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**PLAT COVENANTS AND RESTRICTIONS OF FOX HILL ESTATES**

The undersigned, J&M Development Company, Inc., an Indiana corporation ("Developer"), as the owner of the real estate more specifically described on this plat (the "Real Estate"), hereby certifies that it has laid off, platted and subdivided, and does hereby lay off, plat and subdivide said Real Estate in accord with this plat. This subdivision (the "Subdivision") shall be known and designated as Fox Hill Estates, consisting of Lot Nos. 1 through 100, inclusive, an addition in Marion County, Indiana. In addition to the covenants and restrictions hereinafter set forth, the Real Estate is further subject to the restrictions and agreements contained in the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, which is to be recorded in the Marion County Recorder's Office immediately following the recordation of this plat (the "Declaration"), and to the rights, powers, duties and obligations of Fox Hill Estates Homeowner's Association, Inc. (the "Association"), as set forth in the Declaration. If there is any irreconcilable conflict between the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the conflicting covenant or restriction contained herein shall govern and control only to the extent of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to the Real Estate to the greatest extent possible.

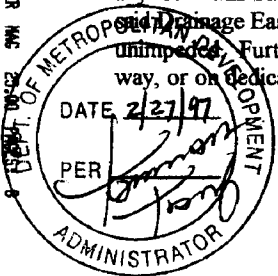
In order to provide adequate protection to all present and further owners of lots in the subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. **Utility, Drainage and Sanitary Sewer Easements.** There are areas of ground on this plat marked "Drainage and Utility Easements (D.&U.E.)", "Drainage Easements (D.E.)" and "Drainage, Utility and Sanitary Sewer Easements (D.U.&S.S.E.)", either separately or in combination. The Drainage and Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. Within these easements, no structure, fence, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utility services. The easement areas of each lot and all improvements thereon shall be maintained continuously by the owner of the lots, except for those improvements for which a public authority or utility is responsible.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer for access to and for the installation, repair or removal of a drainage system, either by surface drainage (i.e., drainage swale, etc.) or appropriate underground installations, for the Real Estate and adjoining property; and (ii) for the Department of Public Works of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system; provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded. Further, drainage swales (ditches) along dedicated roadways and within the rights-of-way, or on dedicated easements are not to be altered, dug out, filled in, tiled or otherwise changed

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APPROVED 2/27/1997  
WASHINGTON TOWNSHIP ASSESSOR  
BY: William Bank Real Estate Deputy

without the written permission of the Department of Public Works of the City of Indianapolis. All owners of any lots in this Subdivision subject to a such a drainage swale must maintain the swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over the swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Department of Public Works of the City of Indianapolis.

The Drainage, Utility and Sanitary Sewer Easements are hereby created and reserved for: (i) the Developer for access to and for the installation, repair or removal of all equipment and facilities necessary for the furnishing of sanitary sewer system for the Real Estate and adjoining property; and (ii) the City of Indianapolis, Indiana (by or through its Department of Public Works), its successors or assigns, who shall have full authority and maintenance responsibilities for such sanitary sewer system servicing the Subdivision, as well as any future connections and extensions thereto. No house service connection may be made to the sanitary sewer system mains without permission from and payment of appropriate fees to the City of Indianapolis. All lot owners within the Subdivision will be required to pay sewer service fees to the City of Indianapolis. No street inlets, catch basins, or other inflow sources may be connected to this sanitary sewer system, including without limitation, basement or crawlspace sump pumps, footing drains or roof drains. Within these Sanitary Sewer Easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such sewer system. The easement area of each lot and all improvements thereon shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility is responsible.

The delineation of the Drainage and Utility Easement, Drainage Utility and Sewer Easement, and Drainage, Utility and Sanitary Sewer Easement areas on this plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go onto any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph 1. No permanent structures shall be erected or maintained upon said easements. The owners of lots in the Subdivision shall take and hold title to the lots subject to the Drainage and Utility Easements, Drainage Utility and Sewer Easements and Drainage, Utility and Sanitary Sewer Easements herein created and reserved.

2. **Dedication of Streets.** The streets and rights-of-way as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to public use, to be owned and maintained by the governmental body having jurisdiction thereof.

3. **Entranceways.** The areas designated on this plat at the entranceway to the Subdivision as "Sign and Landscape Easement" shall be maintained with respect to the landscape and easement sign and/or perimeter fence by the Association, in accord with the terms and conditions of the Declaration.

