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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOXBERRY TRACE
PLANNED UNIT DEVELOPMENT**

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BOOK 0065 PAGE 907

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOXBERRY TRACE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOXBERRY TRACE ("Declaration"), made this 17th day of JUNE, 1993, by TIB Corporation, Reliance Development Corporation and Arlene M. Sutton (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, TIB Corporation, Reliance Development Corporation and Arlene M. Sutton collectively own certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, TIB Corporation and Reliance Corporation have entered into a written purchase agreement to purchase that portion of the Real Estate owned by Arlene M. Sutton and intend to develop the Real Estate, by constructing residential facilities, which shall be known as "Foxberry Trace"; and

WHEREAS, a Master Plan for the Real Estate to be developed by Declarant as Foxberry Trace Planned Unit Development was recorded on JUNE 17, 1993, as Instrument No. 93012654 in the Office of the Recorder of Johnson County, Indiana, in Book C Page 577; and 718

WHEREAS, Declarant intends to record a final plat of the Real Estate as the final phase of the Foxberry Trace Planned Unit Development in accordance with the Master Plan; and

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within Foxberry Trace and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas, Lakes, Recreation Areas, Landscape Easements and other improvements located on the Real Estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Foxberry Trace;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used,

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occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

ARTICLE I

General Purpose of This Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within Foxberry Trace and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Foxberry Trace.

ARTICLE II

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Foxberry Trace to be appointed in accordance with this Declaration.

Section 2. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

Section 3. Association. "Association" means Foxberry Trace Homeowners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 4. Common Areas. "Common Areas" means certain areas not amenable to development which may be designated as Lakes, Recreation Area or Common Area on the Plat and which is intended for the common benefit of all Lots.

Section 5. Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, Recreation Areas, Landscape Easements, Drainage System, and any other cost or expense incurred by the Association for the benefit of the same.

Section 6. Declarant. "Declarant" means TIB Corporation, and Reliance Development Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of TIB Corporation or Reliance Development Corporation as developer of Foxberry Trace, and Ariene M. Sutton, an individual. This Declaration shall not place any development or other obligations of the Declarant upon Ariene M. Sutton, who is included herein due solely to her ownership of a portion of the Real Estate on the date of this Declaration. TIB Corporation and Reliance Development Corporation hereby commit to the provisions and obligations of the Declarant herein and agree and covenant that the Covenants herein shall be wholly binding and effective against TIB Corporation and Reliance Development Corporation as the owners of the Real Estate and the Declarant, both as to the portion of the Real Estate they presently own and the remaining portion which they have by written contract agreed to purchase, upon said portion being conveyed to them by Ariene M. Sutton.

Section 7. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Foxberry Trace.

Section 8. Easements. "Easements" refer to those areas reserved as easements, excluding those referred to as Landscape Easements, on the Plat of Foxberry Trace.

Section 9. Foxberry Trace. "Foxberry Trace" means the Real Estate as it is platted and recorded by Declarant in accordance with the provisions of this Declaration.

Section 10. Landscape Easements. "Landscape Easements" refer to those areas reserved as Landscape Easements on the Plat of Foxberry Trace.

Section 11. Lot. "Lot" means any of the separate parcels numbered and identified on the Plat of Foxberry Trace.

Section 12. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 13. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 14. Plat. "Plat" means the final plat for Foxberry Trace recorded as the final phase of the Foxberry Trace Planned Unit Development in accordance with the Master Plan.

Section 15. Recreation Area. "Recreation Area" means Common Areas "A", "C", "F" and the portions of "E" and "G" where fitness trails established by the Association are located, as designated on the Plat of Foxberry Trace which is intended for the common benefit of all Lots.

Section 16. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 17. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of Foxberry Trace, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

ARTICLE III

General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain their Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Foxberry Trace.

Failure to comply shall warrant the Declarant, authorized agents of Johnson County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

Section 3. Residential Purpose. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any Lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

Section 4. Setbacks. No building shall be located on any lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat. The minimum side yard set back shall be six feet (6') and minimum aggregate of the side yards on any Lot shall be fourteen feet (14'). The minimum rear yard setback shall be fifteen feet (15'). For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

Section 6. Landscape Easements. The landscaping within the Landscape Easements shall initially be determined by the Architectural Control Committee and developed by Declarant in accordance with the Landscape Plan for Foxberry Trace. The Declarant, prior to the incorporation of the Association, and the Association thereafter, shall maintain the Landscape Easements. The Landscape Easements located within the dedicated County road right-of-way shall be subject to termination by the County if, in its discretion, the County determines that the Landscape Easements are not being properly maintained and/or constitute a hazard to the motoring public.

Section 7. Unoperative Parked Vehicles. At no time shall any unlicensed, unoperative vehicle be permitted on any Lot Common Area, street or easement unless kept entirely within a garage.

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Section 8. Trucks, Boats, Recreational Vehicles. No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot unless kept entirely within a garage.

Section 9. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 10. Outdoor Storage. No large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

Section 11. Drainage Ditches. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of authorized agents of Johnson County. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by authorized agents of Johnson County.

Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Johnson County may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for the immediate payment. Failure to pay will result in a lien against the property.

Section 12. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professionally manufactured sign of not more than five square feet advertising the property for sale or rent.

Section 13. Childcare Services. No pre-school, babysitting business or such childcare services for more than six (6) children shall be allowed to operate upon any Lot.

Section 14. Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 15. 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 bred, kept or maintained for any commercial use and are housed within the dwelling.

