



FOXCLIFF RIDGE

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

This declaration, made on the date hereinafter set forth by Norman E. Bruns, herein after referred to as DECLARANT, WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Morgan County, Indiana, which is more particularly described in exhibit "A", attached hereto and by this reference made a part hereof NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A", shall be held, sold and conveyed subject to the following easements, restriction, covenants, assessments and conditions, which are for the purpose of protecting the value and desirability of the real property and which shall run with the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Further, this declaration and plat of Foxcliff Ridge supersedes and replaces the Development Plan recorded in Miscellaneous Record 151, page 545, in the office of the recorder of Morgan County Indiana. Said declaration and plat is intended to delete any prior references to condominiums.

Article I  
Definitions

Section 1. - "Association" shall mean and refer to the Foxcliff Ridge Homeowners Association, its successors and assigns. Any action to be taken by the Association herein shall be done by its Board of Directors.

Section 2. - "Owner" shall mean and refer to the record owner, whether one, or more persons or entities, of a fee simple title to any Lot or Lots which are a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, and excluding the Declarant.

Section 3. - "Properties" shall mean and refer to that certain real property described in Exhibit "A" and such additions thereto as may hereinafter be brought within the jurisdiction of the Association and the Declaration in the manner provided herein.

Section 4. - "Common Area" shall mean all real property owned by the Association, other than a Lot, for the common use and enjoyment of the owners and designated as such on any recorded plat of the Properties.

Section 5. - "Declarant" shall mean and refer to Norman E. Bruns, its successors and assigns if such successors or assigns should acquire more than one Lot from the Declarant development.

Section 6. - "Lot" shall mean and refer to the area and building located thereon with the dimensions more particularly described in the Plat of Foxcliff Ridge, exclusive of the limited common areas defined below in Section 8. Lots are identified by numbers one through six and are exclusive of the common areas set out in Section 4 above.

Section 7. - "Mortgagee" shall mean the institutional holder of a first mortgage or equivalent lien on any Lot or Lots.

Section 8. - "Limited Common areas" shall mean patios, porches, balconies, driveways, decks, and overhang attached to and contiguous with a Lot, and they are hereby reserved to the exclusive use of the Owner of such Lot to the exclusion of all other Owners with easement rights as set out in Section 5.

Article II  
Property Rights

Section 1. - Owner's Easement of Enjoyment - Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common area, if any:
- (b) the right of the Association to suspend the voting rights and right to use the recreational facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 2. - Delegation of Use - Any Owner may delegate in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, descendants, or contract purchasers who reside on the property.

Section 3. - Association's Easement for Maintenance and Repair - The Association and any member pursuant to written authorization of the Board of Directors of the Association thereof whose enjoyment of the use and occupancy of his Lot is affected thereby, shall have an easement to go upon any other Lot for purpose of maintaining or causing to be maintained or repaired any party wall.

Section 4. - Utilities Public Officials Association Officials - There is hereby created a blanket easement upon, across, over and under all of said properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the Company providing electrical, telephone, or other utility service to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of dwelling units. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any lot and structure

to perform the duties of maintenance and repair of the structure, Lots or Common Area provided for herein. The easements provided for in this Article II shall in no way affect any other recorded easement on said premises.

Section 5. - Easements for Encroachment - If any part of the Common Area encroaches upon any Lot or building thereon, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. If any part of any Lot or the building thereon encroaches upon the Common area, or upon another Lot or Lots, a valid easement for such encroachment shall and does exist. In the event that any Lot or building shall be partially or totally destroyed and then rebuilt, minor encroachments of the building upon the Common Area, or other Lots, including, but not limited to eaves and roof over-hang, valid easements for such encroachment and the maintenance thereof shall exist.

Article III  
Membership and Voting Rights

Section 1. - Every Owner of a Lot shall be a member of the Association.  
Membership shall be apurtenant to and may not be separated from ownership of any

Lot. Membership shall automatically transfer with the transfer of fee simple title to any Lot and the membership rights of the transferor shall also be transferred. Section 2. - The Association shall have two (2) types of voting membership:

Class A - Class A members shall be all Owners except the declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B - Class B members shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall cease and converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Article IV  
Covenant for Maintenance Assessments

Section 1. - Creation of the Lien and Personal Obligation of assessments - The declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual or monthly assessments or charges; (b) special assessments for capital improvements; and (c) special assessments as may otherwise be provided herein; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them. The term "monthly" assessment

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as used herein shall refer to an amount which is one twelfth of the "annual assessment. Nothing in this declaration shall prohibit the proper authority from assessing charges at an annual rate and expressing such assessment in terms of monthly payments, rates or assessments. The lien created by the assessment pursuant to this Declaration shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made except as may otherwise be provided herein.