4. **Common Areas.** Lots 8 through 13, inclusive, in Fox Hills Estates (hereinafter referred to, collectively, as "Common Area Lots") abut a "Common Area" as designated on this plat.

The primary purpose of the areas so designated as Common Area is to serve as retention or detention areas and outlets for surface water from the Subdivision and the adjoining real estate. The Common Areas will contain a lake as retention area, which is to be maintained by the Association, in accord with the terms and conditions of the Declaration.

Only the owners of the Common Area Lots, shall have the right to enter upon or use the Common Areas. Further, the owners of the Common Area Lots may use the Common Areas only for fishing, sunbathing or other recreational activities, and only so long as it is done solely without trespassing on other lot owners' lands and without actually entering in or upon the lake contained within the Common Area. No wading, boating, or swimming in the lake, or fishing from within the lake, is permitted at any time.

All owners of Common Area Lots, by accepting a deed to said lot, assume the responsibility of paying periodic "Common Area Maintenance Assessments" for the purposes of maintaining said Common Areas, as more thoroughly set forth in the Declaration.

5. **Building Location.** "Building Set-Back Lines (B.L. Line)" are as depicted on this plat. With the exception of permitted driveways and fences as may be approved by the committee (as defined in paragraph 6 below), no buildings or structures shall be erected or maintained between said set-back lines and the lot line of said lot. With the exception of periods reasonably necessary for construction, all lots shall be sodded from the front yard lot line to, at a minimum, the building set-back line applicable to the lot. In addition, with the exception of fences as may be approved by the Committee, no building or structures shall be erected or maintained closer than five (6) feet to any side lot line of any lot, with each lot having an aggregate side yard requirement of thirteen (16) feet. Where two or more contiguous lots are used as a site for a single dwelling, this side yard restriction shall apply to the combined lots as if they were a single lot.

6. **Architectural Control Committee.** No building, fence, walls, fuel storage tanks, antennae, satellite dishes, in-ground or above-ground pools, or other structure or appurtenance shall be constructed, erected, placed, replaced, altered, or repaired on any lot in this Subdivision until the building plans, specifications and plot plans showing the location and nature of such structures, improvements and/or appurtenances have been approved by the Fox Hill Estates Architectural Control Committee ("Committee"), in accord with the terms and provisions of the Declaration. The destruction of trees and vegetation and any other such matters as may effect the environment and ecology of the Subdivision shall be the proper concern of the Committee and shall first be approved thereby. Notwithstanding the provisions of this paragraph 6 or any other provisions of this plat or the Declaration requiring the approval of the Committee, Developer and any affiliate of Developer shall not be required to apply for or secure the approval of the Committee in connection with any construction, improvement or installation by Developer, or any affiliate of Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

7. **Fence Limitation/Site Lines/Antennas/Satellite Dishes.** No fence, wall, hedge or shrub planting which obstructs site lines at elevations between two (2) and six (6) feet above the

street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same site line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of driveway pavement. All fences must first be approved by the Committee as to size, location, height and composition before installation. Only wrought-iron, split rail, shadow box and black coated chain link fences shall be permitted. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such site line. No exposed radio, cable or television antennas or satellite dishes greater than eighteen (18) inches in diameter shall be permitted.

8. **Minimum Living Area.** No residence constructed on a lot herein shall have less than fourteen hundred (1400) square feet of finished and liveable floor area in aggregate, exclusive of basements, open porches and garages. A minimum square footage of 660 square feet (exclusive of basements, open porches and garages) for the ground level shall be required whenever a multi-floor residence is involved, with the aggregate of all liveable floor area to remain a minimum of sixteen (1600) square feet.

9. **Residential Use Only.** All lots in this Subdivision shall be solely for residential purposes. No business buildings shall be erected on said lots, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana, as amended from time to time. No residence shall be erected, altered, placed, or permitted to remain on any lot herein, other than one detached single-family residence not to exceed two and one-half stories in height and permanently attached residential accessory buildings. any attached garage, tool shed, storage building or any other attached building erected or used as an accessory building to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of any residence. Detached garages, tool sheds or storage buildings may not be erected on any lot.

10. **Two Car Garages.** All residences are required to have a garage which will accommodate at least two (2) automobiles.

11. **Driveways.** Each driveway in this Subdivision shall be of concrete or asphalt material and shall not be less than sixteen (16) feet in width. No additional parking is permitted on a lot other than in the garage or upon the driveway.

