foster Estates lot, or (2) a builder

who is constructing a house on contract and owns the subject lot. In either case, the property will become non-exempt when the Builder conveys ownership of the subject property.

3. Representations and Warranties. The Developer and the Association hereby represent and warrant for and on behalf of itself to the other party that (i) it is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this Amendment has been taken by it; and (iii) the individual executing and delivering this Amendment on its behalf has been authorized to do so and such execution and delivery shall bind it.

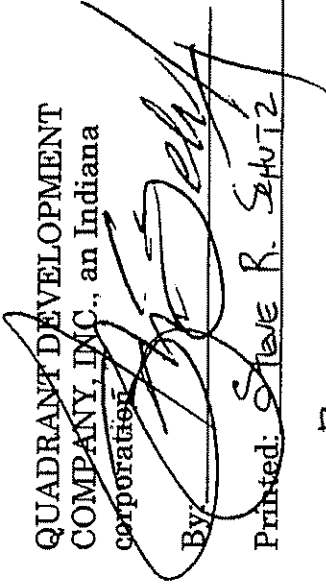
4. Definitions. Except as otherwise provided herein, the capitalized terms used in this Amendment shall have the definitions set forth in the Declaration.

5. Incorporation. This Amendment shall be incorporated into and made a part of the Declaration, and all provisions of the Declaration not expressly modified or amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer and the Association have caused this Amendment to be executed by their duly authorized representatives as of the date and year first above written.

DEVELOPER

QUADRANT DEVELOPMENT
COMPANY, INC., an Indiana
corporation

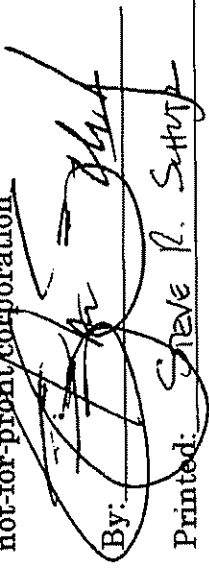
By: 

Printed: Steve R. Schutz

Title: President

ASSOCIATION

FOSTER ESTATES HOMEOWNERS
ASSOCIATION, INC., an Indiana
not-for-profit corporation


By: 
Printed: Steve R. Schutz

Title: President

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State,
personally appeared Stephen R. Schutz, known to me to be the
President of Quadrant Development
Company, Inc., an Indiana corporation, who acknowledged the execution of
the foregoing First Amendment of Declaration of Covenants, Conditions and
Restrictions of Foster Estates for and on behalf of said corporation.

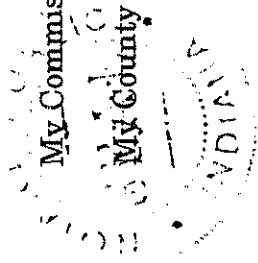
WITNESS my hand and Notarial Seal this 27th day of April,
1998.


Notary Public - Signature

Peggy J. McKinnon
Notary Public - Printed

My Commission Expires: 11/10/00

My County of Residence: Marion



STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

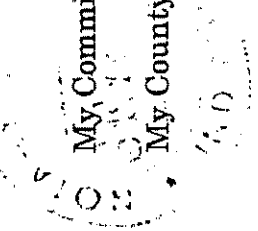
9809823545
Filed For Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 05-06-1998 At 12:02 pm.
AMEND DECL 18.00

Before me, a Notary Public in and for said County and State,
personally appeared Stephen R. Schutz, known to me to be the
President of Foster Estates Homeowners Association, Inc., an
Indiana not-for-profit corporation, who acknowledged the execution of the
foregoing First Amendment of Declaration of Covenants, Conditions and
Restrictions of Foster Estates for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 27th day of April,
1998.