Section 2. - Purpose of Assessments - The assessments levied by the association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and for other purposes as specifically provided herein.

Section 3. - Maximum Monthly Assessment -

- (a) Until (5-1-1999) the maximum monthly assessment on any Lot conveyed by Declarant on the real estate described in Exhibit "A" shall be (\$ 60.00) per Lot.
- (b) From and after (5-1-1999) the maximum monthly assessment may be increased each year not more than ten percent (10%) above the maximum monthly assessment for the previous year without a vote of two-thirds (2/3) of each class of membership approving any such increase in excess of ten percent (10%).
- (c) From and after (5-1-2000) the maximum monthly assessment may be increased each year without a vote of two-thirds (2/3) of each class of membership approving an such increase in excess of ten percent (10%).
- (d) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum set forth above.
- (e) The annual assessment shall be computed by multiplying the monthly assessment by twelve if not otherwise stated.

Section 4. - Special assessment for capital Improvements - In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. - Notice and Quorum for Any Action Authorized Under Sections 3 and 4 - Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty six (66%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. - Date of Commencement of Annual Assessments - Due Dates - The annual assessment provided for herein shall commence as to each Lot on the first day of

the month following the conveyance of such Lot by Declarant. The first annual assessment shall be adjusted Pro-rate according to the number of months remaining in the calendar year. Such monthly payments shall be known as the monthly assessment. Written notice of annual and special assessments shall be sent to every Owner subject thereto. the due dates for all assessments shall be established by the Board of Directors. the Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on any Lot have been paid.

Section 7. - Effect of Non-payment of assessments - If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the Lot subject to the assessment, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner of the Lot to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate of interest established each by the Board of Directors of the Association, but not less than Twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both and there shall be added to the amount of such assessment interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action and any expenses related to collection of the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. - Subordination of the Lien to Mortgages - The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Any mortgagee taking title to and the right of possession of a lot by foreclosure or by assignment or deed-in-lieu of foreclosure or any purchaser at the foreclosure sale shall take said lot free and clear of any claim for unpaid assessments and charges accruing prior to the time said mortgagee takes title to the lot except that said lot shall be subject to the lien of assessment resulting from pro-rata reallocation of such unpaid charges and assessments and all the charges and assessments accruing after the mortgagee has taken title to a lot. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. - Collection by Mortgagee - Nothing in this declaration shall be construed as prohibiting any first mortgagee from collecting the assessments due as a part of or in addition to, any monthly payment due the mortgagee, provided any mortgagee collecting assessments from any other Owner pay said assessments when they become due.

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Article V  
Exterior Maintenance

In addition to maintenance upon the Common area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows:  
maintenance of shrubs and lawns in and around each lot. (Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window fixtures, hardware, patios, decks, and balconies painting, roofing, siding and brick.)

*In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family or guests, or invitees, as determined by the board of Directors of the Association, and not covered or paid for insurance on such Lots, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.*

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Article VI  
Architectural Control

No fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made for the plans and specifications showing the nature, kind shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. A violation of this Article may be enjoined by the Association at any time.

Article VII  
General Provision

Section 1. - Enforcement - The Association, or its successor shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, failure by the Association or its successor to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. - Severability - Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force and effect

Section 3. - Amendment - The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than eighty (80%) of the Lot Owners. Any instrument must be recorded, provided, however, that the Declarant may amend the terms covenants, and restrictions of this Declaration during the first ten (10) years from the date hereof with the consent of the association. Any other provision of this Section to the contrary notwithstanding, the Declarant shall not be entitled to amend this declaration after such time as the Declarant no longer holds any interest in the Properties covered hereunder.

Article VIII  
Declarant's Rights

Section 1. - Use of property - Declarant reserves the right to grant easements for utilities and other reasonable purposes across the common Area, to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in the Declarant includes, but is not limited to, the right of maintain models, erect signs, maintain an office, and to use any and all of the Common area and to show Lots then unsold. Any improvements placed on the Properties for the

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purpose of such sales, such as signs, telephones or any other promotional items shall not be considered a part of the Common Area nor attachments thereto, but shall remain the property of the Declarant. The Declarant retains the right to be considered an owner of any Lots that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements. When Declarant no longer owns any lot in any portion of the properties the rights of the Declarant under this Declaration shall thereupon terminate.

Section 2. - Construction and Sale Period - Notwithstanding any provision contained herein to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of construction and sale of Lots, upon such portion of the Properties as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required or be convenient or incidental to the construction and sale of the Lots, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices and business offices.

Section 3. - Conveyance of Common Area - The Declarant shall convey the Common area to the Association at such time as Declarant no longer owns any Lot.