12. **Temporary Residences Prohibited.** No trailer, shack, tent, boat basement (except the use thereof as an integrated part of the entirety of the residence), garage or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of temporary character be used as a residence, except that used by a builder during the construction of a residential building on the property, which temporary construction structures shall be promptly removed upon the completion of construction of such building.

13. **Construction Sites.** All home construction sites shall be kept free of any unnecessary trash, scrap materials and equipment and in a clean and orderly fashion.

14. **Limitations on Trash.** No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in open public view. All rubbish, garbage or other waste shall be regularly removed from all lots and shall not be allowed to accumulate thereon.

15. **Sign Limitations.** No sign of any kind shall be displayed to the public view on any lot, except that one sign of not more than six (6) square feet may be displayed for the purpose of advertising the property for sale, except Developer and Builder may use larger signs during the sale and development of the Subdivision.

16. **Prohibited Animals/Nuisances.** No farm animals, fowls or domestic animals for commercial purpose shall be kept or permitted on any lot or lots in the Subdivision. No unlawful, or otherwise offensive activity shall be carried out on any lot in the Subdivision; nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

17. **Limitations on Water and Sewer.** No private or semi-private water supply and/or sewage disposal system may be located upon any lot in the Subdivision which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any lot.

18. **Limited Access.** All lots shall be accessed from the interior streets of the Subdivision. No access to any lot is permitted from Fox Hill Drive, Grandview Drive or 59th Street.

19. **Required Yard Lights.** In the event that the Subdivision is not served by public street lights throughout to be paid for by the Association, each lot shall be equipped with a decorative front yard light, or coach lights, each controlled or illuminated from photo cells.

20. **Binding Nature/Duration of Covenants.** These covenants and restrictions (as the same may be amended from time to time as provided in the Declaration) shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until twenty (20) years after the date of recording hereof, and thereafter said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of the majority of the then owners of the lots in the Subdivision, it is agreed that said covenants and restrictions shall terminate in their entirety, provided, however, that no termination of said covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto. any such termination shall be evidenced by a written instrument, signed and acknowledged by the lot owner or owners concurring therein, which instrument shall set forth facts

sufficient to indicate compliance with this paragraph and shall be recorded in the Office of the Recorder of Marion County, Indiana.

21. **Severability.** Invalidation of any other foregoing covenants and restrictions by judgment or court order shall in no way affect any of the other covenants and restrictions, which shall remain in full force and effect.

22. **Enforcement.** Violation or threatened violation of these covenants and restrictions shall be grounds for an action by Developer, the Association, any owner of any lot in the Subdivision and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief for such violation shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; **provided,** however, that neither Developer nor the Association shall be liable for damages of any person for failing to enforce or carry out such covenants or restrictions.

23. **Metropolitan Development Commission.** The Metropolitan Development Commission, its successors or assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision control ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the plat committee.

24. **Titles.** The underlined titles preceding the various paragraphs hereof are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this plat. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

25. **Creation of Association.** The developer has the responsibility of creating the Association for the Subdivision, the membership for which is **required and automatic for all lot owners in all sections of this Subdivision.**



FOX HILL ESTATES

I, the undersigned Registered Land Surveyor, hereby certify that the included plat correctly represents a subdivision of a part of the Northeast Quarter of Section 3, Township 16 North, Range 3 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter Section; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Quarter Section 445.00 feet to the POINT OF BEGINNING; thence continuing North 90 degrees 00 minutes 00 seconds East along said South line 1295.27 feet; thence North 00 degrees 38 minutes 00 seconds East 706.85 feet; thence North 89 degrees 22 minutes 00 seconds West 30.00 feet; thence North 00 degrees 38 minutes 00 seconds East 599.73 feet to a point on the centerline of Fox Hill Road; thence North 88 degrees 33 minutes 00 seconds West along said centerline 620.53 feet; thence North 89 degrees 58 minutes 00 seconds West along said centerline 615.49 feet; thence South 89 degrees 46 minutes 00 seconds West along said centerline 477.62 feet to a point on the West line of said quarter Section; thence South 00 degrees 29 minutes 22 seconds West along said West line 615.99 feet; thence North 90 degree 00 minutes 00 seconds East parallel with the said South line 445.00 feet; thence South 00 degrees 29 minutes 22 seconds West parallel with the said West line 705.00 feet to the place of beginning, containing 45.145 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

EXHIBIT "A"

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**FOX HILL ESTATES**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

JOHN R. VON ARX  
TOWNSHIP AUDITOR

OF

076230 FEB 27 5

**FOX HILL ESTATES**

PROPERTY SUBJECT TO TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

THIS DECLARATION is made this 10<sup>th</sup> day of February, 1997, by  
I&M DEVELOPMENT COMPANY, INC. an Indiana Corporation ("Developer").