Notary Public - Signature

Peggy J. McKinnon
Notary Public - Printed



My Commission Expires: 11/10/00
My County of Residence: Marion

This instrument prepared by and after recording return to: Diane M.
Kortzendorf, Attorney-at-Law, Robinson & Wolenty, 8888 Keystone Crossing,
Suite 710, Indianapolis, Indiana, 46240.

c:/kortzendorf/fosterest/amdrdecl.doc 04/20/98 5:09 PM

1000
1000
1000

CONSENT OF PROPERTY OWNER

The undersigned as fee simple owner of the real estate located in Foster Estates, Hamilton County, Indiana, legally described as follows: Lot 185 in Foster Estates Subdivision, Section Two, as recorded in Plat Book 16, Pages 37-38 in the Office of the Recorder of Hamilton County, Indiana, hereby consents to the terms and provisions of the Declarations of Covenants, Conditions, and Restrictions of Foster Estates as recorded under Instrument No. 9552239 in the Office of the Recorder of Hamilton County, Indiana on September 18, 1995 ("Declaration") and agrees that the undersigned and its successors and assigns shall be bound by all the terms and provisions of the Declaration and that this consent shall be binding upon and run with the land owned by the undersigned, described herein.

IN WITNESS WHEREOF, the undersigned has caused this Consent of Property Owner to be executed this 27 day of June, 2000.

Signature: Robert A. Kuntz

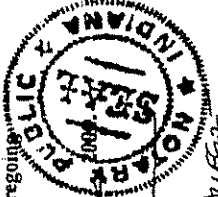
Printed: Robert A. Kuntz

Signature: _____

Printed: _____
20000034001
FILED FOR RECORD IN
HAMILTON COUNTY, INDIANA
MARY L. CLARK
CLERK
ON 07-12-2000 AT 02:12 PM.
MISC 10.00

Before me, the undersigned Notary Public in and said County and State, personally appeared Robert A. Kuntz and _____ and acknowledged the execution of the foregoing _____ Consent of Property Owner.

WITNESS my hand and notarial seal this 27 day of June, 2000.
Frances A. McDufer
Notary Public



My Commission Expires: 7/21/08

My County of Residence is Madison

THIS DOCUMENT PREPARED BY: Steven C. Robinson, ROBINSON & WOLENTY, 8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240.

40.00
10

AMENDED AND RESTATED SECTION FOUR

200100022175
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
04-24-2001 02:59 PM.
AMEND DECL 40.00

DEED OF DEDICATION AND PROTECTIVE COVENANTS

The undersigned being all the owners of the within described real estate hereby amend and restate the Deed of Dedication and Protective Covenants for Section Four, Foster Estates, Carmel, Indiana, previously recorded on August 28, 1996, and recorded as Instrument No. 9609636312, Sheets 3 and 4 in the Office of the Recorder of Hamilton County, Indiana, in its entirety as set forth herein.

The undersigned do hereby lay off, plat and subdivide the real estate into lots, public ways and easements in accordance with the within plat, the within plat shall be known and designated as FOSTER ESTATES SECTION 4, an addition in Clay Township, Hamilton County, Indiana.

STREETS and RIGHTS-OF-WAY: The streets, together with all existing and future planting, trees and shrubbery thereon, as shown on the plat recorded as Instrument No. 9951817, P.C. No. 2, Slide 310, are hereby dedicated to the perpetual use of the public for proper purposes, reserving to the dedicators, their successors or assigns, the reversion or reversions thereon, whenever discontinued by law. Maintenance of the island area at the entrance, Common Area Block 'A' and 'B' and the perimeter wall located within the 60' right-of-way shall be the responsibility of the Foster Estates Homeowners' Association to maintain. The Hamilton County Commissioners agreed to permit construction of the perimeter wall within the proposed 60' right-of-way area. Should the County ever need a portion of the right-of-way which would require the removal of a portion or all of the perimeter fence, the County shall be solely responsible for the demolition. Nothing shall obligate the County to replace the perimeter wall.

BUILDING LOCATION: No building or structure shall be located on any lot nearer to the front lot line or nearer to the side street lot line (corner lots) than the minimum building setback lines as shown on the within plat.

EASEMENTS: There are strips of ground as shown on the within plat marked D.U. & S.E. (Drainage, Utility and Sewer Easement) ("Easements") which are reserved for the use of the Developer and public utility companies, including cable television companies, but not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires, sewers and drains, subject at all times to the proper authorities, and to the easements herein reserved. Developer's use of the drainage easements and any responsibility for repair shall terminate once the maintenance bond requested by the City of Carmel, Indiana has been released.