Article IX  
Use Restrictions

Section 1. - Residential Use - The Properties are hereby restricted to dwellings for residential use. All buildings or structures erected upon said Property shall be of new construction and no buildings or structures shall be moved from other locations onto said Property and no subsequent buildings or structures other than dwelling units, being single family dwelling units joined together by a common exterior roof and foundation, where appropriate, or sharing a party wall with another lot, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of said Property at any time as a residence either temporarily or permanently.

Section 2. - Separate Estate - Each Lot shall be conveyed as a separately designated freehold estate subject to the terms, conditions, and provisions hereof and of the plat.

Section 3. - Declarant's Facilities - Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant or the builder of said dwelling lot to maintain during the period of construction and sale of said dwelling lot, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said dwelling lots, including, but without limitation, a business office, storage area, construction yards, signs, model lots and sales office.

Section 4. - Animals - No animals, livestock or poultry, or pets of any kind shall be raised, bred or kept on any of said Lots or inside any dwelling.

Section 5. - Signs - No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Properties, nor shall said Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activities

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of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns during the construction and sale period of the Declarant, its successors, and assigns, in furtherance of its powers and purposes as herein set forth.

Section 6. - Outside Equipment - No clotheslines, equipment, garbage cans, service yards, or storage piles shall be permitted upon the Properties. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

Section 7. - Landscape - Except in the individual patio areas appurtenant to a Lot, no planting or gardening shall be done, and no fences, hedges or wall shall be erected or maintained upon said Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any part of the Common Areas except as may be expressly allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Lots and is necessary for the protection of said Owners.

Section 8. - Exterior Maintenance - Maintenance, upkeep and repairs of any patio, screens and screen doors, exterior doors and window fixtures, decks and balconies, and other balconies shall be the sole responsibility of the individual Owner of the Lot appurtenant thereto and not in any manner the responsibility of the Board of Directors of the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area of the dwelling lots, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative.

Section 9. - Interior Maintenance - All fixtures and equipment installed within a dwelling lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling lot or impair any easement of heretofore, nor do any act nor allow any condition to exist which will adversely affect the other dwelling lots or their Owners.

Section 10. - Antennas - Without prior written approval and the authorization of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Lots or Common Area, nor upon any structure situated upon the Lots or Common Area other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 11. - Equal Standing - No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any owner or Owners in favor of the other Owners not for the mutual benefit of all Owners.

Section 12. - Leases - Any lease agreement between an Owner and any lessee shall be in writing and shall provide that the terms of the lease shall be subject in all respects to

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the provisions of this Declaration, the Articles of Incorporation of the Association, the by-laws of the Association, and any rules or regulations promulgated thereunder, and that any failure by the leasee to comply with the terms of such documents shall be a default under the lease, and violation of any provision of this Declaration may be directly redressed against a tenant.

Article X  
Insurance

Section 1. - Each Owner and the Association shall carry fire and extended coverage insurance on their respective properties. The Association shall carry insurance on the respective Common Areas. Each Owner shall carry personal liability and personal property insurance. The Association, or the Declarant pursuant to its rights reserved hereunder, may adopt rules and regulations governing the minimum amounts of insurance required to be carried by all Owners; certain provisions which may be required to be included in all such insurance policies; the insurance Company to insure coverage's; and such other terms and provision pertaining to insurance which may reasonably be deemed necessary or appropriate (1) to assure that all Common Areas and all residences and structures are insured and that there will be proceeds of insurance to repair or restore the same in th. even of a casualty loss thereto, or (2) otherwise to assist or simplify problems of coordination insurance coverage between the Owners and Association. The Association, or the Declarant, in the event it shall be determined that any residence on any Lot within the properties is not covered by fire and extended coverage on any such Lot in compliance with the rules and regulations of the Association, and the Association shall have the right to charge the premium therefor as part of the monthly assessment against any Lot for which the Association or the Declarant has obtained such fire and extended coverage insurance pursuant to this Section.

Section 2. - The Board of directors of the Association shall also have the authority to and shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, and workmen's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner and the Association, its Board of directors, and any of its employees or agents from liability in connection with liability endorsements to cover liability of the owners collectively to an owner individually.

Section 3. - Each Owner shall have the right to purchase any additional insurance he deems necessary and he shall be responsible for all insurance on the contents of his residence, his additions and improvements thereto and decorating and furnishing and personal property therein, and his personal property stored elsewhere on the property, and his personal liability to the extent not covered by the liability insurance for all Owners obtained as a part of the common expenses as above provided.