Section 16. Rubbish, Trash And Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

Section 17. Corner Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one-half (2.5) and eight (8) feet above the centerline grades of the intersecting streets shall be placed or permitted on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five (25) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersections of the street right-of-way lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

Section 18. Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all owners of the Lots in this Subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

Section 19. Minimum Living Space. The minimum square footage of living space of dwellings within Foxberry Trace, exclusive of porches, garages or basements shall be no less than:

- (a) 1,200 square feet for single story dwellings; and
- (b) 900 square feet for the ground floor of two-story dwellings.

Section 20. Outbuildings. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any Lot.

Section 21. Driveways And Carports. All driveways must be paved with concrete, asphalt or other all-weather surfaces excluding gravel. No carports are permitted.

Section 22. Communication Devices. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited, excepting antennas attached to the dwelling which do not rise above the peak of the roof.

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Section 23. Mail Boxes. All mailboxes in Foxberry Trace shall be uniform in appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the ACC. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.

Section 24. Yard Lights. All Lots shall upon their initial development and thereafter have yard lights of uniform appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the yard lights approved by the ACC. Owners shall be responsible to maintain the yard lights in the form in which they were originally installed, kept functional at all times and in a state of good repair.

Section 25. Wells And Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks shall be prohibited.

Section 26. Swimming Pools. Above-ground swimming pools are prohibited.

Section 27. Construction Earth-Moving Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot.

Section 28. Fences Walls Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to their construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front Lot line than the front building setback line.

Section 29. Decorative Structures. No decorative structure, statue, or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

ARTICLE IV.

Lakes Covenants and Restrictions

Section 1. The lakes shown on the Plat (hereinafter "Lakes") shall be included as Common Areas as referenced herein, to be maintained and controlled by the Association.

Section 2. The Association shall be responsible for formulating rules and regulations pertaining to the Lakes as well as creating an annual budget to assure adequate maintenance, upkeep and repair of the Lakes property, said budget shall be included as part of the Owners' annual Assessment.

Section 3. Recreational use of the Lakes within the Common Areas "E" and "G" is prohibited.

Section 4. The Lake within the Recreation Area may be used only in the manner authorized by the Association which shall not be inconsistent with the provisions of this Declaration.

Section 5. No privately owned property of any kind shall be allowed to remain within the Lakes areas except when the Owner of such property is present.

Section 6. No docks or piers will be allowed except those which may be authorized by, constructed, owned, and operated by the Association.

Section 7. No Owner or third party shall do or permit another to do any act which could result in pollution of the Lakes, diversion of any water, raise the elevation of the water, significantly disturb the earth or the embankment of the Lakes areas, or any other conduct which could result in an adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the Lakes.

Section 8. The Association, on behalf of the Owners, or authorized agents of Johnson County, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Lakes or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorneys' fees.

ARTICLE V.

Declarant's/Association's Right To Guarantee Compliance

Section 1. In the event the Owner of any Lot in Foxberry Trace shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from Owner. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

ARTICLE VI**Foxberry Trace Architectural Control Committee**

Section 1. Appointment Of Architectural Control Committee. The Board of Directors of the Association, or Declarant if the Association is not yet incorporated, shall appoint an Architectural Control Committee to be composed of three (3) members.

Section 2. Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Foxberry Trace until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

Section 3. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

Section 4. Liability of Committee. Neither the Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5. Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

ARTICLE VII

Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within Foxberry Trace, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, fencing, operating, and maintenance of the Common Areas and Landscape Easements and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas and Landscape Easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

- (a) A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided; and
- (b) A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Liability for Assessments. Any Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on the Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon the Lot. Any such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 3. Pro-rata Share. The pro-rata share of each Owner for purposes of this Article shall be the percentage obtained by dividing one by the total number of Lots within Foxberry Trace that have been conveyed by the Declarant to an Owner ("Pro-Rata Share").

Section 4. Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6. Notice Of Meetings. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting.

Section 7. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. Declarant shall be responsible for all Common Expenses prior to its conveying the Common Area to the Association. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association in which such Assessment is made. 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 Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 8. Duties of the Association.

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

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(b) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

(d) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

Section 9. Non-payment of Assessments; Remedies of Association.

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

Section 10. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or

by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

ARTICLE VIII

Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant.

Section 2. Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Foxberry Trace provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant 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 determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 1999.

Section 3. Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual owners

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in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration.

Section 5. Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

Section 6. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such action; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns at least ten (10) Lots within Foxberry Trace. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with the copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County.

Section 7. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Areas and Landscape Easements. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising

from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Foxberry Trace, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended hereafter.

Section 8. Condemnation; Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 9. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common

Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE IX.

General Provisions

Section 1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants, and conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VII no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. The provisions of Article VIII hereinabove

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notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 7. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to in Article VII; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 9. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns fewer than ten (10) Lots within Foxberry Trace.

Section 10. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions For Foxberry Trace pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana",

and properly identifying the recording instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 11. Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 12. Reservations of Declarant. The provisions of Article VII hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least ten (10) Lots within Foxberry Trace, without the approval or consent of the Owners or Mortgagees of the Lots; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13. Rights to Common Areas. Title to all Common Areas shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over the Streets, the right to reasonable use of the Recreation Area in accordance with the rules and regulations of the Association and the right of access thereto over the Streets, and the right of proper utilization and benefit of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lot; provided, however, that no Owner shall materially interfere with any other Owner in exercising his rights hereunder. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

Section 14. Annexation Waiver. All Lot owners who subsequently tap into or are connected with the sewer system provided for Foxberry Trace, as described in the Plat, release their right to object, remonstrate or appeal against pending or future annexation by the City of Greenwood pursuant to a certain contract dated _____ and recorded in the Johnson County Recorder's Office at Book 65, Page 674.

