

J FOXCLIFF GREEN

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This declaration, made on the date hereinafter set forth by Ramshead, Corp., hereinafter 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, restrictions, 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.

Article I

Definitions

Section 1 - "Association" shall mean and refer to The Foxcliff Green Homeowners Association, Inc., an Indiana not-for profit corporation, its successors and assigns. Any action

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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 or to be owned pursuant to Article IX, Section 4, by the Association 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 Ramshead, Corp., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6 - "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area, which plot is identified

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by number or other such designation.

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, but they shall be deemed for all other purposes to be Common Areas.

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, his

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tenants, 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 the 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,

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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 building upon a Lot in the Properties shall be particularly 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 encroachments 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 appurtenant to and may not be separated from ownership of any Lot. Membership shall automatically transfer with the transfer of fee simple title

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to any Lot and the membership rights of the transferor shall also be transferred.

Section 2 - The Association shall have two (2) classes 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 - The Class B member(s) 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 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

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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 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 January 1, 1981, the maximum monthly assessment on any Lot conveyed by Declarant on the real estate described in Exhibit "A" shall be Thirty-

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five Dollars (\$35.00) per Lot with a one car garage and Forty-five Dollars (\$45.00) per Lot with a two car garage.

(b) Until January 1, 1982, the maximum monthly assessment on any Lot conveyed by Declarant on the real estate described in Exhibit "A" shall be Thirty-five Dollars (\$35.00) per Lot with a one car garage and Forty-five Dollars (\$45.00) per Lot with a two car garage.

(c) From and after January 1, 1982, 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%).

(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 the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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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 percent (60%) 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 - Rate of Assessment - Both annual and special assessments as provided for herein shall be fixed at a uniform rate for all Lots of approximately the same size and maintenance requirements, provided that the assessment for all Lots owned by the Declarant shall be fixed at a rate which is twenty-five percent (25%) of the rate for Lots owned by the Owners when such Lots are placed of record by plat without a dwelling structure, the rate for such Lots with a completed dwelling structure owned by the Declarant shall be fixed at a rate which is fifty percent (50%) of the rate for similar Lots owned by Owners.

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It is presumed for purposes of this Section that the maintenance requirements are greater for a Lot with a two car garage than with a one car garage.

Section 7 - 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-rata 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 8 - Effect of Non-payment of Assessments - Remedies of the Association - If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof, as hereinafter provided, a continuing lien on the Lot subject to the assessment, binding upon the then Owner, his heirs, devisees, successors and assigns. The

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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 year 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 the 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 9 - Subordination of the Lien to Mortgages - The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Any mortgagee taking title to and the right of possession of a unit by foreclosure or by assignment or deed-in-lieu of foreclosure or any purchaser

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at a foreclosure sale shall take said unit free and clear of any claim for unpaid assessments and charges accruing prior to the time said mortgagee takes title to the unit except that said unit shall be subject to the lien of assessment resulting from pro-rata reallocation of such unpaid charges and assessments and all such charges and assessments accruing after the mortgagee has taken title to a unit. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10 - 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.

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: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. (Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window

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fixtures, hardware, patios, decks, and balconies.)

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 by 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.

Article VI

Party Walls

Section 1 - General Rules of Law to Apply - Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of Law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

Section 3 - Destruction by Fire or Other Casualty - If a party wall is destroyed or damaged by fire or other casualty,

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any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4 - Weatherproofing - Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5 - Right to Contribution Runs with Land - The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6 - Arbitration - In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and a decision by a majority of all the arbitrators shall bind all parties.

Article VII

Architectural Control

No fence, wall or other structure shall be commenced,

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erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until 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 VIII

General Provisions

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

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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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded, provided, however, that the Declarant may amend the terms, covenants, and restrictions of this Declaration at any time 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 or in any Properties adjacent or contiguous thereto.