Section 4. - Casualty and Restoration - In the event of damage or destruction of any of the Properties, then the Association shall cause such damaged or destroyed property to be promptly repaired and restored. The proceeds of the insurance carried hereunder shall be applied to such repair and restoration. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the

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name of the Association, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners.

Article XI  
Condemnation

Section 1. - Taking - The taking of a portion of a lot or of the Common Areas by eminent domain shall be deemed to be proceeds from insurance on account of the casualty and shall be payable in accordance with Article XI of this Declaration. The proceeds of the awards shall be distributed or used in the manner heretofore provided for insurance proceeds except that when one or more lots are taken in part, the taking shall have the following effects:

(a) Lot Reduced But Habitable - If the taking reduces the size of a lot and the remaining portion of a lot can be made habitable, the award for the taking of a portion of the lot shall be used for the following purposes in the order stated and the following changes shall be effected in the properties:

(1) The lot shall be made habitable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the lot.  
(2) The balance of the award, if any, shall be distributed to the owner of the lot and to each mortgagee of the lot, the remittance being payable jointly to the owner and mortgagees.

(b) Lot Made Uninhabitable - If the taking destroys or so reduces the size of a lot that it cannot be made habitable, the award for the taking of the lot shall be used for the following purposes in the order stated and the following changes shall be effected in the properties:

(1) The market value of such a lot immediately prior to the taking shall be paid to the Owner of the lot and to each mortgagee of the lot, the remittance being payable jointly to the Owner and mortgagees and a deed and release of mortgage delivered to the Association for the lot as it existed.  
(2) The remaining portion of such lot, if any, shall become a part of the common area and shall be placed in condition for use by all of the lot owners in the manner approved by the Association; provided, if the cost of such work shall exceed the balance of the funds from the award for the taking, such work shall be approved in the manner elsewhere required for further improvement of the common area.  
(3) If the amount of the award for the taking is not sufficient to pay the market value of the condemned lot to the Owner and to condition the remaining portion of the lot for use as a part of the common area, the additional funds required for such purposes shall be raised by assessments against all of the lot Owners who will continue as Owners of lots after

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the changes in the Properties effected by the taking.

(c) Arbitration - If the market value of a lot prior to the taking cannot be determined by agreement between the lot Owner and mortgagees of the lot and the Association within thirty (30) days after notice by either party, such values shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the lot, and judgment of specific performance upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all lot owners.

(d) Award Held In Trust - Any lot owner or the Association receiving award funds from a condemning authority shall be deemed to hold said funds in trust for the purposes of this Article. Award funds held by a lot owner or mortgagee shall be credited to the fair market value payment when such payment is required by this Article. In the event a lot owner fails to apply the award funds to reconstruction or purchase as provided herein, the Association shall have the right to levy a special assessment against such lot owner in the amount of such lot owner's award or portion of such award to satisfy the provisions of this Article. This right of special assessment shall be in addition to any other right of assessment in the Association.

The undersigned persons executing this Declaration on behalf of the Declarant, represent and certify that they are the duly elected officers of the Declarant and have fully empowered, by proper resolution of the board of directors of the Declarant, to execute this Declaration; that the Declarant has full capacity to make this Declaration pertaining to the real estate described herein; and that all action necessary for the making of the Declaration has been taken and done.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed this 23rd day of December 1998

STATE OF INDIANA)

) SS: 19

Norman E. Brun

By Norman E. Brun

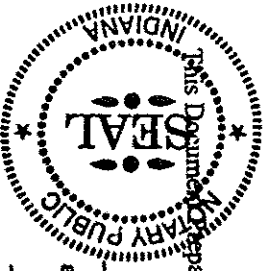
COUNTY OF Morgan )

Before me, a Notary Public, in and for said County and State, personally appeared Norman E. Brun, who acknowledged the execution of the foregoing Declaration for and on behalf of the Declarant.

Witness my hand and notarial seal this 23rd day of December 1998

My Commission Expires:

W. J. G. Brun  
Notary Public  
Residing in \_\_\_\_\_ County



Prepared by: Norman E. Brun  
RECEIVED FOR RECORD  
Jan. 6 1999  
at 8:02 A.M.  
Norman E. Brun  
MORGAN COUNTY RECORDER



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9900156

Book 156 Page 242

CODE OF BY-LAWS  
~~DR 418-555~~  
FOXCLIFF RIDGE  
HOMEOWNERS ASSOCIATION  
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Identification and Applicability

Section 1.01. Identification and Application. These by-laws are adopted simultaneously with the execution of a certain Declaration as described in Exhibit "A" to which these by-laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these by-laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these by-laws and reference is specifically made to Article 1 of the declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the association.