Section 15. Transfer of Control of Owner's Association and Delivery of Warranty Deed to Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Warranty Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four (4) months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

DECLARANT
TIB CORPORATION

By: [Signature]
Bill Bullock
PRES
(Name and Title Printed)

Reliance Development Corporation

By: [Signature]
AMARJEET S. LUTHRA, PRESIDENT
(Name and Title Printed)

[Signature]
Arlene M. Sutton

STATE OF INDIANA)
COUNTY OF Johnson)SS:

Before me, a Notary Public in and for said County and State, personally appeared BILL BULLOCK the _____ of TIB Corporation, who acknowledged the execution of the foregoing, and who having been duly sworn upon his/her oath, stated that the representations therein contained are true.

My Commission Expires: 3-15-17
Notary Public [Signature]
Resident of Johns County, IN



Execution Document
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STATE OF INDIANA)
)SS:
COUNTY OF Johnson)

Before me, a Notary Public in and for said County and State, personally appeared AMARJEET S. LUTHERA, the _____ of Reliance Development Corporation, who acknowledged the execution of the foregoing, and who having been duly sworn upon his/her oath, stated that the representations therein contained are true.

My Commission Expires: 3-15-97



[Signature]
Notary Public, JERRY D. WIGGINS
Resident of Johnson County, IN

STATE OF INDIANA)
)SS:
COUNTY OF Johnson)

Before me, a Notary Public, personally appeared Arlene M. Sutton, who acknowledged the execution of this Declaration, and having been duly sworn upon her oath, stated that she executed the same.

My Commission Expires: 3-15-97



[Signature]
Notary Public, JERRY D. WIGGINS
Resident of Johnson County, IN

This instrument was prepared by William M. Walt, VAN VALER & WILLIAMS, 300 S. Madison Avenue, Suite 400, P.O. Box 405, Greenwood, IN, 46142.

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Fifty-Nine and Thirty-Seven Hundredths (59.37) acres by parallel lines off of the north side of the west half of the northwest quarter of Section 2, township 13 north, range 3 east of the second principal meridian, Johnson County, Indiana, excepting, a part of the west half of the northwest quarter of Section 2, township 13 north, range 3 east of the second principal meridian, described as follows:

Beginning at the northwest corner of said half quarter section; thence north 88 degrees 56 minutes 00 seconds east 225.00 feet; thence south and parallel to the west line of said half quarter section 1818.00 feet; thence south 88 degrees 56 minutes 00 seconds west and parallel to the north line of said half quarter section 225.00 feet; thence north on and along said west line 1818.00 feet to the place of beginning, containing 9.389 acres. Also excepting, a part of said section, township and range aforesaid described as follows:

Beginning at a point on the north line of said half quarter section that is 225.00 feet east of the northwest corner thereof; thence south parallel to the west line of said half quarter section 225.00 feet; thence north 88 degrees 56 minutes east parallel to the north line of said half quarter section, 100.00 feet; thence north parallel to the west line of said half quarter section 200.00 feet; thence north 88 degrees 56 minutes east parallel to the north line of said half quarter section 394.21 feet; thence south 0 degrees 29 minutes east parallel to the east line of said half quarter section 200.00 feet; thence north 88 degrees 56 minutes east parallel to the north line of said half quarter section 600.00 feet to the east line of said half quarter section; thence north 0 degrees 29 minutes west on and along said east line 225.00 feet to the northwest on and along the north line of said half quarter section 1094.00 feet, to the place of beginning, containing 3.842 acres, more or less. Also excepting a part of the southwest quarter of the northwest quarter of said section, township and range aforesaid, described as follows:

Beginning at a point on the west line of said quarter section 286.44 feet north of the southwest corner thereof; thence continuing north on said west line 198.92 feet to the southwest corner of the Mullinix subdivision, White River Township, Johnson County; thence east 225.00 feet on and along the south line of said subdivision to the southeast corner thereof; thence south parallel to west line 198.92 feet; thence west 225.00 feet to the place of beginning, containing 1.03 acres, more or less.

EXHIBIT 'A' Page 1 of 2

Also excepting, a part of the west half of northwest quarter of said section, township and range aforesaid, described as follows:

Commencing at the northwest corner of said half quarter section; thence north 89 degrees 06 minutes 42 seconds east (assumed bearing) along the north line of said half quarter section 325.00 feet; thence south 00 degrees 00 minutes 00 seconds west 25.00 feet to the point of beginning; thence north 89 degrees 06 minutes 42 seconds east 216.00 feet; thence south 00 degrees 00 minutes 00 seconds east parallel with the west line of said half quarter section 200.00 feet; thence south 89 degrees 06 minutes 42 seconds west 216.00 feet; thence north 00 degrees 00 minutes 00 seconds east 200.00 feet to the point of beginning.

Also, part of the west half of the northwest quarter of Section 2, township 13 north, range 3 east in Johnson County, Indiana, described as follows:

Commencing at the northwest corner of said northwest quarter section; thence on an assumed bearing south 90 degrees 00 minutes 00 seconds east 225.00 feet along the north line of said quarter section; thence south 00 degrees 57 minutes 08 seconds west 1952.63 feet parallel with the west line of said quarter section to a point on the south line of 59.37 acres by parallel lines off the north side of the west half of said northwest quarter section, being the point of beginning; thence south 00 degrees 57 minutes 08 seconds west 61.05 feet to a point which is north 286.44 feet measured perpendicular from the south line of said quarter section; thence north 88 degrees 54 minutes 47 seconds east 1101.11 feet parallel with the south line of said quarter section to the east line of the west half of the northwest quarter; thence north 00 degrees 53 minutes 59 seconds east 40.16 feet to the southeast corner of 59.37 acres by parallel lines off the north side of the west half of said northwest quarter section; thence south 90 degrees 00 minutes 00 seconds west 1100.53 feet to the point of beginning; containing in all 1.278 acres, more or less.