**RECITALS**

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer has subdivided the Initial Real Estate into residential lots as generally shown on the plat for Fox Hill Estates, to be recorded in the office of the Recorder of Marion County, Indiana ("Plat"), along with the Plat Covenants and Restrictions of Fox Hill Estates to be recorded contemporaneously with the Plat ("Plat Covenants").
3. In addition to those covenants and restrictions contained on the Plat and in the Plat Covenants, Developer desires to subject the Initial Real Estate to certain other rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of all or any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Initial Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration and Plat Covenants, and collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such additions, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate").

NOW, THEREFORE, Developer hereby declares that the Initial Real Estate, together with any additions as and when the same become subject to this Declaration as hereinafter provided, is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, which shall run with the Initial Real Estate and shall be binding upon, and inure to the benefit of, Developer and any



APPROVED 2/27/1997  
 BY: WASHINGTON TOWNSHIP ASSESSOR  
John Bando Real Estate Dept.

other person or entity hereafter acquiring or having any right, title or interest in the Initial Real Estate, or any part thereof.

## **DECLARATION**

### **ARTICLE I.**

#### **DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1. "Association" means the Fox Hill Estates Homeowners' Association, Inc., an Indiana non-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

1.2. "Committee" means the Fox Hill Estates Architectural Control Committee established pursuant to Article VI, paragraph 6.1, of this Declaration for the purposes herein stated.

1.3. "Common Areas" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana as "Common Area". The Common Area set forth on the Plat is described on the Plat as "Common Area-Block A" and is a limited common area, the use of which, and the obligation to pay certain maintenance expenses for, is limited to certain Lot Owners as set forth in this Declaration.

1.4. "Common Area Lot" means those Lots which abut or adjoin a Common Area.

1.5. "Common Area Lot Owners" means those Owners who own a Common Area Lot.

1.6. "Common Area Maintenance Expenses" means the costs and expenses of and in connection with the performance of the responsibilities and duties of the Association to maintain the Common Areas, exclusive of the costs or expenses incurred in insuring the Common Areas, as such responsibilities and duties are enumerated herein, in the Plat Covenants and in the subdivision plat covenants and restrictions contained on any other subdivision plat of the Real Estate now or hereafter recorded in the office the Recorder of Marion County, Indiana.

1.7. "Common Expenses" means (i) expenses of administration of the Association; (ii) except Common Area Maintenance Expenses, expenses of and in connection with the performance of the responsibilities and duties of the Association, including without limitation all costs and expenses incurred in obtaining and maintaining insurance for the Association, as such responsibilities and duties are enumerated herein, in the Plat Covenants and in the

subdivision plat covenants and restrictions contained on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana; (iii) all sums lawfully assessed against the Owners by the Association; and (iv) all sums declared by this Declaration to be Common Expenses.

1.8. "Developer" means J&M Development Company, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

1.9. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer no longer owns any Lot within or upon the Real Estate.

1.10. "Drainage Easement (D.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the recorder of Marion County, Indiana as Drainage Easement (D.E.).

1.11. "Drainage and Utility Easement (D.&U.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the recorder of Marion County, Indiana as Drainage and Utility Easement (D.&U.E.).

1.12. "Drainage, Utility & Sanitary Sewer Easement (D.U.&S.S.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Drainage Utility & Sanitary Sewer Easement (D.U.&S.S.E.).

1.13. "Drainage, Utility and Sewer Easement (D.U.&S.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Drainage Utility & Sewer Easement (D.U.&S.E.).

1.14. "Landscape, Maintenance Access Easement (L.M.A.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Landscape, Maintenance Access Easement (L.M.A.E.).

1.15. "Lot" means a numbered parcel of land shown and identified as a lot on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.16. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

1.17. "Nonaffiliated Owner" means any "Owner" other than Developer, or any entity or person related to Developer or its principal shareholders.

1.18. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner, as used herein, shall include Developer so long as Developer shall own any Lot.

1.19. "Public Street" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana as "R/W".

1.20 "Sign Landscape Easement (S.L.E.)" means the portions of the Real Estate designated on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Sign Landscape Easement (S.L.E.).

## ARTICLE II.

### NAME

The name by which the Real Estate shall be known is "Fox Hill Estates".