Section 1.02. Individual Application. All of the CO-Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a lot or any part of the Property, or of any property or land annexed to the Declaration as provided therein, shall be subject to the rules, restrictions terms and conditions set forth in the Declaration and these by-laws.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary, the meetings of the Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and assessments, and for such other purposes as may be required by the Declaration and these by-laws.

Section 2.02. Annual Meetings. The annual meeting of the members of the Association shall be held on the first Tuesday of December in each calendar year. At the annual meeting the Owners shall elect the Board of Directors of the association in accordance with the provisions of these by-laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Directors or upon a written petition of the Owners who have not less than thirty-three percent (33%) of the class A membership votes. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which at a special meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

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Section 2.04 Notice of Place of Meeting All meetings of the members of the Association shall be held at any suitable place in Morgan 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 be the Secretary of the Association to each Owner and If applicable, to any Mortgagee not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their address as it appears on the records of the Association. Attendance at any meeting in person or proxy shall constitute a waiver or notice of such meeting.

Section 2.05. Substitute Annual Meeting If the annual meeting shall not be held on the day designated by the by-laws, a substitute annual meeting may be called in accordance with the provisions of Section 2.04 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 2.06. Voting.

(a) Number of Votes. To avoid fractional votes and facilitate the orderly conduct of the meeting, each Owner shall be entitled to cast that number of votes on each matter coming before the meeting which is equal to the Vote which the Owner is entitled as provided in the Declaration.

For the purposes of the conduction of meetings and voting at meetings, the Declarant shall be included within the term "Owner" for the purposes of these by-laws. Voting rights shall be determined in accordance with the Declaration as follows:

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 determine, but in no event shall more than one vote be cast with respect to any lot.

Class B - The Class B member shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total vote outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

(b) Multiple Owner Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to all the Lot 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 Association a proxy appointing one of such persons or partners as the voting representative for such Lot, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, such appointment is rescinded by an order of a court of competent jurisdiction, or the subject Lot which forms the basis of the vote is conveyed. 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

2.06.. 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 be the board of directors of such corporation shall cast the Vote which the corporation is Entitled.

(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 Association prior to the commencement of the meeting.

(e) Quorum. Except as otherwise expressly provided in the Declaration or these by-laws, the Owners representing ten percent (10%) of each class of membership, taken together, shall constitute a quorum at all meetings. The term majority of Owners or majority of vote, as used in these by-laws, shall mean the owners entitled to not less than fifty-one percent (51%) of the Votes in accordance with the Declaration, as such may be amended from time to time.

(f) Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time and business will be conducted in the following order:

- (1) Reading of the Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.
- (2) Treasurer's Report. the Treasurer shall report to the Owners concerning the financial condition to the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.
- (3) Budget The proposed budget for the current calendar year shall be presented to the Owners 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. Such nominations must be in writing and presented to the Secretary of the Association at least (10) days prior to the date of the annual meeting. Voting for Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. All voting for election of the members of the Board of Directors shall be conducted by secret written ballot.

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(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the secretary of the Association at least ten (10) 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; but only for items of common concern to all homeowners.

(6) Adjournment

ARTICLE III

Board of Directors

Section 3.01. The affairs of the Association and Foxcliff Ridge shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The board of Directors shall be composed of three (3) persons. No person shall be eligible to serve as a Director unless he is an Owner or is appointed be the Declarant.

Section 3.02. Initial board of Directors. The initial Board of Directors shall be Norman E. Bruns and Priscilla L., Bruns, whom shall be appointed by the declarant. Notwithstanding any other provision in these by-laws or the Declaration, the initial Board shall hold office until the first annual meeting of the Owners which will occur after the all units have been sold or conveyed, which ever occurs last.

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 may be represented on the Board of Directors by more than one person at a time.

Section 3.04. Term of Office and Vacancy. The board of directors shall be elected at each annual meeting of the association. Directors shall hold office for a term of two (2) years or until their successors have been duly elected and qualified.

Any vacancy or vacancies occurring in the board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05 of this Article III.

Section 3.05. Removal of Directors. A director or Directors, except the initial Directors may be removed with or without cause by vote of a majority of the Vote at a special meeting of the Owners duly called and constituted. 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 or until his successor is duly elected and qualified.

Section 3.06. Duties of the Board of Directors. The Board of directors shall provide for the administration of Foxcliff Ridge, the maintenance, upkeep and replacement of the common areas, and the collection and disbursement of the Common Areas, and the collection and disbursement of the Common Expenses and assessments. These duties include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Areas
- (b) procuring of utilities used in connection with Foxcliff Ridge, 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 street and parking area;
- (e) assessment and collection from the Owners of share of the Common expenses and assessment;
- (f) preparation of an annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;
- (h) keeping a current, accurate and detailed record or receipts and expenditures affecting the Property, specifying and itemizing the Common expenses and assessments; all records and vouchers shall be available for examination by an Owner at any time during normal business hours. All records and vouchers shall also be available for examination by the holder of any first mortgage lien on any lot or lots at any time during normal business hours.

