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***FOX HOLLOW  
COMMUNITY ASSOCIATION, INC.  
ZIONSVILLE, IN***

***DECLARTION OF  
COVENANTS AND RESTRICTIONS***

***AS AMENDED AND RESTATED FOR***

***SECTION ONE  
SECTION TWO  
SECTION THREE  
AND  
SECTION FOUR***

***FOR REFERENCE ONLY – ALL ASSOCIATION MEMBERS  
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**DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOX HOLLOW**

This declaration, made as of this \_\_\_\_ day of \_\_\_\_\_, by Fox Hollow Development Corp., an Indiana Corporation (“Declarant”).

**WITNESSETH:**

**WHEREAS:**

A. Declarant is the owner of the real estate located in Boone County, Indiana, described in Exhibit A, upon a portion of which Declarant intends to develop a residential subdivision to be known as Fox Hollow.

B. Declarant has or will construct certain improvements and amenities, which shall constitute Community area.

C. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Fox Hollow and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

D. Declarant deems it desirable, for the efficient preservation of the values and amenities in Fox Hollow, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

E. Declarant has incorporated under the laws of the State of Indiana, a not-for-profit corporation known as Fox Hollow Community Association, Inc., for the purpose of exercising such functions.

NOW THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and each of the Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Tract or any part or parts thereof.

1. **DEFINITIONS.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

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- a) “**Architectural Review Board**” means that entity established pursuant to Paragraph 12 of this Declaration for the purposes therein stated.
- b) “**Articles**” means the Articles of Incorporation of the Corporation as amended from time to time.
- c) “**Assessments**” means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, the Articles or the By-Laws.
- d) “**Board of Directors**” means the governing body of the Corporation elected by the members in accordance with the By-Laws.
- e) “**By-Laws**” means the Code of By-Laws of the Corporation, as amended from time to time.
- f) “**Fox Hollow**” means the name by which the Tract shall be known.
- g) “**Community Area**” means (i) the Lake Control Structures; (ii) the Drainage System; (iii) the Lakes and Lake Access Easements; (iv) the Entry Ways; (v) the Roadways to the extent not maintained by public authority; (vi) any utility service lines or facilities not maintained by a public or private utility company or governmental agency that serve more than one Lot; and (vii) any area of land (1) shown on the Plat; (2) described in any recorded instrument prepared by Declarant or is a agent; (3) conveyed to or acquired by the Corporation together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.
- h) “**Corporation**” means Fox Hollow Community Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.
- i) “**Declarant**” means Fox Hollow Development Corp., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by Deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).
- j) “**Drainage Board**” means the Boone County Indiana Drainage Board, its successors or assigns.
- k) “**Drainage System**” means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on the plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.
- l) “**Entry Ways**” means the structure constructed as an entrance to Fox Hollow or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic

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island, if any, and the grassy area surrounding such structures, whether located within or without the Tract.

- m) **“Initial Capital Assessment”** means the initial assessment for the Reserve for Replacements required by Paragraph 10(e).
- n) **“Landscaping Easement”** means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Corporation.
- o) **“Lake”** means any Lake depicted on the Plat or Plats and **“Lakes”** means all such Lakes. A numerically designated Lake means the Lake so designated by such number on the Plat or Plats
- p) **“Lake Control Structure”** means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, including but not limited to those depicted on the Plat or Plats, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.
- q) **“Lake Access Easement”** means an area designed on the Plat or Plats as a means of access to a Lake or a Lake Control Structure.
- r) **“Lot”** means a Platted Lot as shown on the Secondary Plat or Plats of Fox Hollow as filed in the Boone County Recorder's Office.
- s) **“Lot Development Plan”** means (i) a site plan prepared by an Indiana registered land surveyor or civil engineer; (ii) foundation plan and proposed finished floor elevations; (iii) building plans, including elevation and floor plans; (iv) material plans and specifications; (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvements thereof.
- t) **“Maintenance Costs”** means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvements of the facility.
- u) **“Member”** means a Class A or Class B member of the Corporation and **“Members”** means Class A and Class B members of the Corporation.
- v) **“Mortgagee”** means the holder of a first mortgage on a Lot on which a Residence is located.
- w) **“Owner”** means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

