



Declaration of Covenants, Conditions, and Restrictions & Association By-laws and Resolutions

Foxgate Residents Association

Updated January 17, 2012 — This is a reformatted copy of the actual document signed, witnessed, and properly filed. An original copy is available at your request from the Residents Association. An electronic copy of this document can be found on <http://www.foxgate.org>.

Foxgate Residents Association
P.O. Box 43384
Louisville, KY 40253-0384

[Original Letter to Homeowners • January 15, 1990]

Dear Residents of Foxgate:

From the Board of the Foxgate Residents Association, and on behalf of all of our members, we wish to extend to you and your family a warm, friendly welcome to our neighborhood. All of us look forward to getting to know you! We are pleased that you have chosen to reside here and hope that this Residents Packet will be informative.

We would like to introduce you to the Foxgate Residents Association, of which every homeowner is automatically a member. The purpose of the Foxgate Residents Association is to protect the value of our homes, to handle the financial affairs of Foxgate subdivision, to maintain the common properties and to promote positive neighborhood relations. We encourage your active participation. Our goal is to have at least one member of each household actively involved in some capacity in the governing of our subdivision.

This copy of the Foxgate Residents Association Declaration of Covenants, Conditions and Restrictions and By-laws is for your review. These restrictions and governing articles will help ensure the quality of life within our subdivision and are for the mutual benefit of present and future property owners. Please read them carefully. If you have any questions about your obligations under them, do not hesitate to contact one of the officers of the Residents Association.

All homeowners are required to pay annual association dues. These dues are primarily used to pay for utilities, the general maintenance of common grounds, taxes and the administrative costs of the Foxgate Residents Association. Included in these costs are electricity, mowing, irrigation and turf maintenance of the common area, maintenance and replacement of trees and shrubs, general repairs, upkeep of the entrance signs and any other items or projects the Board deems by to be beneficial to the entire subdivision.

An Architectural Control Committee has been formed to review any planned additions to properties such as pools, decks, fences, etc. The committee will accept or reject the proposals based on their interpretation of the restrictions and/or By-laws. The purpose for this is to try to establish some consistency and ensure that any additions will enhance our subdivision's overall appearance and protect the value of all homes in Foxgate. Any homeowner contemplating any additions to their property should submit their plans to this committee for review and approval. Approval from the Architectural Control Committee should be secured prior to the purchase of your materials or beginning the work. The developers, Durst and Moert, or any realtor, do not have the authority to approve any alterations to your property.

We will hold our Member Meeting once a year in accordance with the By-laws. Notices are sent at least six days in advance notifying homeowners of this meeting. Your active participation is encouraged. Please make a point to attend this meeting. Our Association will only be as good as our homeowners' participation.

Declaration of Covenants, Conditions, and Restrictions	4
Article I Property Subject to This Declaration; Additions	4
Article II Use Restrictions.....	7
Article III Architectural Control	11
Article IV Residents Association.....	14
Article V General Provisions	17
Association By-laws	19
Article I Association Definition	19
Article II Location	20
Article III Membership	20
Article IV Termination of Membership	20
Article V Resignation of Membership	21
Article VI Transfer of Membership.....	21
Article VII Voting Rights.....	21
Article VIII Property Rights & Rights of Enjoyment of Common Property	21
Article IX Association Purposes and Powers.....	22
Article X Board of Directors.....	22
Article XI Nominating Committee and Election of Directors.....	23
Article XII Powers and Duties of the Board of Directors	25
Article XIII Board of Directors Meetings	27
Article XIV Officers	27
Article XV Committees.....	28
Article XVI Meetings of Members	30
Article XVII Proxies	31
Article XVIII Books and Papers.....	32
Article XIX Board of Directors Indemnification	32
Article XX Items Prohibited in the Properties	33
Article XXI Membership Dues and Assessments	34
Article XXII Effect of Nonpayment of Dues, Assessments, and Maintenance Reimbursements: Remedies of the Residents Association	34
Article XXIII Amendment of By-laws.....	35
Article XXIV Severability	35
Resolution Appended to Foxgate’s Declaration of Covenants, Conditions, and Restrictions & Association By-laws	36

Declaration of Covenants, Conditions, and Restrictions

This Declaration of Covenants, Conditions, and Restrictions for Foxgate subdivision, (“Declaration”), is made by Foxgate Partnership, A Kentucky Limited Partnership, with principal office and place of business at 12200 Shelbyville Road, Louisville, Kentucky 40243 (“Developer”).

Whereas, Developer is the owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision

Now therefore, Developer hereby declares that all of the property described in this instrument, and such additional property as may be hereafter made subject to this Declaration pursuant to Article I, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

Article I

Property Subject to This Declaration; Additions

Section 1. The real property which is subject to this Declaration is located in Jefferson County, Kentucky and is more particularly described as follows:

(a) Being lots 1 through 30 inclusive, as show on the Plat of Foxgate, Section 1, of record in Plat and Subdivision book 35, Page 74, in the office of the Clerk of Jefferson County, Kentucky.

Being part of the same property acquired by Developer by Deed dated April 16, 1986, of record in Deed Book 5574, Page 648, in the office of the Clerk of Jefferson County, Kentucky.

(b) Being lots 36 through 70 inclusive, as show on the Plat of Foxgate, Section 2, of record in Plat and Subdivision book 35, Page 97, in the office of the Clerk of Jefferson County, Kentucky.

Being part of the same property acquired by Developer by Deed dated April 16, 1986, of record in Deed Book 5574, Page 648, in the office of the Clerk of Jefferson County, Kentucky.

(c) Being lots 71 through 89 inclusive, as show on the Plat of Foxgate, Section 3, of record in Plat and Subdivision book 36, Page 27, in the office of the Clerk of Jefferson County, Kentucky.