No permanent or other structures shall be erected or maintained on the Easements without an encroachment permit being issued by the City of Carmel. The owner of the property is responsible to confirm whether an encroachment permit for improvements is required

prior to undertaking any construction in the Easements. The owners of such lots in this addition, however, shall take their title subject to the rights of the public utilities and owners of said lots in this addition to said easements herein granted for egress and ingress in, along, and through the strips so reserved. Drainage easements and storm water detention areas have been specifically designed to properly handle storm water runoff. Alteration of these areas (e.g.- filling, landscaping, etc. which reduces capacity) without City of Carmel approval is not permitted. Landscaping installed by the Developer on Lots 281 through 292 and at the rear of Lots 296 through 299 shall remain and be the responsibility of the purchaser to protect during construction and to replace in the event the landscaping dies. The property owner may install additional landscaping to supplement the existing landscaping; however, no landscaping may occur in those areas designated as dry detention areas on the Section Four Secondary Plat unless the City of Carmel issues an encroachment permit.

LAND USE: All numbered lots in this addition shall be designated as residential lots. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling. All garages constructed shall be attached to the main structure. No hotel building, boarding house, mercantile or factory building or buildings of any kind for commercial use shall be erected or maintained on any lot within this addition. Detached garages, tool sheds, or storage buildings may not be erected on any lot.

LIMITATIONS REGARDING TRASH: No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Other waste must be kept in sanitary containers. All equipment for the storage and disposal of such materials shall be kept in clean and sanitary condition.

TEMPORARY STRUCTURES: No trailer, tent, shack, boat, garage, barn or other outbuilding or temporary structure may be used at any time as a residence. No temporary structures shall be located upon a lot except that used by a builder during the construction of a residential building on the property, which temporary structures shall be promptly removed upon completion of the construction of the building.

RECREATIONAL VEHICLES: No camper, trailer, mobile home, boat, truck or school bus may be parked in the development unless such vehicle is kept in the garage, except for personal automobiles, vans and pick-up trucks. Equipment associated with standard residential construction shall be permitted when associated with the construction or remodeling of a residence within the Section.

DRIVEWAYS: Driveways, driveway aprons and sidewalks are to be concrete. No asphalt construction is permitted.

SATELLITE DISHES: Satellite dishes, antennas or solar panels are not permitted except that "mini-dishes" not exceeding 24 inches in diameter will be permitted.

VEHICLE PARKING: Unless otherwise provided herein, motor homes, mobile homes, any motor vehicle which is inoperative and not being used for normal transportation, any unlicensed vehicles, trailers, boats, campers, commercial delivery trucks and similar vehicles shall not be parked or stored upon a Lot unless within a closed garage. All passenger vehicles may be parked on the street for a period not exceeding forty-eight (48) hours. No vehicles shall be placed on blocks or jacks for purposes of repair, except for repairs made in closed garages. Each property owner understands that the Carmel City Code regulates, abandoned and junk vehicles. Wherever the City Code is more restrictive, the City Code shall be applicable to Section Four property owners.

PLAY STRUCTURES: No tree houses are permitted. Structures which are located on the ground or a movable base and are totally or predominantly enclosed for the purpose of being a children's "play house" shall be subject to architectural review. Play equipment must be kept in the back yard only and must be constructed predominantly of wood and must be maintained in good repair, including painting or staining when necessary. No play structure or equipment may exceed six (6) feet in height without approval from the Architectural Control Committee. Play equipment should not be placed in the required yards (rear yard equals 20 feet of depth and side yards equals 10 feet of depth each side). Play structures are not permitted in easements or dry detention areas without the City of Carmel's approval.

MAILBOXES: A mailbox standard has been established for Foster Estates. A standard mailbox is installed on each lot. It is the responsibility of the owner to maintain the standard mailbox condition, color, height, and size. Newspaper boxes are permitted to be attached to the mailbox post.

FLOOR AREA: The minimum square footage (exclusive of basement, garage and porch areas) for a two-story structure shall be 3,000 square feet. For single-story structures the minimum square footage (exclusive of basement, garage and porch areas) is 2,600 square feet.