Containing in all above described real estate, less exceptions, 45.707 acres, more or less.

Subject to all legal easements, rights-of-ways, restrictions and of record more or less.

springm.don2@ntecor.net

Jan 17 3 20 PM '93

EXHIBIT 'A' Page 2 of 2

RECEIVED FOR RECORD
BOOK 65 PAGE 907
JACQUOLINE E. KELLER
JOHNSON COUNTY RECORDER

Note: Document not
signed, for a generic
reference only
Chicago Title

CODE OF BYLAWS

OF

FOX BERRY TRACE HOMEOWNERS ASSOCIATION, INC.

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CODE OF BYLAWS

OF

FOXBERRY TRACE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These Bylaws are adopted simultaneously with the execution of a certain Declaration of Covenants, Conditions and Restrictions For Foxberry Trace Planned Unit Development (hereinafter together with any Supplemental Declarations referred to as the "Declaration") and the creation thereunder of Foxberry Trace Homeowners Association, Inc. (hereinafter referred to as the "Corporation"), an Indiana not-for-profit corporation. The Declaration and Articles are incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these Bylaws and reference is specifically made to Article II 1 of the Declaration containing definitions of terms. These Bylaws shall apply to the administration and conduct of the affairs of the Corporation and subdivision.

Section 1.02. Name, Principal Office and Resident Agent. The name of the Corporation is Foxberry Trace Homeowners Association, Inc. (hereinafter referred to as the "Association" or "Corporation"). The post office address of the principal office of the Corporation is 2650 Fairview Place, Suite A, Greenwood, Indiana 46142, the name and post office address of its resident agent in charge of such office is Amarjeet Luthra, 2650 Fairview Place, Suite A, Greenwood, Indiana 46142. The location of the principal office of the Corporation, or the designation of its Resident Agent, or both, may be changed at any time or from time to time when authorized by the Board of Directors by filing with the Secretary of State on or before the day any such change is to take effect or as soon as possible after the death of its Resident Agent or other unforeseen termination of its agent.

ARTICLE II

Membership and Meetings of Corporation

Section 2.01. Membership. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an

obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2.02. Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

(a) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but such Owners shall be treated collectively as one member for voting purposes which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(b) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the Resident Agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class B Members are entitled to vote. The first Board of Directors shall also be Class B Members, but the Board members shall have no voting rights, except that a Board member who is also a Lot Owner may exercise the voting rights to which he is entitled to through the ownership of a Lot or Lots. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date, which shall be the first to occur of the following:

(1) the date upon which the written resignation of the Class B Members is delivered to the Resident Agent of the Corporation;

(2) thirty (30) days after the date when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
or

(c) January 1, 1999.

Section 2.03. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacements, and administration of the Common Areas, Lakes, Recreation Areas, Landscape Easements, Drainage System, and other

improvements detailed in the Declaration, to pay any other necessary expenses and costs in connection with these areas, and to perform such other functions as may be designated for it to perform under the Declaration.

Section 2.04. Purpose of Meetings. At least annually, and at such other times as may be necessary, the meetings of the Members shall be held for the purpose of electing the Board of Directors, and for such other purposes as may be required by the Declaration, the Articles, or the Bylaws (subject to the provisions of Section 3.02 hereof).

Section 2.05. Annual Meetings. The annual meeting of the Members of the Corporation shall be held on the third Thursday of February at 7:00 p.m. in each calendar year. At the annual meeting the members shall elect the Board of Directors of the Corporation in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

Section 2.06. Special Meetings. A special meeting of the Members of the Corporation may be called by resolution of the Board of Directors or upon a written petition of Members who have not less than a majority of the total outstanding votes of the Corporation. The resolution of petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.07. Notice and Place of Meetings. All meetings of the Members of the Corporation shall be held at any suitable place in Johnson or Marion County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Corporation to each Member entitled to vote not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Members at the address of their respective Lots or to such other address as is designated by the Owner and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation to each Mortgagee who: (a) requests in writing that such notices be delivered to it, and (b) furnishes its name and address to the Corporation in accordance with Section 8.01 of these Bylaws. Such Mortgagee may designate a representative to attend the meeting. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.08. Voting and Conduct of Meeting.

- (a) Number of Votes. Each Lot Owner shall be entitled to cast one vote for each Lot owned on each matter coming before the meeting. The Corporation, the Board of Directors, or any other person who holds title to any Lot as trustee for the benefit of the Owners shall not be entitled to vote.
- (b) Multiple Owners. Where the Owner of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one vote allocable to that Lot. At the time of acquisition of title to a Lot by a Multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Corporation an irrevocable proxy appointing one of such persons or partners as the voting representative for such Lot, which proxy shall remain in effect until all of such parties constituting such multiple Owner or partners in such partnership designate another voting representative in writing or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Lot. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.08, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.
- (c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said Corporation or trust.
- (d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the commencement of the meeting.
- (e) Quorum. Except where otherwise expressly provided in the Declaration, these Bylaws or the Indiana Non-Profit

Corporations Act of 1991 (hereinafter referred to as the "Statute"), the Members representing a majority of the vote shall constitute a quorum at all meetings. The terms majority of owners or majority of vote, as used in these Bylaws, shall mean the Owners entitled to more than fifty percent (50%) of the votes.