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 power:

- (a) to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the board of directors;
- (b) to procure for the benefit of the Owners fire and extended coverage insurance covering the buildings and the Property to the full replacement value thereof and to procure public liability and property damage insurance and Workmen's Compensation insurance, if necessary, for the benefit of the Owners and the Association;
- (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 Foxcliff Ridge;
- (d) to include the costs of all of the above and foregoing as Common Expenses and assessments and to pay all of such costs therefrom;
- (e) to consent to amendments to the Declaration as therein provided;
- (f) to adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of the Property;
- (g) to open and maintain a bank account or accounts in the name of the association;

Section 3.08. Limitation on Board Action. The authority of the board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,000.00 without obtaining the prior approval of a majority of Owners, except in the following cases:

- (a) contracts for replacing or restoring portions of the Common 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.

Section 3.09. Compensation. No Directors shall receive any compensation for any service rendered to the Association except to such extent as he may be reimbursed for actual expenses incurred in the performance of his duties.

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 Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by 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 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 Morgan 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 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 votes 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 Association 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 Association shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or by-laws. It is intended that the Directors shall

have no personal liability with respect to any contract made by them on behalf of the Association. Every contract made by the Board shall provide that the Board of Directors, in executing such contract, is acting as Agent for the Association and shall have not personal liability thereunder.

Section 3.14. Additional Indemnity of Directors. The Association shall indemnify 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 Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or 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, if it shall be found by a majority 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 Association or statements or advice made by or prepared by the Managing Agent or Foxcliff Ridge or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the association 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 require any or all officers and employees of the Association handling or responsible for Association funds to be covered by an adequate bond. The premiums on such bonds shall constitute a common expense.

Section 3.16. Informal Action of Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the board, whether done before or after the action is taken.

#### ARTICLE IV

##### Officers

Section 4.01. Officers of the Association. The principal officers of the Association 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 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 the Secretary shall not be performed by the same person.

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Section 4.02. Election of Officers The officers of the Association 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 Association. He shall preside at all meetings of the Association and of the board and shall have and discharge all the general powers and duties usually vested in the office of the 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 co-owners as he may deem necessary, to assist in the affairs of the Association 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 by-laws 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 Association 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 Association or the Board are duly given, mailed or delivered, in accordance with the provision of these by-laws.

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 Association and such other duties incident to the office of Treasurer. He shall be the legal custodian of all moneys, notes, securities and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 4.07. Assistant Officers The Board of Managers may, from time to time, designate and elect from among the Owners an Assistant Secretary and 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 by-laws or the Board of Directors may prescribe.

Section 4.08 Compensation No officer shall receive compensation from the Association for acting as such.

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ART V  
Assessments

Section 5.01 Annual accounting. Annually, after the close of each calendar year and prior to the date of the annual meeting of the Association, the Board shall cause to be prepared and furnished to each Owner an audited financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar year, and a copy of said audited financial statement shall be furnished to each holder of a first mortgage lien upon any lot or lots.

Section 5.02 Proposed annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses and assessments for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing calendar 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 of the vote; provided, however that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended. Copies of the proposed annual budget shall also be furnished to each holder of a first mortgage lien upon any lot or lots in the same manner as provided for furnishing such copy to an Owner.

Section 5.03. Regular Assessments. (a) The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses and assessments in the ensuing year as set forth in said budget, contain a proposed assessment against each lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against each respective lot (herein called the "Regular Assessment"). Immediately following the adoption of the annual budget, each holder of a first mortgage lien on any lot or lots shall be given written notice of the assessment against the respective lot on which such holder may hold a first mortgage lien. The Regular Assessment against each lot shall be paid in equal monthly installments, commencing on the first day of January of such calendar year and on the first day of each calendar month thereafter through and including the following December 1. Payment of monthly installments of the Regular Assessment for the year shall become a lien on each separate lot as of January 1 of each calendar year.