LAND USE/ARCHITECTURAL CONTROL: No building, fence, walls or other structure including pools (above ground pools are prohibited), ponds, spas, and other similar structures, shall be erected, placed or altered on any building plot in this addition until the building plans, specifications and plot plan showing the location of such structures have been approved as the conformity and harmony of external design with existing structures herein and as to the building with respect to topography and finished ground elevations, by a committee ("Architectural Control Committee") composed of the undersigned owners of the within described real estate, or their duly authorized representative. If a permit is required from the City of Carmel, said permit will be the responsibility of the lot owner.

In the event of the death or resignation of any member of the Architectural Control Committee, the remaining member or members shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority.

Plans must be sent certified mail to the head of the Architectural Control Committee. If the Committee fails to act upon any plans submitted to it for its approval within a period of thirty (30) days from the date of receipt of the certified mail, the owner may proceed with the building according to the plans as submitted. Neither the Committee members nor the designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. Approval or denial by the Architectural Control Committee shall be in writing.

The Architectural Control Committee will be selected by the Developer until such time as the Developer has sold all its lots. Within thirty (30) days of the sale of the last lot, the Foster Estates Homeowners' Association ("Association") shall be so notified and a meeting of the Association to elect an Architectural Control Committee shall be scheduled. At that meeting three (3) members shall be elected. The initial terms for new members shall be as follows: One new member shall serve a one (1) year term, another a two (2) year term and another a three (3) year term. The Association shall elect a member for the member having his/her term expiring at the annual meeting of the Association. After the initial term of service, new members shall serve a term of three (3) years.

The Architectural Control Committee shall deal solely with matters involving the exterior appearance of the structure and the lot, as prescribed by this document and to include but not be limited to: exterior building modifications of color, materials, additions, entries; lighting; mailboxes; fences; accessory structures; signage; recreational facilities, satellite dishes and antennas; placement of proposed improvements; temporary structures; pools; and driveways.

NUISANCES: No noxious or offensive trade shall be carried on upon any lot in this addition nor shall anything be done thereon which shall be or become a nuisance to the neighborhood. Garbage and trash shall be kept in approved containers which are not visible from the street, except on collection day.

STORM WATER DRAINAGE: In the event storm water drainage from any lot or lots flow across another lot, provision shall be made to permit such drainage to continue without restriction or reduction (artificial or natural) across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on the within plat. The dry detention area maintenance shall be the responsibility of the City of Carmel or the Foster Estates Homeowners' Association as relates solely to the proper function of the engineered design to handle storm water runoff. Neither party shall be responsible for normal maintenance such as mowing, fertilizing, pruning, weeding or weed control. Residents with property which abuts or includes all or a portion of a detention area or drainage easement, shall abide by the storm drainage plans approved by the City of Carmel Engineering Department.

FENCES: No fence shall be erected between the front property lines and the building setback line other than a fence of a decorative nature not exceeding three (3) feet in height. Fences in rear and side yards will be subject to review and approval by the

Architectural Control Committee. A site plan showing the exact location of the fence and an elevation of the fence will be submitted to the Architectural Control Committee. The Committee may ask for a sample of the material and color of finish. No fences shall be erected in detention easements without City of Carmel approval.

ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Any animal so kept shall not be permitted to roam at large within the subdivision and shall be confined to the lot of its owner unless on a leash. Owners shall clean up after their animal in the event it affects another property.

LIGHTS: It shall be the responsibility of the builder to erect and maintain a "dusk till dawn" light at the front of a lot prior to or at the completion of the residence on the lot. The lot owner shall keep the light in good working order and to make sure the light functions as designed.

SIDEWALK: A concrete sidewalk no less than four (4) feet in width shall be required across that portion of a lot which is considered the frontage. Installation and maintenance of said sidewalk shall be the responsibility of the individual lot owners. Sidewalks shall be completed within 30 days of the house being occupied.

ABOVE GROUND POOLS: *No above ground pools shall be installed.* Only in-ground pools will be permitted. Architectural Control Committee approval is required for any in-ground pool.

ENFORCEMENT: If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of these covenants, restrictions, provisions or conditions herein, it shall be lawful for any other person owning any real property situated in this addition to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent him or her from doing so, or to recover damage or other dues for such violation.

The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby dedicated to the public, and reserved to the Association and the several owners of the several lots in this subdivision and to their heirs and assigns.