- (f) Conduct of Annual Meeting. The President of the Corporation shall act as the Chairman of all annual meetings of the Corporation if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:
- (1) Reading of Minutes. The Secretary shall read or distribute the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority of the vote.
 - (2) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Corporation and answer relevant questions of the Members concerning the Common Expenses and the financial report for the prior year and the proposed budget for the current year.
 - (3) Budget. The proposed budget for the current fiscal year shall be presented to the Members for approval or amendment.
 - (4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Nominations shall be made from the floor at the annual meeting. In the event that there are more nominees than there are members of the Board of Directors to be elected, then voting for the Board of Directors may be by secret ballot. Each Member entitled to vote may vote for as many nominees as there are directors to be elected; however, no Member shall be entitled to accumulate his votes. Each voting Member shall sign his ballot. Those persons receiving the highest number of votes shall be elected. The Secretary of the Corporation shall verify each proxy's or Member's right to cast his ballot before the ballot is cast and may require the signature of the proxy or Member on a roster for that purpose. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

- (5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.
- (6) Adjournment.
- (7) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be the matters for which such meeting was called, as set forth in the notice of such special meeting.
- (8) Rules of Order. The meetings of the Corporation shall be conducted by the most current version of Robert's Rules of Order, except as modified by these Bylaws.

ARTICLE III

Board of Directors

Section 3.01. Management. The business and affairs of the Corporation shall be governed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by the Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Directors. The Initial Board of Directors shall be Amarjeet S. Luthra, Rick W. French, and Susan W. Luthra (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of the Declaration, the Articles, these Bylaws or elsewhere the Initial Board shall hold office until the Applicable Date and in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or judicial acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed

coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's rights to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, these Bylaws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Areas, Landscape Easements and Drainage System or merger\consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member, thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

Section 3.03. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, ~~trust or other legal entity, then one of the persons constituting~~ the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

Section 3.04. Term of Office and Vacancy. Subject to the provisions of Section 3.02 hereof, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board of Directors shall be deemed to be elected and reelected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the board members shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a majority of the remaining members of the Board or by Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05 of this Article III. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At

the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 3.06. Duties of the Board of Directors. The Board of Director shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement as required within the Common Areas, Landscape Easements and Drainage System, and the collection and disbursement of the Common Expenses. After the Applicable Date the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (hereinafter "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Other than the Initial Management under Paragraph 9 of the Declaration, any decision thereafter to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to the following:

- (a) protecting and maintaining the Common Areas, Landscape Easements and Drainage System;
- (b) procuring of utilities used in connection with Foxberry Trace Subdivision, removal of garbage and waste, and snow removal from the Common Areas;
- (c) landscaping, painting, decorating and furnishing of the Common Areas;
- (d) surfacing, paving and maintaining streets, parking areas and sidewalks;
- (e) assessing and collecting from the Owners of the Owner's pro-rata share of the common expenses;

- (f) preparing the annual budget, a copy of which shall be mailed or delivered to each Owner at least ten (10) days before the date of the annual meeting;
- (g) preparing annually a full accounting of all receipts and expenses incurred in the prior year which accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the subdivision; specifying and itemizing the common expenses; making all records and vouchers available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours or at other reasonable times;
- (i) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under the Declaration, and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (j) paying any other necessary expenses and costs in connection with the Easements and Drainage Areas; and
- (k) furnishing, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement of the Corporation for the immediately preceding fiscal year.

Section 3.07. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the following powers:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease or otherwise obtain for the Corporation to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation; and
- (g) to grant or relocate easements.

Section 3.08. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contract involving a total expenditure of less than \$2,500.00 without obtaining the approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Easements and/or Detention Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a special meeting of the Owners.

Section 3.09. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States Mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days

prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Johnson or Marion County, Indiana, as shall be designated in the notice.

Section 3.11. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken thereat, shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the vote of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.13. Non-Liability of Directors. The Directors shall not be liable to the Owners or other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 3.14. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to

be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.15. Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the Treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

Section 3.16. Conflicts of Interest. No contract or other transaction between the Corporation and one or more of its Directors, or between the Corporation and any other corporation, partnership, trust, firm, association or entity in which one or more of the Directors of the Corporation is a director, officer, partner, shareholder, member, employee, or agent or is financially interested, shall be either void or voidable because of such relationship or interest or because said Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because the vote(s) of such Director or Directors is or are counted for such purposes, if:

- (a) the fact of such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested Director or Directors; or

- (b) the fact of such relationship or interest is disclosed or known to the Owners entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent sufficient for the purpose; or
- (c) the contract or transaction is fair and reasonable to the Corporation.

Such interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction. In the event any Director must disqualify himself from voting because of a conflict of interest, then the vote of the remaining entire Board of Directors must be unanimous in order to ratify such contract or other transaction. This section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory laws applicable thereto.

ARTICLE IV

Officers

Section 4.01. Officers of the Corporation. The principal officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these Bylaws.

Section 4.06. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Corporation. The Treasurer may permit the Managing Agent (if any) to handle and account for monies and other assets of the Corporation to the extent appropriate as part of its duties.