Being part of the same property acquired by Developer by Deed dated October 5, 1987, of record in Deed Book 5574, Page 648, in the office of the Clerk of Jefferson County, Kentucky.

(d) Being lots 92 through 109 inclusive, as show on the Plat of Foxgate, Section 4, of record in Plat and Subdivision book 36, Page 44 in the office of the Clerk of Jefferson County, Kentucky.

Being part of the same property acquired by Developer by Deed dated April 16, 1986, of record in Deed Book 5574, Page 648, in the office of the Clerk of Jefferson County, Kentucky.

(e) Being lots 110 through 122 inclusive, as show on the Plat of Foxgate, Section 5, of record in Plat and Subdivision book 36, Page 47, in the office of the Clerk of Jefferson County, Kentucky.

Being part of the same property acquired by Developer by Deed dated April 16, 1986, of record in Deed Book 5574, Page 648, in the office of the Clerk of Jefferson County, Kentucky.

(f) Being lots 1 through 20 of Foxgate Woods inclusive, as show on the Plat of Foxgate, of record in Plat and Subdivision book 36, Page 47, in the office of the Clerk of Jefferson County, Kentucky.

Being property acquired by Ferriell and Lorenz by Deed dated October 10, 1988, of record in Deed Book 5724, Page 134, in the office of the Clerk of Jefferson County, Kentucky.

Section 2. Additional residential property and common areas may become subject to this Declaration, or may be annexed to the real property subject to this Declaration, as follows:

- (a) Additions in accordance with General Plan of Development, Developer intends to make each section a part of a larger subdivision to be developed in accordance with current plans and known as Foxgate. Additional land described in instrument recorded in Deed Book 5574, Page 648, in the Office of the Clerk of Jefferson County, Kentucky, and additional land now owned by Foxgate Partnership, A Kentucky Limited Partnership, described in instrument recorded in Deed Book 5643 Page 705 in the Office of the Clerk of Jefferson County, Kentucky, may be included by Developer as other sections of Foxgate, including certain common properties which may contain recreational facilities.
- (b) Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. The common area initially covered by this Declaration shall inure to the benefit of the owners of any new lots within Foxgate which may become subjected to this Declaration or a similar set of deed of restrictions and any additional lots on other real estate which may hereafter be annexed to and made part of Foxgate and subjected to this Declaration or a similar set of deed restrictions, and the common area allocable to the owners of all such lots, shall inure to the benefit of the owners of lots recorded earlier, each to enjoy the common area of the other and to have and to hold the same as if each new lot had been developed and subjected to this Declaration simultaneously.

All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplementary Declaration may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration

- (c) Additional residential property and common areas which are not presently a part of the general plan of development of Foxgate may be annexed to Foxgate by Developer.

Article II

Use Restrictions

Section 1. No lot shall be used except for private single-family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except one single family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half (2 1/2) stories in height and containing a minimum of an attached two (2) car garage for the sole use of the owner and occupants of the lot.

Section 2. No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 3. No structure of a temporary character shall be permitted on any lot except temporary tool sheds, field offices or sales offices used by a builder or Developer, which shall be removed when construction or redevelopment is completed.

No outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

No trailer, truck (excluding truck class vehicles commonly referred to as sport utility vehicles, mini-vans or non commercial pickup), motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. A permit, which may be obtained from the Treasurer or his appointee, shall allow the temporary driveway parking of a boat, trailer, motor home or recreational vehicle for a twenty-four (24) hour period of time. Each lot owner shall be entitled to eight permits per calendar year. Permits shall not be issued for more than two (2) consecutive twenty-four (24) hour periods. In the event permits are issued for consecutive twenty-four (24) hour periods, a subsequent permit shall not be issued for at least five (5) more days. Said permits shall not be transferable. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the subdivision. No trailer, boat, truck, or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in any one (1) calendar year.

No automobile shall be continuously or habitually parked on any street or public right-of-way in the subdivision.

Section 4. No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes.

Section 5. No outside clotheslines shall be erected or placed on any lot.

No fence or wall of any nature may be extended toward the front or street side property line beyond the front or sidewall of the residences.

No tennis court fence shall be erected on any lot in the subdivision unless the fencing is coated with black or green vinyl.

No aboveground swimming pools shall be erected or placed on any lot unless its design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

No antennae (except for standard small television antennae) or microwave and other receivers and transmitters (including those currently called “satellite dishes”) shall be erected or placed on any lot unless its design and placement are approved by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

Section 6. From and after the date of purchase of a lot until construction of a single-family residence is started, Developer shall have the exclusive right to perform all maintenance on the lot, including but not limited to mowing. Each owner shall be assessed an annual fee payable in January at the rate of \$10.00 per month for the first two (2) years following the date the lot owner acquires title to a lot; thereafter, Developer may assess the lot owner at an amount Developer determines necessary to maintain the lot.

From and after the date construction of a single family residence on a lot is started, it shall be the duty of each lot 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 Developer may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive, and the owner shall, immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest,

and Developer 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 thereon.

Section 7. Each owner of a lot shall, at its sole cost and expense, repair his residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty.

Section 8. No trade or business of any kind (and no practice of medicine, dentistry, chiropractic, osteopathy and other like endeavors) shall be conducted on any lot nor shall anything be done thereon which may become a nuisance to the neighborhood. Notwithstanding the provisions hereof or of Section 1 of this Article II, a new house may be used by a builder thereof as a model home for display or for the builder's own office provided said use terminates within eighteen months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Developer.

Section 9. No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale or rent thereof, which shall not be greater in area than nine (9) square feet. Regarding political signs, the Association recognizes the First Amendment right of free speech set forth in the Constitution of the United States and upheld in Federal court, which stipulates that political signs may not be prohibited by residents associations. The court does however support the right of residents associations to restrict political advertising display. As such, the Association limits the display of political signs pertaining to the immediate area towards our voting district prior to a primary or general election held by the United States, Commonwealth of Kentucky or Louisville Metro to two (2) week prior to the election. Furthermore these signs should be removed no later than 48 hours after said election.