The Developer, Quadrant Development Company, shall not be liable for damages of any kind to any person as a result of a property owner violating one or more of the covenants or restrictions.

TERM: The within covenants, limitations, and restrictions are to run with the land and shall be binding on all parties claiming under them. These covenants shall be in full force and effect for a period of twenty-five (25) years from the recording date, at which time

said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of the majority of the then owners of the lots, it is agreed to change the covenants in whole or part.

SEVERABILITY: Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every combination of the Restrictions. Invalidation of any of the covenants by judgment or court order shall in no way affect any of the other provisions that shall remain in full force and effect.

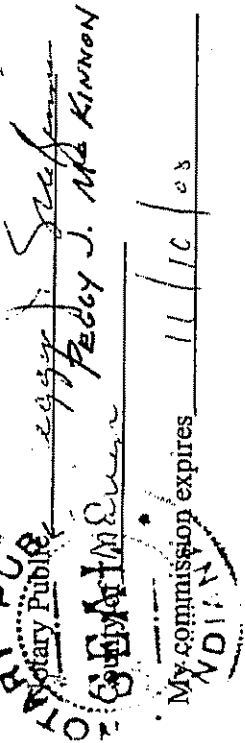
In witness whereof, the undersigned, have hereunto caused its name to be subscribed this 19th day of April, 2001.

Quadrant Development Company:
By: 
Printed Name: STEPHEN SCHUYLER

State of Indiana)
)SS:
County of Hamilton)


Before me, a notary public in and for the county and state, personally appeared Stephen R. Schuyler (name) the President (title) on behalf of Quadrant Development Company and acknowledged the execution of the foregoing instrument as his voluntary act and deed and affixed his signature thereto.

--Witness my signature and notarial seal this 19th day of April, 2001.


Notary Public
Gregory J. McKinnon
My commission expires 11/10/03

In witness whereof, the undersigned, have hereunto caused its name to be subscribed this 19th day of April, 2001.

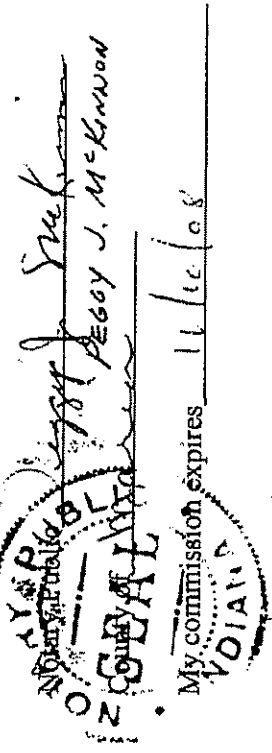
Chaparral, Inc.

By: 
Printed Name: Scott Schutz

State of Indiana)
)SS:
County of Hamilton)

Before me, a notary public in and for the county and state, personally appeared Scott Schutz (name) President (title) on behalf of Chaparral, Inc. and acknowledged the execution of the foregoing instrument as his voluntary act and deed and affixed his signature thereto.

Witness my signature and notarial seal this 19th day of April 2001.


Peggy J. McKinnon

In witness whereof, the undersigned, have hereunto caused their names to be subscribed this 14th day of April, 2001.

Jaytee Properties, LLC

By: [Signature]
Printed Name: Scott Schurz

By: [Signature]
Printed Name: SARAH R SCHURTZ

By: [Signature]
Printed Name: Sarah R Schurz

By: [Signature]
Printed Name: Sandra R. Garrett

By: [Signature]
Printed Name: Sarah R Schurz

By: [Signature]
Printed Name: Sandra R Schurz

State of Indiana)

)SS:

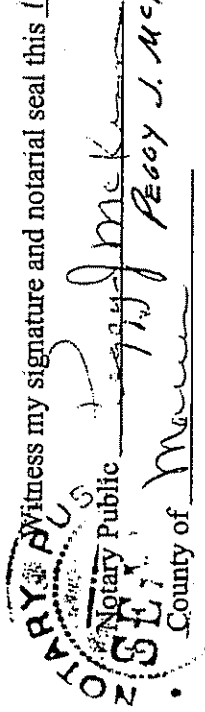
County of Hamilton)

Before me, a notary public in and for the county and state, personally appeared Sarah R Schurz, Sandra R Garrett, Sarah R Schurz, Sandra R Schurz and acknowledged the execution of the foregoing instrument as their voluntary act and deed and affixed their signatures thereto.