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- x) "**Person**" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.
- y) "**Plat or Plats**" means the final secondary Plat or Plats of the Tract recorded in the Office of the Recorder of Boone County, Indiana.
- z) "**Reserve for Replacement**" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.
- aa) "**Residence**" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential Lot.
- bb) "**Restrictions**" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.
- cc) "**Register of Regulations**" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
- dd) "**Roadway**" means all or any part of a street, land or road (including the right-of-way) designed to provide access to one or more Lots which has not been accepted for maintenance by a public authority.
- ee) "**Tract**" means the land described in Exhibit A.
- ff) "**Zoning Authority**" with respect to any administrative action means the Boone County Area Plan Commission or, where it lacks the capacity to take action, or the failure to act, of the Area Plan Commission, Executive Director or Building Inspector, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the building commissioner.

2. **DECLARATION**. Declarant hereby expressly declares that the Tract shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

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3. **THE LAKES.** Declarant shall convey title to the Lakes to the Corporation. The Corporation shall be responsible for maintaining the Lakes. The Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment Each Owner of a Lot which abuts a Lake shall be responsible at all times for maintaining such bank of a Lake above the pool level as constitutes a part of, or abuts his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonably clean condition. No Owner shall pump water out of a Lake. No boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structures may be extende into a Lake. No swimming or ice-skating will be permitted in or on a Lake except of and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Corporation, Boone County, and each other Owner against all loss or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot Declarant, the Corporation, and Boone County shall have no liability to any Person with respect to the lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

4. **THE LAKE CONTROL STRUCTURES.** Declarant shall convey title to the Lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots.

5. **DRAINAGE SYSTEMS.** Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1995, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot, which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

6. **MAINTENANCE OF ENTRY WAYS, SIGNS & LANDSCAPE EASEMENTS.** The Corporation shall maintain the Entry Ways and the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonable required to maintain an attractive entrance to Fox Hollow, or a part thereof, or a planting area within Fox Hollow. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. Should sign age, lighting, lawn irrigation, and landscaping that does not conform to Boone County Standards be incorporated into the Plat or Plats and are located in the right-of-way, the Corporation shall maintain same and hold harmless the governing authority for maintenance or liability.



**7. ROADWAYS.** Declarant or Corporation shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the roadway has been accepted as a public roadway. All landscaping within the road right of way is subject to the approval of the of the Boone County Highway Superintendent and/or the City of Zionsville Engineer if Fox Hollow is annexed.

**8. CONSTRUCTION OF RESIDENCES.**

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed two and one-half stories or 35 feet in height measured from finish grade to the underside of the eave line may be constructed thereon. No portion of any Lot may be sold or resubdivided such that there will be thereby a greater number of Residences in Fox Hollow than the number on the recorded Secondary Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single-family dwellings. No home occupation shall be conducted or maintained on any Lot, other than one which does not constitute a "special use" and which - is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,400 square feet if a one-story structure, or 1,300 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 800 square feet in addition to the ground floor area and the total floor area shall not be less than 2,300 square feet.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line show on the Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than ten (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line. No accessory building may be erected in front of a main building or in the required front yard on the side of a comer Lot unless the accessory building is attached to the main building by a common wall. No accessory building which is not attached to the main building by a common wall or any swimming pool, tennis court or other improvement may be erected or installed between the rear of the main building and Ford Road or Hunt Club Road, unless approval is granted by the Architectural Review Board. **MINI BARNS AND POLE STRUCTURES ARE PROHIBITED AND ARE NOT CONSIDERED ACCESSORY BUILDINGS.** A minimum finished floor elevation shown on the development plan for Fox Hollow has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and

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certified by a licensed professional engineer or a licensed land surveyor. No construction will be allowed in a Landscape or Drainage Easement.