Section 4.07. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

ARTICLE V

Assessments

Section 5.01. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.02. Proposed Annual Budget. Annually, prior to the beginning of the each fiscal year and before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the coming fiscal year estimating the total amount of the Common Expenses for the current fiscal year together with a reasonable allowance for contingencies and for reserves of the Corporation. The Board shall cause to be delivered to each Owner thirty (30) days prior to the beginning of each fiscal year. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event, except for the lack of a quorum, shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget may be amended at any time during the year by the Owners at any duly called special meeting of the Corporation.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expense as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.03. Regular Assessments. The annual budget as adopted by the Owners shall, based upon the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Owner on a pro-rata basis based on the the total number of platted Lots. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and

included in the final annual budget, including reserve funds as hereinbelow provided. The Regular Assessment against each Lot shall be paid in advance in quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter. Payment of these installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then payments shall be adjusted as follows:

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, then that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all such payments thereafter during such fiscal year shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year; or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments

furnished by the Corporation pursuant to Paragraph 8.02 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determination. Quarterly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 5.04. Special Assessments. Should the Board of Directors at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors may, at any time, and from time to time, levy such Special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors shall have the right to levy at any time, and from time to time, one or more Special Assessments for the purpose of defraying, in whole or in part, any unanticipated Common Expense not provided for by the Regular Assessment. However, the total amount of all special assessments each year shall not exceed twenty percent (20%) of the Regular Assessment without the affirmative vote of a majority of a quorum of the Owners.

Section 5.05. Regular Assessments Prior to the Applicable Date. Prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board of Directors without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph.

The Corporation shall enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent"). So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) one (1) year after the date of execution, the quarterly Regular Assessment shall not exceed Forty-Five Dollars (\$45.00) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the quarterly Regular Assessment shall not exceed the amount

of the Guaranteed Charge by more than a twenty percent (20%) increase each year thereafter. Such adjustments to the Guaranteed Charge (no more than a twenty percent (20%) increase in any year as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such quarterly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments or, if sufficient, the replacement reserve fund, in any such fund exists.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement reserve required in the Common Areas, Landscape Easements and/or Drainage System. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date. Payment of the Regular Assessment prior to the Applicable Date with respect with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the quarterly period next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each quarterly period thereafter during the period prior to the Applicable Date. **DECLARANT NOT BE RESPONSIBLE FOR REGULAR ASSESSMENT FOR LOTS OWNED BY DECLARANT AS LONG AS DECLARANT IS ALSO THE MANAGING AGENT AND IS MAINTAINING THE COMMON AREAS, LANDSCAPE EASEMENTS AND DRAINAGE SYSTEM.**

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described above and to adhere to and abide by the same.

Section 5.06. Reserve for Replacements. The Board of Directors shall cause to be established and maintained a reserve fund for replacements by the allocation and payment to such reserve funds not less often than annually of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas, Landscape Easements, and Drainage System, including, but not limited to, painting the exterior of building and fences and resurfacing, repairing and or replacing streets, parking areas, sidewalks, roofs and fences. In determining the amount, the Board shall take into consideration the expected useful life of such Common Areas, projected increases in the costs of materials and labor, interest

to be earned by such funds, and the advice of Declarant, the Managing Agent and any consultants the Board may employ. Such fund shall be a common expense. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only for the purpose of effecting the replacement of the Common Areas, Landscape Easements, Drainage System and equipment of the Corporation. The Board shall annually review the adequacy of the reserve fund. The proportionate interest of any Owner in any reserve for replacement shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 5.07. General Operating Reserve. The Board of Directors shall establish and maintain a reserve fund for general operating expenses of a non-recurring nature by the allocation and payment to such reserve fund not less frequently than annually of an amount determined as follows:

- (a) three percent (3%) of the amount of the annual Regular Assessment until the reserve fund is equal to fifteen percent (15%) of the amount of the annual budget;
- (b) thereafter, two percent (2%) of the amount of the annual assessment until the reserve fund is equal to twenty percent (20%) of the amount of the annual budget when payment to the reserve fund shall terminate.

Such fund shall be conclusively deemed to be a common expense. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, at the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by the United States of America. The general operating reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any reserve fund for general operating expenses shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 5.08. Failure of Owner to Pay Assessments.

(a) No owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by

waiver of the use or enjoyment of the Common Areas, Landscape Easements and Drainage System or by abandonment of the Lot belonging to him.

(b) Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several.

(c) If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, then such assessment shall be deemed delinquent and the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law.

(d) If any Assessment is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the maximum rate allowable under any applicable usury laws, and the Corporation may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot. In addition, there shall be added to the amount of such Assessment all costs of such action including the Corporation's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees. ←
20,00

(e) In the event of the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessment or Special Assessments. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

(f) The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

Section 5.09. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Areas, Landscape Easements and Drainage System shall be furnished by the Corporation as detailed in Article VII Section 1 of the

Declaration, as a part of its duties, and the cost thereof shall constitute a part of the Common Expense.

Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean, and sanitary condition. Each Owner shall promptly perform all maintenance and repair upon his own Lot and Dwelling Unit which, if neglected, would affect the value of the Dwelling Unit thereon and which is the responsibility of the Owner to make personally. Such maintenance and repairs include, but are not limited to, internal water lines, plumbing, electric lines, appliances, gas lines, telephones, air conditioning, doors, windows, lamps and all other accessories belonging to the Owner and appurtenant to the Dwelling Unit.

If any Owner shall fail to so maintain and keep his property or any part thereof in good condition as set out above, the Corporation may perform any work necessary to do so and charge the Owner thereof for such costs, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Areas, Landscape Easements and Drainage System if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is fully covered and paid for by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

So long as the Tract is subject to the Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

ARTICLE VI

Rules and Regulations

Section 6.01. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations

regarding the operation of Foxberry Trace Subdivision, including but not limited to the use of the "Improvements", as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 6.02. Restrictions on Use. The following restrictions on the use and enjoyment of the subdivision and the Common Areas shall be applicable to Foxberry Trace in addition to those set forth in the Declaration. These are as follows:

(a) All Buildings shall be used exclusively for residential purposes and the occupancy for a single family.