Witness my signature and notarial seal this 14th day of April, 2001.



Notary Public [Signature] Ruby J. McKinnon
My commission expires 11/16/05
INDIANA

Witness my signature and notarial seal this 19th day of April, 2001.



My commission expires 11/10/08

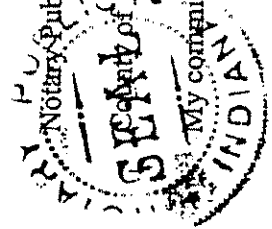
In witness whereof, the undersigned, have hereunto caused its and their names to be subscribed this 19th day of April, 2001.


Scott R. Schutz

Mary M. Schutz

State of Indiana)
)SS:
County of Hamilton)

Before me, a notary public in and for the county and state, personally appeared Scott R. Schutz and Mary M. Schutz and acknowledged the execution of the foregoing instrument as their voluntary act and deed and affixed their signatures thereto.

Witness my signature and notarial seal this 19th day of April, 2001.


Peggy J. McKinnon
My commission expires 11/10/08

This instrument was prepared by Steve Robinson, Robinson & Wolenty, LLP, 8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240.

Homeowners Association Covenants

There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as "Foster Estates Homeowners Association, Inc.", or an organization of similar name, which is referred to as the "Homeowners' Association". Every owner of a residential lot in Section Four of Foster Estates, a subdivision located in Hamilton County, Indiana (hereinafter referred to as "Subdivision" such term including all other sections of Foster Estates platted and recorded prior to, contemporaneously with or subsequent to the recording of the within plat lying within the boundaries of that certain parcel of real estate described in that certain warranty deed from Hazel Foster to Quadrant Development Company, Inc. ("Developer") dated 12-18-86, and recorded as Plat Book 363, Page 363, in the office of the Recorder of Hamilton County, Indiana) shall be a member of the Homeowners' Association and shall be subject to all the requirements and limitations imposed in these Covenants, including those provisions with respect to the payment of assessments.

A. The Homeowners' Association shall be governed in accordance with its Articles of Incorporation and By-Laws, including but not limited to, the terms and conditions as contained in these Covenants.

B. Classes of Membership. The Homeowners' Association shall have two classes of voting members:

1. Class A. Class A members shall be all the owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for each lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.
2. Class B. The Class B member shall be the Developer, who shall be entitled to three hundred and three (303) votes until such time as the Developer owns no lots, at which time it shall surrender its membership to the Class A members. The Developer shall have the option to surrender its Class B membership at an earlier date at which time the Class B membership shall be converted to Class A membership for those lots remaining under the ownership of the Developer.
- C. Board of Directors. The members of the Homeowners' Association shall elect a Board of Directors of the Homeowners' Association as prescribed by the Homeowners' Association By-Laws. The Board of Directors shall manage the affairs of the Homeowners' Association.

D. Professional Management. No contract or agreement for professional management of the Homeowners' Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without any termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Homeowners' Association

1. Primary Obligations. The Homeowners' Association shall be responsible for the management and control for the exclusive benefit of the members of all property conveyed or leased to it and all improvement, fixtures and equipment thereon ("Association Property"), and shall the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.
2. Insurance. The Homeowners' Association may procure and maintain casualty insurance, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.
3. Contracts for Services. The Homeowners' Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Homeowners' Association deems necessary or advisable.
- F. Recreational Facilities. Developer intends, but is not obligated, to construct certain recreational facilities for the benefit of the lot owners in the Subdivision. Owners not required to be members of the Homeowners' Association because their ownership of their lot was obtained prior to the requirements of these Declarations, or other declaration being in place ("Non-Member Owner or Owners") may become members of the Homeowners' Association by: (1) paying such initiation fees, annual dues in arrears and late fees, if any, as determined by the Homeowners' Association and (2) executing covenants that will be recorded, will run with the lot owned by the Non-member Owner's successors and assigns, which covenants accept and agree to be bound by all the provisions herein relating to the Homeowners' Association, including without limitation, the payment of assessments. The recreational facilities may be opened to the general public under such terms and conditions and rules as determined by the Homeowners' Association.