Section 10. Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. Connections on each lot shall

be made with watertight joints in accordance with all applicable plumbing code requirements.

Section 11. No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers.

Section 12. Each lot owner's electric utility service lines shall be underground throughout the length of service line from Louisville Gas & Electric's (LG&E) point of delivery to customer's building; and title to the service lines shall remain in and the cost of installation and maintenance thereof shall be borne by the respective lot owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each lot owner, together with the right of ingress and egress over abutting lots or properties to install, operate and maintain electric service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric and telephone easements shown on the plat shall be maintained as preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or lot owner without the express written consent of LG&E and South Central Bell Telephone Company and their respective successors and assigns.

Easements for overhead transmissions and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including open and drainage space area) outlined by dash lines and designated for underground and overhead facilities.

Aboveground electric transformers and pedestals may be installed at appropriate points in any electric easement.

In consideration of bringing service to the property subject to this Declaration, LG&E is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

The electric and telephone easements hereby dedicated and reserved to each lot owner, as shown on the recorded plat(s) of Foxgate, Sections I-V and Foxgate Woods, shall include easements for the installation, operation and maintenance of cable television service to the lot owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal

units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums.

Section 13. The Foxgate Residents Association, Inc. of Jefferson County (the “Residents Association”) is authorized to adopt rules for the use of the Foxgate common area and such rules shall be furnished in writing to the lot owners.

Article III

Architectural Control

Section 1. No structure may be erected, placed or altered on any lot until the construction plans and building specifications and a plan showing (a) the location of improvements on the lot; (b) the grade elevation (including rear, front and side elevations); (c) the type of exterior material (including delivery of sample thereof) and (d) the location and size of the driveway (which shall be concrete), shall have been approved in writing by the Developer.

In addition to the plans referred to in the previous paragraph, a landscape plan shall be submitted to the Developer for its approval in writing, which plan shall show the trees, shrubs and other plantings then existing or to be planted on the lot. Each landscape plan for a lot submitted to the Developer shall show that the lot has or will have a minimum of one a tree (at least 2-1/2 inches in diameter) in the front yard and an additional decorative flowering variety tree (at least 1-1/2 inches in diameter) also in the front yard and shall further obligate the lot owner to install (to the extent the same are not already located on the lot).

References to “Developer” shall include any entity, person or association to whom Developer may assign the foregoing right of approval. References to “structure” in this paragraph shall include any building (including a garage), fence, wall, antennae (except for standard small television antennae) and microwave and other receivers and transmitters (including those currently called “satellite dishes”).

Section 2. The exterior building material of all structures shall extend to ground level and shall be either brick, stone, brick veneer or stone veneer or a combination of same. Developer recognizes that the appearance of other exterior building materials (such as wood siding) may be attractive and innovative and reserves the right to approve in writing to use of other exterior building materials.

The roof pitch of any residential structure shall not be less than a plane of 6 inches vertical for every plane of twelve (12) inches horizontal for structures with more than one story, and a plane of seven (7) inches vertical for every plane of twelve (12) inches horizontal for one-story structures.

The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one (1) year and must have built a minimum of six (6) homes. Developer makes this requirement to maintain a high quality of construction within the subdivision, and reserves the right to waive these standards of experience.

Section 3. The following shall be the minimum floor areas for homes to be constructed after this instrument is recorded:

- (a) The ground floor area of a one (1) story house shall be a minimum of 1,600 square feet, exclusive of the garage.
- (b) The ground floor area of a one and one-half (1 1/2) story house shall be a minimum of 1,100 square feet, exclusive of the garage.
- (c.) The total floor area of a tri-level house shall be a minimum of 2,400 square feet, exclusive of the garage.
- (d) The ground floor area of a two (2) story house shall be a minimum of 1,100 square feet, exclusive of the garage.
- (e) Finished basement areas, garages and open porches are not included in computing floor areas.

Section 4. No structure shall be located on any lot nearer to the front lot line than the minimum building setback lines shown on the recorded plat, except bay windows and steps may project into such area, and open porches may project into such area not more than six (6) feet. No structure shall be located on any lot nearer any side lot line or side street line than the minimum building setback lines required pursuant to applicable zoning regulations, which zoning regulations presently provide that no structure shall be located any nearer any such side lines than the distance of twelve (12) feet on one side and six (6) feet on the other; provided, however, notwithstanding that applicable zoning regulations may become less restrictive, in no event shall any structure be located on any lot nearer any side lot line or side street line than the distance of ten (10) feet on one side and five (5) feet on the other, except bay windows

and steps may project into said areas. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

Section 5. The openings or doors for vehicular entrances to any garage located on a lot shall not face the front lot line, unless approved by the developer. All lots shall have at least a two car garage and no detached garages are allowed. Garages, as structures, are subject to prior plan approval under Section I of this Article III.

No carport shall be constructed on any lot in Foxgate.

Section 6. After the construction of a residence, the lot owner shall grade and sod that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets. Each lot owner shall cause a sidewalk to be constructed on each lot within one (1) year from the date of construction of a residence on 80% of the lots in Foxgate Section I has begun, whether or not the lot owner has begun construction on that particular lot.

Each lot owner shall concrete the driveway on the lot within three (3) months after completion of a single family dwelling; provided, however, that portion of the driveway from the pavement of any abutting street to the sidewalk shall be concrete.

Upon construction of a residence, the lot owner shall cause to be planted one (1) tree (at least 2-1/2 inches in diameter) in the front yard of the lot and an additional decorative flowering variety tree (at least 1-1/2 inches in diameter) also in the front yard on the lot unless agreed to by the Developer. No tree shall be removed from any lot without the prior written approval of Developer.