(e) Driveways. All driveways shall be paved and maintained dust free. Driveway locations are of particular concern and the Declarant or Architectural Review Board reserves the right to approve their placement. Lots number 1, 13, 22, 35, 36, 40, 49, 53, 58, 59, 78, 83, 86, 90 and 98 shall have special emphasis and require prior approval. Under no conditions shall driveways be constructed over storm sewer curb inlet structures in the public street. No driveway shall be located behind a curb containing these inlets. Ford Road and Hunt Club Road shall have limited access from the subdivision. Lots 36-46 shall be prohibited from extending any driveway or paved access across the public right-of-way of Ford Road or Hunt Club Road. Access to these Lots shall be from Ford Valley Lane and Beaumont Court.

(f) Yard Lights. The Owner and/or the builder on each Lot shall install a “dawn-to-dusk” yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by Architectural Review Board to insure illumination on each Lot and shall be equipped with a photo electric cellar similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the wt Owner and power to the light shall be supplied by the electrical system of the home and the light structure shall be located between the platted front building line and right-of-way.

(g) Construction and Landscaping. All construction upon, landscaping of and other improvement to a wt shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. A minimum of \$3,500.00 shall be spent on each wt for plant materials exclusive of sad or seed and Declarant reserves the right to modify this value from time to time. Ail landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the wt strictly in accordance with such approved plan within 30 days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase is not improved with a Residence shall commence construction of a Residence upon the wt within one (1) year from the date the Owner or builder acquired title thereto and shall complete construction of such Residence within one (1) year after the date of commencement of the building process, but in no event later than two (2) years after the date the Owner acquired title to the Lot unless such wt is adjacent to a Lot upon which the Owner has constructed a Residence in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Residence within the time period specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of ' construction of a Residence upon the Lot, then, in any of such events Declarant may:

(i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or the Clerk of the Circuit Court of Boone County the lesser of (i) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant, together with such actual costs, if any, as the Owner may prove to have been incurred in connection with the commencement of construction of a Residence on the Lot and (ii) the then fair market value of the Lot, as determined by averaging two (2)

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appraisals made by qualified appraisers appointed by the Judge of the Boone County Circuit or Superior Court.

(ii) obtain injunctive relief to force the Owner to proceed with construction of any residence, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or

(iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or received approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this sub-paragraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(h) Mailboxes and Delivery Boxes. All mailboxes and delivery boxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board. The cost of these boxes shall be borne by the Lot Owner.

(i) Sewage Disposal Systems. Private sewage disposal systems (septic systems) are prohibited on all lots in Fox Hollow, as this development, as well as the Woodlands at Irishman's Run Farm, will be served by a private sanitary sewer treatment system owned by Irishman's Run Farm Utility Co., Inc., or its Successors, transferees or assigns. Irishman's Run Farm Utility Co., Inc., shall have the right, but not the obligation, to dedicate, transfer, sell or assign, not earlier than August 1, 1998, its ownership interest in the private sanitary treatment plant to The Woodlands at Irishman's Run Farm Property Owners' Association, and/or the Fox Hollow Community Association, Inc., or any other private or public entity formed as a successor thereto. Owners of Lots in Fox Hollow specifically waive any and all right of legal, equitable or administrative remonstrance or claim to any decision made by Irishman's Run Farm Utility Co., Inc., or its successor, to dedicate, transfer, sell or assign its ownership interest in the private sanitary sewage treatment system serving this subdivision, whether as a part of annexation to a municipality or otherwise. Each Owner of a Lot shall be a member of the Irishman's Run Farm Utility Co., Inc., an Indiana Not-for-profit corporation.

(j) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the Lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use irrigation water well on his Lot, subject to any required permits or approvals.

(k) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without

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restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, “**Drainage Easements**” reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. All of the Lots in Fox Hollow will be included in the Fox Hollow Legal Drain as established and administered by the Boone County Drainage Board. An annual assessment will be established, initially not to exceed \$100.00 per lot annually, and billed with the May County property tax statement. Failure to pay could result in a property being offered for tax sale by the Boone County Treasurer for failure to pay taxes. This assessment is collected and held in specific funds to maintain sub-surface drains, underdrains, tile drains, open swales, storm sewer pipes and structures, and lake and lake control structures. Perimeter foundation drains and sump pump drains are the only drains to be connected to the sub-surface drains. The elevations of a Lot shall not be changed so as to materially affect the surface elevation grade of surrounding Lots. Downspout and other surface water shall be directed to storm inlets for overland flow and collected indirectly by the surface drainage system.