G. Covenant for Assessment.

1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Homeowners' Association and, (2) special assessments for capital improvements and operating deficits. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
2. Purpose of Assessments. The assessments levied by the Homeowners' Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Subdivision and for the improvement and maintenance of the areas owned and operated by the Homeowners' Association, including any recreational areas, building, improvements, fixtures and equipment.
3. Pro-rata Share. Each owner shall pay a pro-rata share of any assessments or special assessments fixed, established or determined from time to time as hereinafter provided. The pro-rata share of each owner for purposed of this paragraph shall be the percentage obtained by dividing one by the total number of members of the Homeowners' Association.
4. Basis of Annual Assessments. The Board of Directors of the Homeowners' Association shall establish an annual budget prior to the beginning of each fiscal year setting forth all anticipated expenses for the coming fiscal year (with appropriate allocations for expenses attributed to any shared facilities), together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Association Property. A copy of this budget shall be delivered to each owner within thirty (30) days prior to the beginning of each fiscal year of the Homeowners' Association.

5. Basis of Special Assessments. Should the Board of Directors of the Homeowners' Association at any time during the fiscal year determine that the assessments levied for such year may be insufficient to pay the expenses of the Homeowners' Association for such year, the Board of Directors shall call a special meeting of the Homeowners' Association to consider imposing such special assessments as may be necessary for meeting the expenses for such year. A special assessment shall be imposed only with the approval of two-thirds (2/3) of the members entitled to vote, and shall be due and payable on the date determined by such members, or if not so determined, then as may be determined by the Board of Directors.
6. Fiscal Year. Date of Commencement of Assessments: Due Dates. The fiscal year of the Homeowners shall be the calendar year but may be changed from time to time by action of the Homeowners' Association. The annual assessments on each lot in the Development shall commence on the first day of the first month following the month in which Developer first conveys ownership of any lot to an owner; provided, that if any lot is first occupied for residential purposes prior to being conveyed by Developer, full assessments shall be payable with respect to such lot commencing on the first day of the first month following the date of occupancy. However, the Developer shall be liable and shall make up any deficit in the budget for the expenses for any year which Developer controls the Homeowners' Association. The first annual assessment shall be made for the balance of the fiscal year of the Homeowners' Association in which such assessment is made and shall become due and payable commencing on any date(s) fixed by the Board of Directors. The annual assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Homeowners' Association. Annual assessments shall be due and payable in full as of the above date, except that the Board of Directors may from time to time by resolution authorize the payment of such assessments in monthly, quarterly, or semi-annual installments. The Homeowners' Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Homeowners' Association setting forth whether the assessment on a specified lot have been paid. A properly executed certificate from the Homeowners' Association regarding the status of assessments for any lot shall be binding upon the Homeowners' Association as of the date of its issuance.
7. Special Assessments for Capitol Improvement and Operating Deficits. In addition to the monthly assessments authorized above, the Homeowners' Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction,

reconstruction, repair or replacement of any capital improvement which the Homeowners' Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

8. **Effect of Nonpayment of Assessments.** Remedies of the Homeowners Association. If any assessment (of monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the lot, binding upon the then owner, his heirs, devisees, successors and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments but, in no event, less than 12% per annum, and the Homeowners' Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court, together with the costs of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.
9. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Homeowners' Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.
10. **Initial Assessments.** During the first year following the date of recordation of these Covenants, the total assessments per lot shall not exceed Four Hundred Dollars (\$400.00). In each year thereafter, the total assessments per lot per year shall be determined by the

membership. In no event shall the annual assessments exceed One Thousand Dollars (\$1,000) per year per lot without the approval of the majority of the members; provided, however, that said maximum amount may be increased by no more than five percent (5%) per year by the Board of Directors without such consent.

11. Notice and Quorum for Any Action to Increase Assessments. Written notice of any meeting called for the purpose of increasing the regular or special assessments of the Association shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all votes shall constitute a quorum. If required quorum is not present, another meeting may be called subject to the same notice requirement and the requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Nothing contained in this paragraph shall be construed to limit the ability of the Developer or the Board of Directors to increase assessments up to the amount permitted herein.