Upon an owner's failure to comply with the provisions of this Section 6, Developer may take such action as necessary to cause compliance therewith, and the owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, 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 thereon.

Section 7. No mailbox, paper holder or hedge shall be placed or planted on any lot unless its design and placement or planting are approved in writing by Developer.

Article IV

Residents Association

Section 1. Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with title to every lot. The common area means and refers to all non-residential lots and areas, which are shown on any recorded final subdivision plat within any portion of Foxgate made subject to the Residents Association. Although constructed in an area dedicated to public use, the entranceway to Foxgate, Section I, from Ward Ave, and any other entranceways to Foxgate and/or Foxgate, Section I, which are constructed in area dedicated for public use, are also or shall become part of the common area subject to maintenance by the Residents Association. The right of enjoyment is subject to the following provisions:

- (a) The right of the Residents Association to charge reasonable fees for the maintenance of the common area;
- (b) The right of the Residents Association to borrow money for the purpose of improving the common areas or for construction, repairing or improving any common areas located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or a part of the common area;
- (c) The right of the Residents Association to suspend the voting rights, of an owner for any period during which any assessment against his lot remains unpaid, and for a period of time for any infraction of its published rules and regulations; and
- (d) The right of the Residents Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Residents Association. Developer may dedicate utility or service easements at its sole discretion so long as there is in existence the Class B membership in accordance with Section 13 of this Article IV, and so long as additions are permitted under Article I, Section 2.

Section 2. Any lot owner may delegate, in accordance with the By-laws, his voting rights to the common area to the members of his family or contract purchasers who reside on the property. Membership in the Residents Association may not be conveyed separately from ownership in the lot.

Section 3. The authorized representative of the Residents Association or the Board shall be entitled to reasonable access to the individual lots as may be required in connection with the preservation of property on an individual lot or in the event of an emergency or in connection with the maintenance of, repairs or replacements within the common area, or any equipment, facilities or fixtures affecting or serving other lots or the common area or to make any alteration required by any governmental authority.

Section 4. Each lot owner, except Developer, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Residents Association (a) annual assessments or charges, and (b) special assessments for improvements, such assessments to be established and collected as provided in this Article IV. Developer shall be responsible for the maintenance costs of the Residents Association, incurred over and above assessed amounts payable to the Residents Association by the lot owners, until Developer transfers control of the Residents Association. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 5. The assessments levied by the Residents Association shall be used exclusively to promote the health, safety and welfare of the residents and in particular for the maintenance of the common areas to this purpose. Including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, payment of taxes assessed against the common area, the procurement and maintenance of insurance in accordance with the By-laws, the employment of attorneys to represent the Residents Association shall maintain, operate and repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the common areas, open spaces, entrance-ways, streets, crosswalks, medians, storm drains, and basins.

Until Class B membership ceases and is converted to Class A membership pursuant to Section 13 of this Article IV, Developer or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes generally benefiting Foxgate, as permitted in this Declaration.

Section 6. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be set at a rate not to

exceed \$75.00 per year per lot. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of two-thirds of each class of members pursuant to the By-laws. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. The Board of Directors shall determine when the assessments shall be paid.

Section 7. In addition to the annual assessments authorized above, the Residents Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of an improvement upon the common area. Any such assessment shall have the assent of the members of the Residents Association in accordance with the By-laws.

Section 8. Both annual and special assessments shall be fixed at a uniform rate for all lots except those owned by Developer. The Board of Directors may at its discretion waive the assessment for any year or part of a year for any lot not occupied as a residence.

Section 9. The annual assessments provided for herein shall begin as to any lot subject to the assessment at the time the lot is occupied as a residence. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when the lot is first occupied as a residence

Section 10. Any assessment not paid by the due date shall bear interest from the due date at the maximum rate of interest then allowable by Kentucky law. The Residents Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the property, and interest, costs and reasonably attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

Section 11. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. 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 sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien.

Section 12. Developer and every owner of a lot which is subject to an assessment shall be a member of the Residents Association. Such owner and member shall abide by the Residents Associations By-laws, Articles of Incorporation and rules and regulations, shall pay the assessments provided for in this Declaration when due, and shall comply with decisions of the Residents Association's Board of Directors. Memberships shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 13. The Resident's Association shall have two classes of voting membership:

- (a) Class A Class A members shall be all lot owners, with the exception of Developer, and shall be entitled to one (1) vote for each lot owned.
- (b) Class B. The Class B member shall be Developer. Developer shall be entitled to ten (10) votes for each lot owned. The Class B member shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - (i) Transfer of control by Developer no later than twenty (20) years from the date of the sale of the first lot to a lot owner other than Developer; or
 - (ii) When ninety (90) percent of the lots which may be developed in Foxgate have been sold by Developer.

Article V General Provisions

Section 1. Enforcement of these restrictions shall be proceeding of law or in equity, brought by any owner or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any owner or Developer to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

Section 2. Invalidation of any one of these covenants by judgment of court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 3. Unless cancelled, altered or amended under provisions of this Section 3, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the front footage of all lots subject to these restrictions has been recorded agreeing to change these restrictions and covenants in whole or in part. These restrictions may be cancelled, altered or amended at any time by the affirmative action of the owners of seventy-five (75) percent of the lots subject to these restrictions.

Section 4. Nothing in this Declaration shall limit the right of the Residents Association to amend, from time to time, its Articles of Incorporation and By-laws.

Section 5. Neither Developer nor the directors and officers of the Residents Associations shall be personally liable to the owners of the lots for any mistake of judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless each of the directors and officers and their respective heirs, executors, administrators, successors and assigns in accordance with the By-laws of the Residence Association.

Section 6. In the event of any dispute or disagreement between any relating to the property subject to this Declaration, or any questions of interpretation or application of the provisions of this Declaration or the By-laws, or determination thereof by the Board shall be final and binding on each and all such owners.