(l) Vacant Lots. Declarant and the Corporation shall have the right to mow the lawns of and maintain vacant Lots.

(m) Approval Withheld. Declarant specifically reserves the discretion to withhold Architectural Approval. Any Lot purchaser, whether it be a Builder or Individual Owner, understands and accepts that approval may be unreasonably withheld.

## **9. MAINTENANCE OF LOTS.**

(a) Vehicle Parking. No camper, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Fox Hollow and the sale of Lots therein and such signs as may be located in the Community Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than eight (8) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale. A builder may display a “sold” sign on the Lot when he has sold the property. The builder's identification sign and his selling agent's sign are the only signs permitted.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front yards for purposes of fencing. Trees shall not be deemed -shrubs- unless planted in such a manner as to constitute a “hedge”. **No chain link fence shall be erected upon a Lot.** All fencing shall be uniform in height, style, and color and substantially similar in material. No fence shall be erected or maintained on or within any Landscaping Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. All fences on Lake Lots shall be wrought iron, aluminum or similar material. No fence may be erected on a Lot without the prior approval of the Architectural Review Board which may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences.

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All fences shall be kept in good repair. No fence, wall, hedge or shrub planting, which obstructs sight 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 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing when approved shall be at a two (2) sided or "neighbor friendly" finish.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Declarant or Architectural Review Board shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Declarant or Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking, which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke there from would blow upon any other Lot and then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No satellite receiver or downlink shall be permitted on any Lot, nor shall any exterior antenna be permitted thereon without the prior written consent of the Architectural Review Board. The Architectural Review Board shall not be obligated to give its consent to the installation of any exterior television antenna if television reception is available from under-ground cable connections serving the Lot. As new technologies are developed for data transmissions, a change in antennas and receiver types that are acceptable may be required. Modification under Paragraph 19 (a) or (b) would be required to effect the change.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear Lot line 80 as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(l) Tennis Courts. No tennis courts shall be installed or maintained on any Lot, which abuts a Lake unless specifically approved, by Declarant or the Architectural Review Board.

(m) Swimming Pools. No swimming pool or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Board. No swimming pool shall be located on a Lot abutting within 35 feet from the water's edge at normal pool elevation as established on the engineering design plans for the Lake filed with the Zoning Authority. State and

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Local laws require that a minimum five (5) foot fence be placed around the perimeter of all in ground swimming pools unless a properly rated automatic pool cover is utilized. If a variance permitting installation of a mechanical pool cover in lieu of fencing has been or may be granted by the Zoning Authority, then the Architectural Review Board may require, as a condition to the location of a swimming pool on a Lot, that the Owner install a mechanical pool cover. If the Board imposes such requirement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Board shall be installed by the Owner in compliance with all applicable legal requirements established by the Zoning Authority as a condition to such variance, and all requirements established by the Architectural Review Board.

(n) INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT Rule 321IAC 15-5 and U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) and INDIANA OCCUPATIONAL SAFETY HEALTH ADMINISTRATION (IOSHA) REGULATIONS. All Lot Owners and their respective General Contractors, Building Contractors or Sub-Contractors hired on their behalf, expressly agree to comply with the -IDEM Rule 327IAC 15-5" and to conform to OSHA/108m Standards as they may be modified from time to time, and agree to pay for any costs, including reasonable attorney's fees, relating to the Declarant having to enforce said Rule. Copies of these regulations may be obtained from the appropriate governmental agency.

(o) Duty to Maintain Lot. From and after the date of purchase of a Lot until construction of a single family residence is commenced, Declarant or the Corporation shall have the exclusive right to perform all maintenance on the Lot, including but not limited to mowing and removing dead trees. Each Owner shall be assessed an annual fee on January 1, payable by January 15 of the same year, at the rate of \$18.00 per month for one (1) year following the date the Owner acquires title to a Lot for such maintenance; thereafter, Declarant or the Corporation may assess the Owner at an amount Declarant or the Corporation determines necessary to maintain the Lot. The assessment, together with interest, costs and reasonable attorneys' fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage lien thereon. The requirement of each Owner to pay any future assessments, as set forth in these Declarations shall cease at the date that construction of a single-family residence commences.