## ARTICLE III.

### APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Initial Real Estate, together with such additions as and when the same become subject to this Declaration, shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this

Declaration, and for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

#### ARTICLE IV.

#### COMMON AREAS

4.1. Easement to Owners. Developer hereby creates and grants a non-exclusive easement in favor of each Owner for the visual and aesthetic enjoyment of the Common Areas which shall run with and be appurtenant to each Lot, subject to the following provisions:

(i) the right of the Association to suspend the voting rights and right to the use and/or enjoyment of any Common Areas by an Owner for any period not to exceed sixty (60) days for any material infraction of its published rules and regulations;

(ii) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two-thirds (2/3) of the members of the Association;

(iii) the rights of the Developer as provided in this Declaration and in the Plat and any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana;

(iv) the terms and provisions of this Declaration and the terms and provisions of the Plat Covenants and all amendments thereto;

(v) the easements reserved elsewhere in this Declaration and in the Plat and in any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana; and

(vi) the exclusive rights of the owners of Common Area Lots, as defined in the Plat, to enter upon or use the Common Areas and the rights and obligations of the Association with respect to the Common Areas as set forth herein.

4.2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, his right of enjoyment of the Common Areas to his family members, his tenants or contract purchasers who reside on the Lot.



4.3. Conveyance of Common Areas. Upon final completion of the Common Areas, Developer shall convey all of its right, title and interest in and to such areas to the Association by quitclaim deed, and such areas shall then be the property of the Association.

## ARTICLE V.

### ASSOCIATION

5.1. Membership. Each Owner shall, automatically upon becoming an Owner, be a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be a member of the Association.

5.2. Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in subparagraph (ii), in which event Developer shall then be a Class A member). Class A members shall be entitled to one (1) vote for each Lot owned.

(ii) Class B Members. The Class B member shall be Developer. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3. Applicable Date. As used herein, the term "Applicable Date" shall mean the date which is the earlier of (a) the end of the Development Period; or (b) January 31, 2002.

5.4. Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot shall determine among themselves, but in no event shall more than one (1) vote (in the case of Class A membership) be cast with respect to such Lot.

5.5. Board of Directors. The Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between the Developer and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for

termination by either party with or without cause, without any termination fee, on written notice of ninety (90) days or less.

5.7. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Installation, maintenance, repair and replacement of such fences, walls, foliage, landscaping, signs, sign illumination, street lights and other improvements in and upon (a) the "Sign Landscape Easement", as designated on the Plat, and (b) the Common Areas, as the Association deems necessary or appropriate and maintenance of the Sign and Landscape Easement and Common Areas and any installation thereon in a clean and attractive condition and in good repair.

(ii) Management and control of retention in and upon the Common Areas and easement areas (shown and identified as such on the Plat and any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) for maintenance of the same in a clean, attractive and sanitary condition; installation and replacement of such improvements in and upon said Common Areas and easements as the Association deems necessary or appropriate; and maintenance of any such improvements installed by Developer or the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include maintenance to protect the Common Areas from erosion, algae control and maintenance of levels, if applicable. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law.

(iii) Maintenance, repair and replacement, if necessary, of a drainage system in and upon the easements which are shown and identified, in one manner or another, as drainage easements on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as the Association deems necessary or appropriate, subject, however, to (i) the rights, obligations and/or responsibilities of the Indianapolis Department of Public Works to maintain such drainage system and to enforce compliance with applicable codes, ordinances, rules and regulations, and (ii) the obligations of the Owner of a Lot subject to such drainage easements to (a) keep the portion of the easements on his Lot free from obstructions so that the surface water drainage will be unimpeded, and (b) to comply with all applicable codes, ordinances, rules and regulations relating to such drainage easements.

(iv) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance coverages as the Association deems necessary or advisable.

(v) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(vi) Assessment and collection from the Owners of Regular or Special Assessments, sufficient in amount to pay the Common Expenses.

(vii) Assessment and collection from the Common Area Lot Owners of Common Area Maintenance Assessments sufficient in amount to pay the Common Area Maintenance Expenses.

(viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

(ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration or the Plat Covenants) governing the use and/or enjoyment of the Common Areas by the Owners of Lots, and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

(x) Replacement and maintenance of any street identification signs within and upon the Real Estate designated as street signs, except to the extent the same is the responsibility of any governmental agency or subdivision.

(xi) Procuring and maintaining for the benefit of the Association, its Board of Directors, Developer, and the Owners, a general liability insurance policy in an amount not less than Three Million Dollars (\$3,000,000.00) providing coverage for injury to person or property arising on, in or about the Common Areas, and the easement areas.