Section 4 - Annexation of Additional Property -

A. Additional property may be brought within the jurisdiction of the Association or made subject to the provisions of this Declaration in the manner provided herein. Such annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members present, if any, at a meeting duly called for this purpose, written notice of which shall

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be sent to all Class A members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of Class A members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be more than sixty (60) days following the preceding meeting. Class A members not present may give their written consent to the action taken thereat.

B. Additional land adjacent to the Properties and owned or controlled by the Declarant, may be annexed by the Declarant without the consent of Owners or members within five (5) years of the date of recording this instrument. Said annexation shall be effective upon the Declarant recording an instrument referring to this Declaration, describing the property to be annexed, and submitting said property to the provisions of this Declaration. "Adjacent Land" includes land separated from the properties by a street, road, stream, easement or other similar monument or structure.

Article IX

Declarant's Rights

Section 1 - Use of Property - Declarant reserves the right

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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 to maintain models, erect signs, maintain an office, staff the office with employees, and to use any and all of the Common Area and to show Lots then unsold. Any improvements placed on the Properties for the 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 Lot 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 unit in any portion of the properties or annexed properties or no longer has the right to annex adjacent land, whichever shall occur later, the rights of the Declarant under this Declaration shall thereupon terminate.

Section 2 - Declarant's Easement for Adjoining Property - Certain other Properties may be annexed to the Properties as provided in Article VIII, Section 4 hereof. Declarant reserves

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unto itself, its successors and assigns a non-exclusive easement over the streets, driveways and walks of the Properties in order to provide access through the Properties to and from such adjoining property. Declarant further reserves the right to connect to, extend and utilize the utilities that will be located on the Properties. Declarant further reserves the right to permit future owners of all or any portion of such adjoining property, their tenants, invitees and guests, to use the recreational facilities of the Common Area, provided that such persons pay a pro-rata share of the operating and maintenance cost of such recreational facilities, and that all persons having the right to use the same shall abide by the reasonable rules and regulations adopted by the Association governing such use.

Section 3 - 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.

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Section 4 - Conveyance of Common Area - The Declarant shall convey the Common Area to the Association at such time as Declarant no longer owns any Lot or any adjacent land subject to annexation under Article VIII.

Article X

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 unit, 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. This restriction does not prevent the annexation of other properties with a different use.

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

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provisions herein contained to the contrary, it shall be expressly permissible for Declarant or the builder of said dwelling unit to maintain during the period of construction and sale of said dwelling unit, 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 units, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 4 - Animals - No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes, and they are reasonable in size and number. The decision of the Board of Directors of the Association with regard to the reasonableness of the size, type and number of pets shall be final.

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 of any kind whatever shall be conducted in any building or in any portion of said

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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 walls 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

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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 hardware 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 and all exteriors and roofs of the dwelling units, 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 unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, 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 unit or impair any easement of hereditament, nor do any act nor allow any condition to exist which will adversely affect the other dwelling units or their Owners.

Section 10 - Antenna - Without prior written approval and the authorization of the Board of Directors, no exterior

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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 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 lessee 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 XI

Insurance

Section 1 - Each Owner and the Association shall carry fire and extended coverage insurance on their respective properties.

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The Association shall carry insurance on the respective Common Areas and dwellings. 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 coverages; and such other terms and provisions 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 the event of a casualty loss thereto, or (2) otherwise to assist or to simplify problems of coordination insurance coverage between the Owners and the 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

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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 the Common Area. Where agreeable to the insurer all liability insurance policies shall contain cross-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 name of

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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 XII

Condemnation

Section 1 - Taking - The taking of a portion of a unit 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 units are taken in part, the taking shall have the following effects:

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

(1) The unit 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 unit.

(2) The balance of the award, if any, shall

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be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being payable jointly to the owner and mortgagees.