This document is a copy of the actual Declaration document signed, witnessed, and properly filed with in the Office of the County Court Clerk of Jefferson County, Kentucky. An original copy is available at your request from the Residents Association.

Association By-laws

Article I Association Definition

Section 1. “Association” shall mean and refer to the Foxgate Residents Association, Inc., a nonprofit Corporation organized and existing under the Laws of the State of Kentucky.

Section 2. “The Properties” shall mean and refer to Sections 1 through V of Foxgate being the same property acquired by Foxgate Partnership by deed dated April 16, 1986 of record in Deed Book 5574, Page 648, in the office of the County Court Clerk of Jefferson County, Kentucky. Additionally The Properties shall include Foxgate Woods, property acquired by Ferriell & Lorenz Development by deed dated October 9, 1988, of record in Deed Book 5742, Page 134, in the office of the County Court Clerk of Jefferson County, Kentucky and any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. “Common Properties” shall mean and refer to parks, playgrounds, swimming pools, golf courses, commons, streets, footways, including buildings, structures, personal properties incident thereto, and any other properties owned and maintained by the Association now or in the future for the common benefit and enjoyment of the residents within The Properties.

Section 4. “The Board” shall mean and refer to the Board of Directors of the Foxgate Residents Association, Inc.

Section 5. “Declaration of Covenants, Conditions and Restrictions” as referred to herein shall collectively refer to those six (6) separate instruments, each entitled “Declaration of Covenants, Conditions and Restrictions” as pertain to Section 1, dated 9/19/86 and recorded in Deed Book 5614, Page 203; Section 2 dated 6/9/87 and recorded in Deed Book 5683, Page 905; Section 3 dated 10/5/87 and recorded in Deed Book 5716, Page 916; Section 4 dated 1/14/88 and recorded in Deed Book 5743, Page 134; Section 5 dated 2/17/88 and recorded in Deed Book 5749, Page 675; and Foxgate Woods dated 8/9/88 and recorded in Deed Book 5795, Page 519, respectively, all of which instruments are recorded in the Office of the County Court Clerk of Jefferson County, Kentucky.

Article II Location

Section 1. The principal Office of the Association shall be located at the office of its designated process agent.

Article III Membership

Section 1. Every person or entity who is a recorded Owner of a fee or undivided fee, interest in any Lot or (Living Unit) which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each owner of the property against which such assessments are made as provided by Articles IV, Sections 4, 5, 6, 7, 8, 9, 10, and 11 of the Declaration of Covenants, Conditions and Restrictions which The Properties are subject and recorded

Section 3. The membership rights of any person whose interest in The Properties is subject to assessments under Article III, Section 2, whether or not he be personally obligated to pay such assessments, shall be suspended by action of the Directors during the period when the assessment remained unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the board has adopted and published rules and regulations governing the use of common properties and facilities, and the personal conduct of any person thereon, as provided in Articles VIII, Section 2, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty days.

Article IV Termination of Membership

Section 1. Membership shall be terminated in The Association when the member ceases to be a Fee Title Holder of any Lot(s) in The Properties.

Article V
Resignation of Membership

Section 1. Any member may resign membership in The Association by filing written notice with the Secretary of The Association; however, such resignation shall not relieve the resigning member from any obligation to make payments due The Association under Article III, Section 2.

Article VI
Transfer of Membership

Section 1. Membership is not transferable or assignable in The Association except with transfer or assignment of the Fee Title of any Lot(s) in The Properties.

Article VII
Voting Rights

Section 1. A member shall be a Fee Title Owner of a Lot or Lots in The Properties, with one (1) vote for each Lot owned.

Article VIII
Property Rights & Rights of Enjoyment of Common Property

Section 1. Each member shall be entitled to the use and enjoyment of the common properties and facilities as provided in Article IV, Section 1, of the Declaration of Covenants, Conditions and Restrictions which The Properties are subject and recorded.

Section 2. Any member may delegate his right of enjoyment in the Common Properties and Facilities to the members of his family who reside upon The Properties or to any of his tenants who reside thereon under a leasehold interest. Such member shall notify the Secretary in writing of the name of such person and the relationship of the member to such person. The rights and privileges of such person are subject to suspension under Article III Section 3, to the same extent as those of the member.

Article IX

Association Purposes and Powers

Section 1. The Association has been organized for the following purposes to promote the health, safety, and welfare of the residents within The Properties, and for this purpose to:

- (a) Own, acquire, build, operate, and maintain the recreation and common areas.
- (b) Maintain unkept properties as per Article II, Section 6, of the Declaration of Covenants, Conditions and Restrictions.
- (c) Supplement municipal services as determined necessary by the Board.
- (d) Fix assessments (or charges) to be levied against The Properties.
- (e) Enforce any and all covenants, conditions, restrictions and agreements applicable to The Properties.
- (f) Pay taxes, if any, on the common properties and facilities, and,
- (g) Insofar as permitted by law, to do any other thing that, in the opinion of the Board, will promote the common benefit and enjoyment of the residents of The Properties.

Article X

Board of Directors

Section 1. The affairs of the Corporation shall be managed by an initial Board of no fewer than twelve (12) Directors and no greater than seventeen (17) Directors. The term of office of the initial Board elected with the First Annual Meeting held November 9, 1989 shall expire with the close of the Second Annual Meeting to be held in January 1991. Beginning with the election of Directors in the Second Annual Meeting, the affairs of the Corporation shall be managed by a Board of twelve (12) Directors. Beginning with the Second Annual Meeting, Directors will be elected in accordance with Article XI for the vacancies created when the term of office of the initial Board expires at the close of the Second Annual Meeting. Beginning with the election of Directors in the Second Annual Meeting, the terms for each Director elected, shall be set as follows: four (4) Directors will be elected for three (3) year terms, four (4) Directors will be elected for

two (2) year terms, and four (4) Directors be elected for one (1) year terms of office. Beginning with the election of Directors in the Third Annual Meeting to be held in January 1992, and continuing in perpetuity, each newly elected Director(s) will have three (3) year terms of office. Beginning with the Third Annual Meeting, successors to the Board are to be elected for only those vacancies created by the members of the Board whose terms have expired.