(b) No additional structures shall be erected or located in the subdivision other than the Buildings and other structures designated in the Declaration and shown on the Plans.

(c) Nothing shall be done or kept on any Lot or in the Common Areas, Landscape Easements or Drainage System which will cause an increase in the rate of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.

(d) No waste shall be committed in the subdivision.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, patios and balconies or placed on the outside walls of a Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Building without the prior consent of the Board.

(f) Nothing shall be done or permitted in any Building which will impair the structural integrity or any other Building or which would structurally change any other Building, except as otherwise provided in the Declaration or these Bylaws.

(g) No industry, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on or in the subdivision.

(h) No "for sale", "for rent", or "for lease" signs or other window or advertising display shall be maintained or permitted on any part of the subdivision without the prior written consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on any unsold or unoccupied Buildings or Lots.

(i) All Owners and members of their families, their guests or invitees, and all occupants of any Building or other persons entitled to use the same and to use and enjoy the Common Areas shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas and Limited Common Areas.

(j) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas except with express written permission from the Board.

ARTICLE VII

Foxberry Trace Architectural Control Committee

Section 7.01. Appointment of Architectural Control Committee. The Board of Directors shall appoint an Architectural Control Committee to be composed of three (3) members.

Section 7.02. Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Foxberry Trace until the plans and specifications, locations and plot plan thereof, in detail and to scale, have been submitted to and approved by the Architectural Control Committee (hereinafter "Committee"). The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply with all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by the Board may be based upon any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Committee. The Board shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to the Committee shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

Section 7.03. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in

writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

Section 7.04. Liability of Committee. Neither the Committee nor any agent thereof, nor the Board shall be responsible in any way for any defects in any plans, specifications, or other materials submitted to it, nor for any defects in any work performed according thereto.

Section 7.05. Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and the Declaration.

ARTICLE VIII

Amendments to Bylaws

Such amendments shall be filed and recorded in due form as required by law. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these Bylaws may be amended by the vote of a majority of a quorum of the Owners in a duly constituted meeting called for such purpose. Such amendments shall be filed and recorded in due form as required by law. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these Bylaws prior to the Applicable Date without the consent and approval of Declarant.

ARTICLE IX

Mortgages

Section 9.01. Notice to Corporation. Any Owner who places a first mortgage lien upon his lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration, these Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Declaration, these Bylaws, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

The Corporation shall, upon the request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove

provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these Bylaws which is not cured within sixty (60) days.

Section 9.02. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget.

Section 9.03. Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Foxberry Trace Subdivision. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

Section 9.04. Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

ARTICLE X

Miscellaneous

Section 10.01. Fiscal Year. The fiscal year of the Corporation shall be established by its accountant.

Section 10.02. Personal Interests. No Member of the Corporation shall have or receive any earnings from the Corporation, except a Member who is an officer, director, or employee of the Corporation may receive fair and reasonable compensation for this services as officer, director or employee, and a Member may also receive principal and interest on monies loaned or advanced to the Corporation.

Section 10.03. Contract, Checks, Notes, Etc.. All contracts and agreements entered into by the Corporation and all checks, drafts and bills or exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President or in his absence, the Treasurer. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of

business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

The undersigned Secretary of the Corporation hereby certifies that the above and foregoing Bylaws of the Corporation were duly adopted by the express written consent of the Directors of the Corporation on the 6th day of June, 1994.

Susan W. Luthra,
Secretary

13.00

Cross Reference: Instrument No. 93012655 Book 65, Page 907
Instrument No. 93012654 Book C, Page 577 A & B

Recorded Johnson County, Indiana
Sue Anne Hinzinger, Recorder
Date 03/05/2004 Time 11:12:50 1 of 2 Pgs
Inst # 2204-083463 OFF
15.00 J. H. HUNT

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOXBERRY TRACE PLANNED UNIT DEVELOPMENT

This Amendment to the Declaration of Covenants, Conditions & Restrictions for Foxberry Trace Planned Unit Development was executed this 16 day of December, 2003.

WITNESSETH:

WHEREAS, the Foxberry Trace planned unit development located in Johnson County, Indiana was established by a certain Declaration of Covenants, Conditions & Restrictions for Foxberry Trace Planned Unit Development which was recorded on June 17, 1993, as Instrument No. 93012655 in the Office of the Recorder of Johnson County, Indiana, in Book 65, Page 907, said Declaration being hereafter referred to as the "Declaration"; and

WHEREAS, the Master Plan for the Foxberry Trace to be developed as Foxberry Trace Planned Unit Development was recorded on June 17, 1993, as Instrument No. 93012654 in Office of the Recorder of Johnson County, Indiana, in Book C, Page 577 A&B, established the Lots and Common Areas comprising said subdivision; and

WHEREAS, after written notice was duly given, a Special Meeting of the Owners and the Foxberry Trace Homeowners Association, Inc. ("Association") was held on December 11, 2001; and

WHEREAS, the purpose of said Special Meeting was for the Association's members to vote upon the approval of the following Amendment to the Declaration; and

WHEREAS, at said meeting, the Owners of two-thirds (2/3) or more of the total number of Lots, in person or by proxy, voted in favor of amending the Declaration pursuant to the terms below; and

WHEREAS, there were no Mortgagees requesting notice of such action.