(b) Unit Made Uninhabitable - If the taking destroys or so reduces the size of a unit that it cannot be made habitable, the award for the taking of the unit 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 unit immediately prior to the taking shall be paid to the Owner of the unit and to each mortgagee of the unit, the remittance being payable jointly to the Owner and mortgagees and a deed and release of mortgage delivered to the Association for the unit as it existed.

(2) The remaining portion of such unit, if any, shall become a part of the common area and shall be placed in condition for use by all of the unit owners in the manner approved by the Association; provided, if the cost of such work shall exceed the balance of the fund 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 unit to the Owner and to condition the remaining portion of the unit 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 unit Owners who will continue as Owners of units after the changes in the Properties effected by the taking.

(c) Arbitration - If the market value of a unit prior to the taking cannot be determined by agreement between the unit Owner and mortgagees of the unit 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 unit; and a judgment of specific

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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 unit owners.

(d) Award Held in Trust - Any unit 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 unit owner or mortgagee shall be credited to the fair market value payment when such payment is required by this Article. In the event a unit 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 unit owner in the amount of such unit 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.

(e) Definition of "Unit" - For purposes of this Article, the word "unit" shall mean the Lot and any structure thereon or appurtenant thereto.

Article XIII

Restrictions of Foxcliff Estates Subdivision

Section 1 - Foxcliff Estates Subdivision - Foxcliff Green is located upon real estate that may be subject to the restrictions, covenants and easements of Foxcliff Estates Subdivision as shown by the plat or plats thereof in the Office of the Recorder of Morgan County, Indiana. All Owners agree to abide by such restrictions as may apply to Foxcliff Green and holds title to a unit or units subject to such restrictions, covenants and easements.

Section 2 - Foxcliff Estates Community Association, Inc. - Owners of any Lot in Foxcliff Green shall become members of

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Foxcliff Estates Community Association, Inc., in addition to their membership in Foxcliff Green Homeowners Association, Inc., and Owners agree to pay such assessments and abide by such rules, by-laws, and regulations as may be applicable to Owners from time to time.

The undersigned persons executing this Declaration on behalf of the Declarant, Ramshead Corp., 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 corporate capacity to make this Declaration pertaining to the real estate described herein; and that all corporate 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 19 day of February, 1980.

✓ RAMSHEAD, CORP. ®

By D. Eugene Rubeck
D. Eugene Rubeck

STATE OF INDIANA)
COUNTY OF DeWitt) SS:

Before me, a Notary Public, in and for said County and State, personally appeared D. Eugene Rubeck, President of

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Ramshead, Corp., who acknowledged the execution of the foregoing Declaration for and on behalf of the Declarant.

Witness my hand and notarial seal this 19th day of February, 1980.

Jane M. Preiss
Notary Public Jane M. Preiss
Residing in Illinois County

NOTARY PUBLIC
Commission Expires:
January 1983
SEAL



CHICAGO TITLE

This instrument prepared by Lynn H. Coyne, Attorney at Law.

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FOR RECORD

FEB 19 10 52 AM '80

Laura M. E. Ekins
RECORDER OF
MORGAN COUNTY

BOOK 213 PAGE 158

EXHIBIT "A"

TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF FOXCLIFF GREEN

Boundry Description
For Section 1 of Outlot 1
In Foxcliff Estates South

A part of Outlot 1 in Foxcliff Estates South, Section
30, Recorded in Plat Book 238, Page 322, and more
particularly described as follows:

Beginning at a 5/8 inch found iron pin marking the
Northeast corner of said outlot 1; thence South 00°-19'
East (based on plat) along the east line of said Outlot 1
a distance of 175.1 feet; thence South 89°-36' West
a distance of 127.7 feet; thence North 00°-24' West along
the east line of said Lot a distance of 123.1 feet;
thence along a curve to the right an arc distance of
77.50 feet said curve having a radius of 50 feet; thence
North 88°-11' East along the north line of said lot a
distance of 79.13 feet to the point of beginning
containing 0.5 acres more or less and subject to all
legal rights of way and easements.

CHICAGO TITLE

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