(b) The Common Expenses shall include, but are not limited to, the following:

- (i) the expenses, costs and charges incurred in connection with the administration, operations and management of the Association and Common Areas and Facilities; (ii) the cost of maintenance, repair, replacement and restoration of the Common Areas and Facilities, or any part thereof;
- (iii) The cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the provisions of the Declaration;
- (iv) such amounts as the Board of Directors may deem proper for the convenience, comfort and well being of the Lot Owners, and for the operation, management, and maintenance of the property, including, without limitation, an amount for working capital of the Association, for a general operating reserve, for a reserve fund for replacements, and to make up deficit in the common expenses for any prior year;

(v) such amounts as may be required for the purchase or lease by the Board or its designee, corporate or otherwise, on behalf of all or less than all Lot Owners of any Lot whose Owner has elected to sell or lease such Lot or of any Lot which is to be sold at a foreclosure or other Judicial sale;

(vi) in proper cases, the cost of administration and of maintenance and repair of the Limited Common Areas and Facilities, if any, and

(vii) and other expense lawfully agreed upon.

Section 5.04. Special Assessments From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the owners, unless otherwise provided in these by-laws or the Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the board, shall become a lien on each lot in a uniform manner (herein called "Special Assessment"). Provided, however, that no special assessment whether adopted in accordance with this Section 5.04, or otherwise, shall be effective without the prior written approval of the majority of the holders of first mortgage liens on any lot or lots.

Section 5.05. Commencement of Assessments. The first annual budget and the Regular Assessment to be charged against each lot pursuant thereto shall be determined by the Owners at the first annual meeting of the Association to be held on the second Tuesday of each December. Except as otherwise provided in this paragraph, all owners who own lots in Foxcliff Ridge at the time of the first annual meeting shall commence payment of their monthly amount of the regular assessment on January 1.

Section 5.06. Failure of Owner to Pay Assessments. Each Owner shall be personally liable for the payment of all Regular, Interim and special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular, Interim, or Special Assessment when due, the lien for such Assessment on the Owner's lot may be filed and foreclosed by the Board for and on behalf of the association as provided by law. In any action to foreclose the lien for Assessments, the Owner and occupant shall be jointly and severally liable for the payment to the Association of reasonable rental for such lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular, Interim or Special Assessment. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular, Interim or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular, Interim or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective lot.

Section 5.07. Maintenance and Repairs. Every Owner shall promptly perform all maintenance and repair to his own lot, which, if neglected, would affect the value of the Property and 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 lot.

The Association, in the performance of its maintenance duties, may from time to time, make use of the external water outlets and faucets on the various lots, provided, however, that the association may do so only if it provides monitoring for the amount of water used and reimburses the Owner whose outlet or faucet is used for the amount of water consumed by the Association in the performance of its duties within 90 days from the date or dates of use.

#### ARTICLE VI

##### Restrictions on Use

Section 6.01. The following restrictions on the use and enjoyment of the lots, Common areas, and the Property shall be applicable to Foxcliff Ridge and in addition to those set forth in the declaration and recorded plats. These are as follows:

- (a) All lots shall be used exclusively for residential purposes.
- (b) No additional buildings shall be erected or located on the properties other than the Buildings designated in the Declaration and shown on the Plans.
- (c) nothing shall be done or kept in any unit or in the common areas which will cause an increase in the rate of insurance on any building or the contents thereof No Owner shall permit anything to be done or kept in his Lot or in the Common Areas which will result in a cancellation 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 on the lot or Common Areas.
- (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any 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) No animals, livestock, poultry, or pets of any kind shall be raised, bred, in any Lot or boarded in the Common Areas at any time.
- (g) Nothing shall be done or permitted on a unit which will impair the structural integrity of any building or which would structurally change any Lot, except as otherwise provided in the Declaration or these by-laws.
- (h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Areas, the common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (i) 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 the Property.
- (j) 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 Property or any unit without the prior 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 lots.

- (k) All Owners and members of their families, their guests, or invitees, and all occupants of any lot or other persons entitled to use the same and to use and enjoy the common areas or any part thereof; 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.
- (l) No boats, campers, trailers of any kind, buses, mobile homes, trucks or any other unconventional vehicles of any description, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage.
- (m) No owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas without permission from the Board.

Section 6.02. Right of Entry. An owner or occupant of a Lot shall grant the right of entry to a person authorized by the Board in case of any emergency originating in or threatening his Lot, whether the Owner is present at the time or not. Any Owner shall permit other persons or their representatives when so required, to enter his Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of emergencies, such right of entry shall be immediate.

Section 6.03. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas, 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 to be delivered or mailed promptly to all Owners.

Section 6.04. Annexed Land. Upon the annexation of land to the jurisdiction of the Declaration pursuant to the provisions contained therein, the Owners of lots in such annexed land shall have full and free access to all of the Common Area, facilities and amenities, as though such annexed land had originally been within the provisions of the Declaration from the time it was recorded in the office of the Recorder of Morgan County. In a like manner, the existing Owners shall have full and free access to the common Area of any land annexed pursuant to the Declaration.