NOW, THEREFORE, the Declaration which is applicable to all Owners and residents within Foxberry Trace is hereby amended as follows:

- 1. Article III, Section 20 of the Declaration shall be amended to read as follows:

Section 20. Outbuildings. No shacks or tents shall be maintained on any Lot. No outbuildings of any other kind, including detached garages, sheds, mini-barns, or storage buildings, shall be permitted unless the Owner of the Lot submits an application in advance to, and receives approval from, the Architectural Control Committee pursuant to the provisions of Article VI of this Declaration. The Owner's application shall include construction plans (including specifications on proposed materials and

colors), elevations, and a plot plan, and shall conform with Design Guidelines adopted by the Architectural Control Committee.

2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or Foxberry Trace as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

Executed this 16 day of DECEMBER, 2003.

Foxberry Trace Homeowners Association, Inc.

By [Signature]
Signature

Attest:

[Signature]
Signature

Michael Robinson, President
Printed Name & Title

Jean Mercer, Secretary
Printed Name & Title

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a notary public, in and for said County and State, personally appeared Michael Robinson and Jean Mercer, the President and Secretary, respectively, of Foxberry Trace Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the certifications and representations made therein are true. Witness my hand and notarial seal this

16 day of DECEMBER, 2003.

P. THOMAS MURRAY, JR.
Notary Public, State of Indiana
County of Marion
My Commission Expires Dec. 20, 2009
My Commission Expires:

[Signature]
Notary Public - Signature
P. THOMAS MURRAY, JR.
Printed
Residence County: _____

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Eads Murray & Pugh, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256. (317) 842-8550.

18.0

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Cross Reference: Instrument No 93012655 Book 65 Page 907;
Instrument No 93012654 Book C, Page 577A & B;
Instrument No 2004-003463

AMENDMENT TO THE DECLARATIONS OF THE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR FOXBERRY TRACE
PLANNED UNIT DEVELOPMENT

This Amendment to the Declaration of Covenants, Conditions and Restrictions for Foxberry Trace Planned Unit Development was executed this 23rd day of February, 2007.

WITNESSETH:

WHEREAS, the Foxberry Trace Planned Unit Development located in Johnson County, Indiana was established by certain Declaration of Covenants, Conditions and Restrictions for Foxberry Trace Planned Unit Development which was recorded on June 17, 1993 as Instrument No. 93012655, Book 65 Page 907, in the Johnson County Recorder's Office, Johnson County, Indiana, said Declaration being hereafter referred to as the "Declaration"; and,

WHEREAS, the Master Plan for Foxberry Trace to be developed as the Foxberry Trace Planned Unit Development recorded on June 17, 1993 as Instrument No. 93012654 in the Johnson County Recorder's Office, Johnson County, Indiana, in Book C, Page 577A & B, established the Lots and Common Areas comprising said subdivision; and,

WHEREAS, written notice was duly given, a Special Meeting of the Owners and the Foxberry Trace Homeowners Association, Inc. ("Association") was held on January 10, 2007; and

WHEREAS, the purpose of said Special Meeting was for the Association's members to vote upon the approval of the following amendment to the Declaration; and

WHEREAS, at said meeting, the owners of at least two thirds (2/3) or more of the total number of Lots and the Mortgagees of at least two thirds of such action, either in person or by proxy voted in favor of amending the Declaration pursuant to the terms below; and

WHEREAS, there were no Mortgagees requesting such action.

Now therefore, the Declaration which is applicable to all Owners and residents within the Foxberry Trace community is hereby amended as follows:


Doc ID: 003427720003 Type: MIS
Recorded: 03/30/2007 at 12:50:29 PM
Fee Amt: \$20.00 Page 1 of 3
Workflow# 475510
Johnson County-Recorded as Presented
Sue Anne Misiwiec Recorder
Inst **2007-007988**

1. Article III, Section 30 of the Declaration shall be amended to read as follows:

Section 30: Lease of Dwelling

For the purpose of this section the words dwelling or home shall include any single family residential structure constructed on any lot within the Foxberry Trace Planned Unit Development, commonly known as Foxberry Trace.

In order to maintain the quality of life and property values, the objective of the Association is to promote and encourage homeowners to reside on the premises. All owners desiring to lease their unit must follow the procedures set forth herein.

- (A) New homeowners must live in the home for at least two years prior to being eligible for establishing the home as a rental property.
- (B) Failure by the owner or tenant to abide by any of the terms herein may result in appropriate legal action. No owner shall be released from or relieved of liability for remedies of the Association.

Executed this 10th day of January, 2007

Foxberry Trace Homeowners Assn., Inc.

by Shannon M. Jenkins
Signature

Attest:

Julie Markland
Signature

Shannon M. Jenkins - President
Printed Name and Title

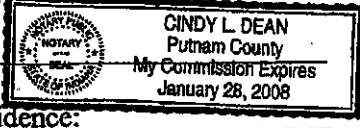
Julie Markland - Secretary
Printed Name and Title

State of Indiana)
) SS:
County of Johnson)

Before me, a Notary Public, in and for said County and State personally appeared SHANNON M. JENKINS and JULIE MARKLAND, president and secretary, respectively, of Foxberry Trace Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the foregoing for and on behalf of said corporation and its

members and who being duly sworn stated that the certifications and representations made herein are true. Witness my hand in notarial seal the 23rd day of FEBRUARY 2007.

Cindy L. Dean
Notary Public - Signature



Printed Name _____
County of Residence: _____

This instrument prepared by and should be returned to Jeffrey M. Uchino, Attorney at Law, 1601 S. Anderson Street, Elwood, Indiana 46036 (765) 557-7360.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

Jeffrey M. Uchino
Jeffrey M. Uchino