(xii) Ensuring compliance with each and every commitment set forth in that certain "Commitments Concerning the Use and Development of Real Estate made in Connection with Rezoning of Property", recorded April 30, 1996, as Instrument No. 96-57731 in the office of the Recorder of Marion County, Indiana.

(xiii) Actively maintaining the water quality, safety, taste, and odor of any surface water discharging into and out of the storm water retention system servicing the Real Estate.

5.8. Compensation. No Director of the Association shall receive compensation for his services as such Director, except to the extent expressly authorized by a two-thirds (2/3) vote of the Owners.

5.9. Non-Liability of Directors and Officers. The Directors and Officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as Directors or Officers of the Association, except for their own individual willful misconduct or gross negligence. The

Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a Director or Officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and Officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.10. Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or Officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action or suit of proceeding against an Indemnitee, no Director or Officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such Director or Officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such Director or Officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 5.10.

5.10. Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

## ARTICLE VI.

### ARCHITECTURAL CONTROL COMMITTEE

6.1. Creation. There shall be, and hereby is, created and established the Fox Hill Estates Architectural Control Committee (the "Committee") to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of not less than three (3) or more than nine (9) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of not less than three (3) or more than nine (9) persons appointed, from time to time, by the Board of Directors of the Association.

6.2. Purposes and Powers of Committee. The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation, ecology and topography.

(i) In General. No residence, building, structure or improvement of any type or kind shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. When required by the Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Building Permit shall bear the stamp or signature of the committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or the Plat or any other subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana;

(b) The design of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(c) The proposed improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) **Rules and Regulations.** The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or the Plat or any other subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana, as long as the same are not inconsistent with this Declaration or such subdivision plat(s).

6.3. **Duties of Committee.** The Committee shall approve or disapprove proposed construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One (1) copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

6.4. **Liability of Committee.** Neither the Committee, Developer, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

6.5. **Inspection.** The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI. However, no such inspection, or failure to inspect, by the Committee shall result in any liability on the part of the Committee, nor shall the Owner be relieved of any obligation regarding painting, construction or improvements in accordance with the approved plans therefor.

6.6. **Nonapplication to Developer.** Notwithstanding the provisions of this Article VI or any other provisions of this Declaration requiring the approval of the Committee, Developer and any entity related to Developer shall not be required to apply for or secure the approval of the Committee in connection with any construction or installation by Developer, or any affiliate of Developer of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

## ARTICLE VII.

### ASSESSMENTS

7.1. Creation of Lien and Personal Obligation. Developer, for each Lot now or hereafter conveyed by it, hereby covenants, and each Owner of a 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 (i) regular assessments for Common Expenses ("Regular Assessments"), (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments") and, (iii) only if such Owner is a Common Area Lot Owner, regular assessments for Common Area Maintenance Expenses ("Common Area Maintenance Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successor(s) in title unless expressly assumed by such successor(s). The Secretary of the Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a written statement setting forth the amount of any unpaid Regular Assessment, Special Assessment, Common Area Maintenance Assessment and other charges of the Association against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.2. Purpose of Assessments. The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Sign and Landscape Easement shown and identified as such on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, (iii) for the performance of the responsibilities and duties of the Association, including without limitation obtaining and maintaining the insurance policies and coverages as required herein, and (iv) for such other purposes as are specifically or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. The Common Area Maintenance Assessments levied by the Association against the Common Area Lot Owners and the Common Area Lots shall be used exclusively for the improvement, maintenance and repair of the Common Areas shown and identified as such on the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, and for the performance of the responsibilities and duties of the Association relating thereto.

7.3. Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Lot (including Common Areas Lots) at any amount not in excess of the maximum Regular Assessment hereinafter provided.

(i) Until January 1, 1999, the maximum Regular Assessment on any Lot shall not exceed Fifteen Dollars (\$15.00) per month; and

(ii) From and after January 1, 1999, the maximum Regular Assessment on a Lot may not be increased by more than fifteen percent (15%) above the annual Regular Assessment for the previous calendar year without the approval of two-thirds (2/3) of those members of the Association who cast votes in person or in proxy at a meeting of the members of the Association duly called for such purpose.

7.4. Special Assessments. In addition to regular Assessments, the Association may make Special Assessments against each Lot (including Common Area Lots) for the purpose of reconstructing, repairing or replacing any capital improvement which the Association is required to maintain. In addition, the Association may make Special Assessments to recover any operating deficits which the Association may from time to time incur.