(i) From and after the date construction of a single family residence on a Lot is started, it shall be the duty of each Owner to keep the grass on the Lot properly cut, to keep the Lot free from weeds and trash and to keep it otherwise neat and attractive in appearance. Should any Owner fail to do so, then Declarant or the Corporation may take such action as it deems appropriate, including mowing, in order to make such Lot neat and attractive, and the Owner shall, immediately upon demand, reimburse Declarant or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and Declarant or the Corporation shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage lien thereon.

(ii) The Owner shall indemnify and hold harmless the Declarant or the Corporation for any liability, loss, or damage as a result of the entry by the Declarant or the Corporation onto the Owner's Lot.

**10. FOX HOLLOW COMMUNITY ASSOCIATION, INC.**

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as art! set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation shall have two (2) classes of members as follows:

CLASS A. Every person who is an Owner shall be a Class A Members.

CLASS B. Declarant shall be a Class B Member and shall have ten (10) votes for each Lot. No other Person, except a successor to substantially all of the interest of Declarant in the Tract, shall hold a Class B membership in the Corporation. The Class B membership shall terminate upon the resignation of the Class B member or when 95% of the Lots in the Tract have been sold.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

(e) Reserve for Replacement. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(f) Limitations on Action by the Corporation. Unless the Class B Member and (i) at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on the basis of (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration. The actions of the Corporation's Board of Directors shall not expose the Members to

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personal liabilities. Insurance in an appropriate amount shall be in force to protect the Board Members and the cost of this insurance shall be an expense to the Corporation.

(g) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

(h) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 14(b), 14(f), 15 or 19(b).

## **11. ASSESSMENTS.**

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General Assessments, (2) Initial Capital Assessment and (3) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Lots and for the improvement, maintenance and operation of the Community Area.

(ii) Basis for Assessment

(1) Lots Generally. Each Lot owned by a person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed with the assent of the Class B member and of (i) two-thirds (2/3) of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees



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(based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii) fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the dates the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Community Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses, which in accordance with the provisions of this Declaration are to be borne by all Owners, shall first be allocated to all Owners. Costs and expenses, which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots, shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Deposit. On the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the sum of Three Hundred Dollars (\$300.00). All such sums shall be deposited in the Accounts maintained by the Corporation.

(d) Monthly Assessments. The Board of Directors shall have prepared an Annual Budget and the total operating expenses shall be allocated on an evenly proportional basis. It is anticipated that initially the monthly payment due quarterly will be \$40.00. The annual budget shall not increase by more than 10% unless ratified by 2/3 of the Owners.

(e) Special Assessment. The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A Members whose Lots are subject to assessment, with respect to the capital improvement, who are voting in person or by proxy at a meeting of such Members duly called for this purpose.

(f) Date of Commencement of Assessment. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(g) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may, upon resolution by the Board of Directors, bear interest from the due date at a percentage rate no greater than the current statutory maximum

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annual interest rate, to be set by the Board of Directors, for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of anyone or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(h) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof shall, however, extinguish the lien of such Assessments as to payments, which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(i) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be. A preparation fee will be charged for said certificate or for the transfer of ownership on any Lot.

(j) Exempt Powers. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) the Community Area; (3) all properties exempt from taxation by state or local governments upon the term<sup>8</sup> and to the extent of such legal exception. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said Assessments, charges or liens.

(k) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

(l) Management Company. The Corporation and Declarant reserve the right to employ a professional Management Company to administer the business of the Corporation.

## **12. ARCHITECTURAL CONTROL.**

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) Persons as provided in the By-Laws shall be appointed by the Class B Member. At such time as there is no Class B Member, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located hereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to

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an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefore. Prior to the commencement by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or. (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Fox Hollow, and no owner shall undertake any construction activity within Fox Hollow unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c) “planting” does not include flowers, bushes, shrubs or other plants having a height of less than 18 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B member, any such guidelines or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

### **13. COMMUNITY AREA.**

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use or Adequacy. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or the adequacy thereof for the purpose intended.