Section 2. Vacancies in the Board shall be filled by the majority of the remaining Directors. Any such appointed Director is to hold office until his successor is elected by the Members, who may make such election at the next annual meeting of the Members or any special meeting duly called for that purpose.

Article XI

Nominating Committee and Election of Directors

Section 1. Election of Directors to the Board shall be by written ballot as hereinafter provided. At such election, the members or their proxies may cast, in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the recorded Covenants applicable to The Properties. The names receiving the largest number of votes shall be elected. Should the election of Directors result in a tie, a majority vote by the Board of Directors shall determine the deciding vote.

Section 2. Nominations for election as Director to the Board shall be by a Nominating Committee which shall be one of the Standing Committees of the Association.

Section 3. The Nominating Committee shall consist of a minimum of one (1) Board member and two (2) or more members of the Association. The Nominating Committee shall report to the Secretary of the Board. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the members to serve from the close of such meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

Section 4. Any member in good standing with the Association may submit to the Nominating Committee nominations for the election of Directors to the Board. Persons eligible for nomination to the Board may be members or non-members; however, the Nominating Committee has the sole discretion to determine such eligibility requirements, which discretion shall not be unreasonably exercised. The Nominating Committee shall, thereupon, accept as many nominations for election of Directors to the

Board as it shall in its sole discretion determine, but not less than the number of vacancies that are to be filled. Nominations shall be placed on a written ballot as provided in Section 5 and shall be made in advance of the time fixed in Section 5 for the mailing of such ballots to members.

Section 5. All elections of Directors to the Board shall be made on written ballot which shall: (a) describe the vacancies to be filled; (b) set forth the names of those nominated by the Nominating Committee for such vacancies; and (c) contain a space for a write-in vote by the members for each vacancy. Such ballots shall be prepared and mailed by the Secretary to the members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the day before the annual meeting or special meeting called for election).

Section 6. Each member shall receive as many ballots as he has votes. The completed ballots shall be returned as follows: Each ballot shall be placed in a sealed envelope marked "Ballot" but not marked in any other way. Each such "Ballot" envelope shall contain only one ballot, and the members shall be advised that, because of the verification procedures of Section 7, the inclusion of more than one ballot in any one "Ballot" envelope shall disqualify the return. Such "Ballot" envelope or envelopes (if the member or his proxy is exercising more than one (1) vote), shall be placed in another sealed envelope which shall bear on its face the name, lot number or address, and signature of the member or his proxy, the number of ballots being returned, and such other information as the Board may determine will serve to establish his right to cast the vote or votes presented in the ballot or ballots contained therein. The ballots shall be returned to the Secretary at the following address: P.O. Box 43384, Louisville, Kentucky, 40253-0384.

Section 7. Upon receipt of each return, the Secretary shall immediately place it in a safe or other locked place until the day set forth for the annual or other special meeting at which time the elections are to be held. On that day, the external envelope containing the "Ballot" envelopes shall be turned over, unopened, to the Vice President of Membership, who in the presence of the President and the Secretary of the Board or their Board member appointees, shall verify that the number of envelopes marked "Ballot" corresponds to the number of votes allowed to the member or his proxy identified on the outside envelope containing them; and that the signature of the member or his proxy on the outside of the envelope is genuine; and if the vote is by proxy, that the proxy has been filed with the Secretary as provided in Article XVII, Section 2, and that the proxy is valid. Such procedure shall be taken in such manner that the vote of any member or his proxy shall not be disclosed to anyone.

The outside envelopes shall thereupon be placed in a safe or other locked place and the Vice-President of Membership in the presence of the President and the Secretary of the Board or their Board member appointees, shall proceed to the opening of the "Ballot" envelopes and the counting of the votes. If any "Ballot" envelope is found to contain more than one (1) ballot, all such ballots shall be disqualified and shall not be counted. Immediately after the announcement of the results, unless a review of the procedure is demanded by the members present, the ballots and the outside envelopes shall be destroyed.

Article XII

Powers and Duties of the Board of Directors

Section 1. The Board of Directors shall have power:

- (a) To call special meetings of the members whenever it deems necessary and it shall call a meeting at any time upon written request of one third (1/3) of the voting membership, as provided in Article XVII, Section 2.
- (b) To appoint and remove at pleasure all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-laws shall be construed to prohibit the employment of any Member, Officer, or Director of the Association in any capacity whatsoever.
- (c) To establish, levy and assess, and collect the assessments or charges referred to in Article III, Section 2.
- (d) To adopt and publish rules and regulations governing the use of the common properties and facilities and the personal conduct of the members and their guests thereon.
- (e) To exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved to the meeting or to the members of the covenants.
- (f) In the event that any member of the Board of Directors shall be absent from two (2) consecutive regular meetings, or three (3) combined meetings in a calendar year without being excused by the Board of Directors, the Board

by action taken at the meeting during which said absence occurs, declare the office of said absent Director to be vacant.

Section 2. It shall be the duty of the Board:

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or any special meeting when such is requested in writing by one-third (1/3) of the voting membership, as provided in Article XVI, Section 2.
- (b) To supervise all officers, agents and employees of this Association, and to see that their duties are performed properly.
- (c) As more fully provided in Article V of the Declaration of Covenants, Conditions and Restrictions applicable to the Properties:
 - (1) To fix the amount of the assessment against each lot thirty (30) days in advance of such date or period and, at the same time;
 - (2) To prepare a roster of the properties and annual assessments, special assessments and/or fines applicable thereto which shall be kept by the Treasurer and be available for review by any member upon written request, at the same time;
 - (3) To send written notice of each assessment to every owner subject thereto.
- (d) To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such Certificates shall be conclusive evidence of any assessment therein stated to have been paid.
- (e) To comply with all covenants of the Declaration of Covenants, Conditions and Restrictions, and all approved actions of the Board or defined Association.