7.5. Common Area Maintenance Assessments. In addition to Regular Assessments and Special Assessments, the Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Common Area Maintenance Assessment against each Common Area Lot at any amount not in excess of the maximum Common Area Maintenance Assessment hereinafter provided.

(i) Until January 1, 1999, the maximum Common Area Maintenance Assessment on any Common Area Lot shall not exceed Fifteen Dollars (\$15.00) per month; and

(ii) From and after January 1, 1999, the maximum Common Area Maintenance Assessment on a Common Area Lot may not be increased by more than fifteen percent (15%) above the annual Common Area Maintenance Assessment for the previous calendar year without the approval of two-thirds (2/3) of the Common Area Lot Owners who cast votes in person or in proxy at a meeting duly called for such purpose.

7.6. Uniform Rate of Assessment. The Regular Assessments, Special Assessments and Common Area Maintenance Assessments levied by the Association shall be uniform for all Lots and Common Area Lots, as applicable, except that all of the provisions of this Declaration notwithstanding, Developer shall not be liable for the payment of Regular Assessments, Special Assessments and Common Area Maintenance Assessments.

7.7. Date of Commencement of Regular Assessments and Common Area Maintenance Assessments; Due Dates. The Regular Assessment and the Common Area Maintenance



Assessment shall commence as to each Lot and/or Common Area Lot, as applicable, on the first day of the first calendar month following the first conveyance of such Lot or Common Area Lot to a Nonaffiliated Owner. The first payment of Regular Assessments for a Lot shall be payable on the date of conveyance at the closing, and shall be for the period from the date of conveyance through the end of the calendar year (if the conveyance occurs on a date other than the first day of the month the Regular Assessment for such partial month shall be pro rated based upon the number of days the Lot will be owned by the Owner).

The Board of Directors of the Association shall fix the amount of the Regular Assessment and the Common Area Maintenance Assessment on an annual basis for the upcoming calendar year no later than the first day of December of the then current year, provided that the Board of Directors may fix the initial Regular Assessment and Common Area Maintenance Assessment at any time during a calendar year for the remainder of the calendar year. Written notice of the assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.8. Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments, Special Assessments and Common Area Maintenance Assessments, as applicable, or from contributing toward the Common Expenses and/or the Common Area Maintenance Expenses, as applicable, and toward any other expense lawfully agreed upon, by abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors of the Association for and on behalf of the Association in the same manner as a mortgage on real property or as otherwise provided by law. Upon the failure of any Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors 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 assessments. The Board of Directors of the Association may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest at a rate of twelve percent (12%) per annum from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this paragraph 7.8 or elsewhere in this Declaration, any sale, or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor.

## ARTICLE VIII.

### INSURANCE

8.1. Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against Developer, the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2. Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of Three Million Dollars (\$3,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and easement areas (shown and identified as such upon the Plat and on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) and shall insure Developer, the Association, its Board of Directors, officers, agents and employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association, Developer or other Owners.

8.3. Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of

Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

## ARTICLE IX.

### MAINTENANCE AND DECORATION

9.1. Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot, and those Owners of Lots subject to the Landscape, Maintenance Access Easement shall keep the trees, shrubs and other landscaping in such easement area trimmed and attractive in appearance, shall not remove any trees, shrubs or other landscaping without the prior written permission of the Board of Directors and shall repair and/or replace any damaged or destroyed trees, shrubs or other landscaping promptly after the damage or destruction occurs. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by a unanimous vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be an additional assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

### 9.2. Additional Restrictions Concerning Residences and Other Structures.

(i) Existing or newly planted trees on any Lot shall not be removed by an Owner, after commencement of his occupancy, without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by Developer, or any affiliate of Developer, during the development of the Real Estate and during the construction by Developer, or any affiliate of Developer, or a residence or accessory building on any Lot; and

(ii) In order to preserve the aesthetic appearance of the Real Estate, any mailbox must be approved by the Committee as to size, location, height or appearance before it is installed.

## ARTICLE X.

### MORTGAGES

10.1. Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such mortgage and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.2. Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and defaults of the Owner of such Lot, if any, in the performance of such Owner's obligation under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

## ARTICLE XI.

### AMENDMENT

11.1. By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration, the Plat Covenants and the subdivision plat covenants and restrictions contained on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be proposed and adopted in the following manner.