(c) Obligation of the Coordination. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment

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related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of Lots abutting the Lake may use the Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot.

(e) Extent of Easements. The easements of enjoyment crated hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(iii) the right of the Declarant or Corporation to dedicate or transfer all or any part of the Community Area to any public or private agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and/or (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereof, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Lakes and Lake Control Structures to the Corporation, free and clear of all liens and financial encumbrances, not later than the later of four (4) years from the date. of this Declaration or at such time as 95% of all Lots have been conveyed. Owners shall have all the rights and obligations imposed by this Declaration with

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respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

**14. EASEMENTS.**

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Boone County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscaping easements, lake access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public or private utility companies and governmental agencies as follows.

(i) Drainage Easements. (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Fox Hollow and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements. (SE) are created for the use of a private company or the local government agency having jurisdiction over any storm or sanitary waste disposal system which may be designed to serve Fox Hollow for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements. (UE) are created for the use of Declarant, the Corporation and all public or private utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements. (EWE) are created for the use of Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscaping Easements. (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the planting and maintenance of trees, shrubs and other plantings. The goal is to maintain continuity of planting and specific requirements are in the Architectural Guidelines.

(vi) Lake Access Easements. (LAE) are created for the use of Declarant, the Corporation, the Drainage Board and the controlling waste authority for the purpose of gaining access to the Lakes, the Lake Control Structures, the Drainage System in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements. (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

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ALL EASEMENTS MENTIONED HEREIN INCLUDE THE RIGHT OF REASONABLE INGRESS AND EGRESS FOR THE EXERCISE OF OTHER RIGHTS RESERVED. NO STRUCTURE, INCLUDING FENCES, SHALL BE BUILT ON ANY DRAINAGE, SEWER OR UTILITY EASEMENTS, BUT A PAVED DRIVEWAY NECESSARY TO PROVIDE ACCESS TO A LOT FROM A PUBUC STREET OR ROADWAY SHALL NOT BE DEEMED A "STRUCTURE" FOR THE PURPOSE OF THIS RESTRICTION.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Tract except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Tract to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been Constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An. easement is hereby created for the benefit of, and granted to, the Boone County Drainage Board and the Office of the Boone County Surveyor to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings other than crossings, driveways, walkways or Lake Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Tract, Declarant reserves a blanket easement and right on, over and under the ground within the Tract to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

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(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

**15. DECLARANT'S USE DURING CONSTRUCTION.** Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sales of Lots and Residences in the Tract, upon such portion thereof as is owned or leased by Declarant or otherwise as approved by Declarant, such facilities as in the sale opinion of Declarant may be reasonable required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

**16. ENFORCEMENT.** The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

**17. APPROVALS BY DECLARANT.** As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: the dedication or transfer of the Community Area; the merger or consolidation of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Initial Capital Assessment.

**18. MORTGAGES.**

(a) Notices to Corporation. Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, the Articles or the By-Laws (the Organizational Documents.) 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, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be

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entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above, notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that required the consent of a specified percentage of Mortgagees; and

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interest in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owner, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof, and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

## **19. AMENDMENTS.**

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 18, Mortgagees, or (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to 95% of the Lots being conveyed. Such amendments shall be in writing executed by Declarant and recorded with the Recorder of Boone County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to



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such Owners prior to the amendment, or adversely affect the rights and interest of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 14(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot, which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Boone County, Indiana.

**20. INTERPRETATION.** The underline titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any work 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.

**21. DURATION.** The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation and Declarant, and shall run with the land and be binding on all parties and all-Persons claiming under them until January 1, 2023, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

**22. SEVERABILITY.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of, and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**23. NON-LIABILITY OF DECLARANT.** Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over, or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

IN TESTIMONY WHEREOF, witness the signatures of Declarant as of the date set forth above.

FOX HOLLOW DEVELOPMENT CORP.

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BY \_\_\_\_\_  
Christian C. Barnes, President