Article XIII

Board of Directors Meetings

Section 1. A regular meeting of the Board shall be held on the first Monday of each Calendar Quarter, at 7:00 o'clock P.M., provided that the Board may, by resolution, change the day and hour of holding such regular meeting.

Section 2. Notice of such regular meeting is hereby dispensed with. If the day for the regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 3. Special meetings of the Board shall be held when called by any two (2) officers of the Association or by any three (3) directors after not less than three (3) days notice to each director.

Section 4. The transaction of any business at any meeting of the Board however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present.

Section 5. The majority of the Board shall constitute a quorum thereof.

Article XIV

Officers

Section 1. The officers shall be a president, a vice-president of membership, a vice-president of maintenance and architectural control, a secretary, and a treasurer. All shall be members of the Board.

Section 2. The officers shall be chosen by majority vote of the Board of Directors.

Section 3. All officers shall hold office during the pleasure of the Board.

Section 4. The president shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out and sign all notes, leases, mortgages, deeds and all other written instruments.

Section 5. The vice-president of membership shall perform the duties of the president in his absence. He/she shall record in a book kept for such purposes the

names of all members of the Association together with their addresses as registered by such members. The vice-president of membership shall supervise all committees pertaining to membership activities. These shall include but not be limited to the Social Committee and the Membership Relations Committee.

Section 6. The vice-president of maintenance and architectural control shall supervise all committees pertaining to maintenance of common grounds and architectural control of The Properties. These shall include but not be limited to the Maintenance Committee and the Architectural Control Committee.

Section 7. The secretary shall record the votes, and keep the minutes of all proceedings of the Board in a book to be kept for such purposes. He/she shall keep the non-financial records of the Association. The secretary shall supervise all committees pertaining to the election of Directors to the Board. This shall include but not be limited to the Nominating Committee.

Section 8. The treasurer shall receive and deposit in an appropriate bank all monies of the Association and shall disburse such funds as directed by resolution of the Board, provided however, that a resolution of the Board shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The treasurer shall be authorized to sign any checks and notes of the Association. The treasurer shall keep proper books of account and cause an annual review of the Association books to be made by two (2) members of the Association not on the Board and/or a certified public accountant at the completion of each fiscal year. He/she shall prepare an annual budget sheet statement and the budget and the balance sheet statement shall be presented to the membership at its regular annual meeting. The treasurer shall supervise all committees pertaining to the financial activities of the Association. This shall include but not be limited to the Finance Committee.

Article XV Committees

Section 1. The Standing Committees of the Association shall be:

The Nominations Committee

The Social Committee

The Maintenance Committee

The Architectural Control Committee

The Membership Relations Committee

The Finance Committee

Unless otherwise provided herein, each committee shall consist of three or more members, one of whom shall act as Chairman, and shall report to an officer as described in Article XV, Section 2,3,4,5,6 and 7. Additional committees shall be determined by the Board and announced at each annual meeting. Each committee is to serve from the close of such annual meeting until the close of the next annual meeting. The Board of Directors may create or dissolve such committees as it deems desirable.

Section 2. The Nominations Committee shall have the duties and functions described in Article XI and shall perform such other functions as the Board, in its discretion, determines. The Nominations Committee shall be responsible to the Secretary of the Board.

Section 3. The Social Committee shall advise the Board on all matters pertaining to social activities and events of the Association and shall perform such other functions as the Board, in its discretion, determines. The Social Committee shall be responsible to the Vice President of Membership of the Board.

Section 4. The Maintenance Committee shall advise the Board on all matters pertaining to the maintenance and improvement of the Common Properties of the Association and shall perform such other functions as the Board, in its discretion, determines. The Maintenance Committee shall be responsible to the Vice President of Maintenance and Architectural Control of the Board.

Section 5. The Architectural Control Committee shall advise the Board on matters pertaining to the approval of all construction and landscaping plans to the Common Properties by the Board and/or the Properties by any members of the Association as described in Articles II & III of the Declaration of Covenants, Conditions and Restrictions of Foxgate Subdivision. It shall watch for and approve all proposals, programs, or activities which may adversely affect the residential value of the Properties and shall advise the Board of such Activities. The Architectural Control Committee shall also perform such other functions as the Board, in its discretion, determines. The Architectural Control Committee shall be responsible to the Vice President of Maintenance and Architectural Control of the Board.

Section 6. The Membership Relations Committee shall inform the members of all activities and functions of the Association and shall, after consulting with the Board, make such public releases and announcements as are in the best interest of the of the Association. These shall include but not be limited to welcoming new members to the Association and maintaining and publishing a directory of membership in the Association. The Membership Relations Committee shall also perform such other functions as the Board, in its discretion, determines. The Membership Relations Committee shall be responsible to the Vice-President of Membership of the Board.

Section 7. The Finance Committee shall supervise the annual review of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Article XIII, Section 8. The Treasurer shall be an ex-officio member of the Finance Committee The Finance Committee shall also perform such other functions as the Board, in its discretion, determines. The Finance Committee shall be responsible to the Treasurer of the Board.

Section 8. With exception of the Nomination Committee, the Architectural Control Committee and the Finance Committee, each committee shall have the power to appoint a sub-committee from among its membership and may delegate to any such sub-committee any of its power, duties and functions provide it has a majority approval of the Board.

Section 9. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such committee, director or officer of the Association as is further concerned with the matter presented.

Section 10. It shall be the responsibility of each committee to recommend any budget requirements to the Treasurer.