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by any Owner who is in good standing with the Association. An Owner shall be deemed in good standing if he has paid all assessments that are then due and payable.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a two-thirds (2/3) majority vote of all Owners; provided however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lots within and upon the Real Estate. In the event any Lot is subject to a first mortgage, each Mortgagee shall be notified of the meeting and the proposed amendment in the manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.1.

(v) Special Amendments. No amendment shall be adopted which changes any provision of this Declaration, the Plat Covenants or the subdivision plat covenants and restrictions contained on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this provision.

11.2. By Developer. Developer hereby reserves the right, so long as it, or any entity related to Developer, owns any Lot within and upon the Real Estate, to make such amendments to this Declaration, the Plat Covenants and the subdivision plat covenants and restrictions contained on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as may be deemed necessary or appropriate by Developer in its sole discretion, without the approval of any other person or entity; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially increases the obligations imposed by this Declaration on any Owner; unless such amendment is made (i) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase,

sell, insure or guarantee first mortgages covering Lots, (iii) to bring this Declaration into compliance with any statutory requirements, or (iv) to correct clerical or typographical errors in this Declaration or any supplement or amendment thereto.

11.3. Recording. Each amendment to the Declaration, the Plat Covenants and the subdivision plat covenants and restrictions contained on any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be executed by Developer only in any case where Developer has the right to make such amendment without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's written consent. To the extent that any amendments concern or affect development standards or other matters within the scope of authority of the City of Indianapolis Department of Metropolitan Development ("DMD"), such amendments must be reviewed by DMD prior to being recorded. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII.

### GENERAL PROVISIONS

12.1. Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration, the Plat or in any other subdivision plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by Developer, the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

12.2. Non-liability for Subsurface and Soil Conditions. Neither Developer nor the Association shall be liable to any Owner for any damages, injuries, costs, expenses, fees or any other liabilities caused by or arising out of soil or subsurface conditions of the Real Estate.

12.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions provided in this Declaration or in any subdivision plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of

that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

12.4. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until twenty (20) years after the date of recording hereof, and thereafter said covenants and restrictions shall be automatically extended for successive periods of the ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety. In the event the Association shall vote to terminate this Declaration as provided above, the Secretary of the Association shall cause to be recorded in the Office of the Recorder of Marion County a copy of the adopting resolution and the original signatures thereto of the majority of the Owners voting to terminate.

12.5. Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

12.6. Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

12.7. Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

12.8. Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration, the Plat or any other subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, and any affiliate of the Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

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

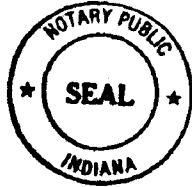
J&M DEVELOPMENT COMPANY, INC.

By: *Joseph F. Sexton*  
Joseph F. Sexton, Chairman of the Board

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for the State of Indiana, personally appeared Joseph F. Sexton, the Chairman of the Board, of J&M Development Company, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 10<sup>th</sup> day of February, 1997.



Signature *Glenn E. Christian*

Printed Glenn E. Christian  
NOTARY PUBLIC

My Commission Expires:

April 30, 1997

County of Residence:

Hamilton

This instrument was prepared by Allan S. Katz, Attorney at Law, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone: (317) 236-2100.



FOX HILL ESTATES

I, the undersigned Registered Land Surveyor, hereby certify that the included plat correctly represents a subdivision of a part of the Northeast Quarter of Section 3, Township 16 North, Range 3 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter Section; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Quarter Section 445.00 feet to the POINT OF BEGINNING; thence continuing North 90 degrees 00 minutes 00 seconds East along said South line 1295.27 feet; thence North 00 degrees 38 minutes 00 seconds East 706.85 feet; thence North 89 degrees 22 minutes 00 seconds West 30.00 feet; thence North 00 degrees 38 minutes 00 seconds East 599.73 feet to a point on the centerline of Fox Hill Road; thence North 88 degrees 33 minutes 00 seconds West along said centerline 620.53 feet; thence North 89 degrees 58 minutes 00 seconds West along said centerline 615.49 feet; thence South 89 degrees 46 minutes 00 seconds West along said centerline 477.62 feet to a point on the West line of said quarter Section; thence South 00 degrees 29 minutes 22 seconds West along said West line 615.99 feet; thence North 90 degree 00 minutes 00 seconds East parallel with the said South line 445.00 feet; thence South 00 degrees 29 minutes 22 seconds West parallel with the said West line 705.00 feet to the place of beginning, containing 45.145 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

EXHIBIT "A"

METES/24001  
04/29/96