



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

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The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**



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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR FOXBERRY TRACE**

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

**WITNESSETH THAT:**

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

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

WHEREAS, a Master Plan for the Real Estate to be developed by Declarant as Foxberry Trace Planned Unit Development was recorded on JUNE 17, 1993, as Instrument No. 23012654 in the Office of the Recorder of Johnson County, Indiana, in Book C Page 577; and

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

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

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

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



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

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

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

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

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

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

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

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



(b) Cut down and remove dead trees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

#### ARTICLE IV.

##### Lakes Covenants and Restrictions

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

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

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

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

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

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

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

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

#### ARTICLE V.

##### Declarant's/Association's Right To Guarantee Compliance

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

ARTICLE VI.

Foxberry Trace Architectural Control Committee

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

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

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

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

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

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

## ARTICLE VII

### Covenants for Maintenance Assessments

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

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

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

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

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

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

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

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

Section 8. Duties of the Association.

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

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

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

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

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

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

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

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

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

ARTICLE VIII.

Organization and Duties of Association

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

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

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determined, but in no event shall more than one vote be cast with respect to any Lot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE IX.

##### General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 14. Annexation Waiver.** All Lot owners who subsequently tap into or are connected with the sewer system provided for Foxberry Trace, as described in the Plat, release their right to object, remonstrate or appeal against pending or future annexation by the City of Greenwood pursuant to a certain contract dated \_\_\_\_\_ and recorded in the Johnson County Recorder's Office at Book 65, Page 274.

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





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

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

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

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

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

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

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

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

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

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

springer.don@statcor.ia

JUN 17 3 20 PM '93

EXHIBIT "A" Page 2 of 2

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