#### ARTICLE VII

##### Amendment to by-laws

Section 7.01. These by-laws may be amended by a vote of not less than sixty-six percent (66%) of the vote of the owners in a duly constituted meeting called for such purpose. Provided, that the Board of directors may amend these by-laws at any time prior to the conversion of Class B votes to Class A votes as described in Section 2.06.

ARTICLE VIII

Insurance

Section 8.01. Insurance on Individual Mortgaged Lots. The owner of any lot who obtains a mortgage on said lot shall carry and maintain in force property insurance affording protection against loss or damage from fire and other hazards covered by the standard extended coverage endorsement in an amount at least sufficient to pay the mortgage balance in the event of a covered loss. Insurance in an amount less than the mortgage balance is permitted only where the appraisal made in connection with the mortgage loan provided separate valuations for the land and improvements, and in such instances the insurance must cover the full replacement cost of the improvements.

Section 8.02. Minimum Requirements for Association Insurance. The Association shall as a minimum obtain and carry a policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent liability from Operation of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

1. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
2. such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 8.03. Public Liability Insurance. The Association shall as a minimum carry and maintain in force a comprehensive policy of public liability insurance covering all of the common areas located in the properties insuring the Association with limits not less than \$3,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: garage keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

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Section 8.04. Minimum Bonding Requirements. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

- a. all such fidelity bonds shall name the Association as an obligee; and
- b. such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves, unless a greater amount is required by FNMA; and
- c. such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and
- d. such bonds shall provide that they may not be canceled or substantially modified (including cancellations for nonpayment of premiums) without at least 30 days prior written notice.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed this 28<sup>th</sup> day of November 1998

STATE OF INDIANA

Norman E. Bruns

By Norman E. Bruns

COUNTY OF

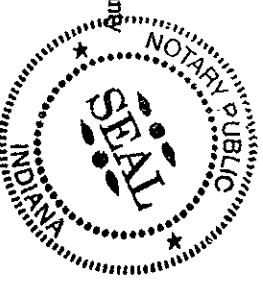
Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged the execution of the foregoing Declaration for and on behalf of the Declarant. Witness my hand and notarial seal this 28 day of November 1998.

My Commission Expires:

~~MORGAN COUNTY, President~~  
~~My Commission Expires:~~  
~~2-3-2001~~

Notary Public  
Residing in

B. A. [Signature]  
Morgan County



This Document Prepared by: Norman E. Bruns

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RECEIVED FOR RECORD

Jan 6 1999  
8:04 A.M.  
Karen Burnett  
MORGAN COUNTY RECORDER

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9804700

BOOK PAGE 294

9:16 A.M.  
Yickie Kivett  
MORGAN COUNTY RECORDER

CURVE DATA No. 1  
A = 90-00-00  
R = 25.00  
D = 229-10-59  
T = 25.00  
ARC = 39.27  
CH = 35.36 S 11-59-30 E

CURVE DATA No. 2  
A = 41-34-30  
R = 350.00  
D = 16-22-12  
T = 152.87  
ARC = 253.97  
CH = 248.43 S 36-12-15 E

NORTH HALF  
99,135 SFT  
6160 LESS BLDG. "E"  
92,975 = 2,134 AC± SOUTH HALF  
92,975 = 2,134 AC±

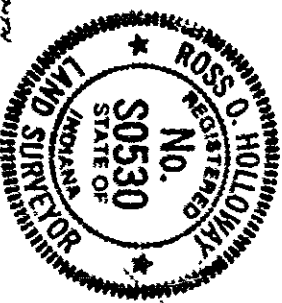
- Iron Monument Found
- Iron Monument PLACED
- PLAT DISTANCE
- COMPUTED CORNER
- No Monument

DIVISION OF OUTLOTS 4, 5 AND 6 IN  
FOXCLIFF ESTATES SECTION XXX AS  
RECORDED IN DR 238, Pg. 322, MORGAN  
COUNTY, INDIANA.

CERTIFICATION  
I, Ross O. Holloway, an Indiana Registered Land  
Surveyor, hereby certify that, to the best of my  
information, knowledge and belief, this plat represents  
a survey as completed by me on June 14, 1987.

Ross O. Holloway  
Indiana Registered  
Surveyor No. 50530  
Dated:

Client: Mr. Ken Hale and Robert Sloan  
File No.: 41-87



Change of Record: Norman E. Bruns Plat  
Kenneth Hale, Mrs. G. Hale, Lynn E. Bruns  
PLAT ENTERED FOR TAXATION BETTY J. Bruns and  
PLAT 3/1988 V. BRUNSA CALL  
Auction, Morgan County  
Improvements on North Part (corner d) on 1  
N 71-35-00 E  
E 14' (5.0 P)