Article XVI

Meetings of Members

Section 1. The regular meeting of the members shall be held on the third Monday of the month of January, in each year, at the hour of 7:00 o'clock P.M. The Board may change the date and/or time of the meeting for the convenience of the

membership, and notice of the new meeting date and/or time shall be given to the members in accordance with Section 3 of this Article.

Section 2. Special meetings of the members for any purpose may be called at any time by the President, the Vice-President of Membership, or the Treasurer, or by any two (2) or more members of the Board, or upon written request of one third (1/3) of the members who have a right to vote of all the votes of the entire membership.

Section 3. Notice of any meeting shall be given to the members by the Secretary. Notice may be given to the members either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the corporation. Each member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed at least six (6) days in advance of the meeting and shall set forth in general the nature of the business to be transacted, provided however, that if the business of any meeting shall involve an election governed in Article XI or any action governed by the Articles of Incorporation or by the Covenants applicable to The Properties, notice of such meeting shall be given or sent as therein provided.

Section 4. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one fifth (1/5) of the votes of single family residences, or owners of vacant lots and undeveloped acreage shall constitute a quorum for any action governed by these By-laws. Any action governed by the Articles of Incorporation or by the Covenants applicable to The Properties shall require a quorum as therein provided.

Article XVII

Proxies

Section 1. At all corporation meetings of members, each member may vote in person or by proxy.

Section 2. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of his home or interest in The Properties.

Article XVIII

Books and Papers

Section 1. The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any member.

Article XIX

Board of Directors Indemnification

Section 1. The corporation shall indemnify each of its directors and officers who was or is a party or is threatened to be made a party to any anticipated, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding had no cause to believe his conduct was unlawful.

Section 2. Except as provided herein below, any such indemnification shall be made by the corporation only as authorized in the specific case upon determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth above. Such indemnification shall be made: (a) by the Board of Directors by a majority vote of a quorum of directors who are not parties to such action, suit, or proceeding; or (b) by the members of the corporation.

Section 3. Expenses (including reasonable attorneys' fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding if authorized by the Board of Directors or the members upon receipt of a written statement by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation.

Section 4. To the extent that a director or officer has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to above or any claim, issue or matter therein, he shall be indemnified against expenses (including

reasonable attorneys' fees) actually and reasonably incurred by him in connection therewith without any further determination that he has met the applicable standard of conduct set forth above.

Section 5. The foregoing indemnification provision shall apply to any former director or officer of the corporation whose term of office has expired.

Article XX

Items Prohibited in the Properties

Section 1. Insomuch as the membership of the Association holds that the primary function and responsibility of the Board is to protect the value of The Properties, the following items, in addition to those specified in the Declaration of Covenants, Conditions, and Restrictions, are therefore considered a nuisance and expressly forbidden and prohibited within the Properties:

- (a) Any metal fence including but not limited to those referred to as chain link fences, except black aluminum as approved by the Architectural Review Committee of the Foxgate Residents Association.
- (b) Any barbed wire attachment to any fence.
- (c) Any fence over six (6) feet in height above the contour of the ground.
- (d) No boat, trailer, motor home, of other recreational type vehicle shall be stored within the properties unless housed in a garage. A permit, which may be obtained from the Treasurer or his appointee, shall allow the temporary driveway parking of a boat, trailer, motor home or recreational vehicle for a twenty-four (24) hour period of time. Each lot owner shall be entitled to eight permits per calendar year. Permits shall not be issued for more than two (2) consecutive twenty-four (24) hour periods. In the event permits are issued for consecutive twenty-four (24) hour periods, a subsequent permit shall not be issued for at least five (5) more days. Said permits shall not be transferable.
- (e) Any broadcast transmission or receiving antenna of any kind excluding those currently known as satellite dishes less than thirty-six (36) inches in diameter which are now protected by the Federal Communications Act of 1996.

- (f) Any vehicle not operational (except those housed in a garage).
- (g) Any asphalt driveway or walkway.
- (h) Any animal not commonly considered to be bred as a domesticated house pet in this geographic area.
- (i) Any exterior solar heating panels.

Section 2. The Board has the specific and sole discretion and authority to make conclusive determination as to structures or other items within the Properties, not specifically mentioned in Section 1 of this Article or within the Declaration of Covenants, Conditions and Restrictions recorded with the Jefferson County Court Clerk, as to what will constitute nuisance(s) for the purpose of the prohibition contained in this Article. The specific nature of this Article and the Declaration of Covenants, Conditions and Restrictions shall not be construed as containing an exclusive list of those nuisance structures or other items within the Properties.

Article XXI

Membership Dues and Assessments

Section 1. The Association by and through the Board of Directors shall from time to time determine a need to (a) increase the membership dues but not in excess of the increase provided for in the Declaration of Covenants, Conditions and Restrictions, and/or (b) to invoke an assessment which may not exceed 50% of the current annual dues which are pursuant to Article IV, Section 5 and 6 of the Declaration of Covenants, Conditions and Restrictions. Having made said determination they shall be levied by a majority vote of the Board. Any need for an increase in dues or a special assessment in excess of those allowed by the aforementioned, may be levied by a majority vote of a quorum of the membership at a regular or special meeting.

Article XXII

Effect of Nonpayment of Dues, Assessments, and Maintenance Reimbursements: Remedies of the Residents Association

Section 1. It shall be the responsibility of the member to pay all regular dues and assessments and to pay any maintenance reimbursements owed to the Association by the due date as provided in the Article II, Section 6 and Article IV, Section 4, 6, 7, 8, and 9 of the Declaration of Covenants, Conditions, and Restrictions.

Section 2. Upon the failure of a member to pay dues, assessments, or maintenance reimbursements, the Board may, after proper notice and hearing before the Board, shall the affected member request a hearing within ten (10) days of the notice, assess and proceed toward collection a late charge equal to two (2) times the amount of said delinquent dues, assessments, or maintenance reimbursements, which late charge shall bear interest at the rate of Twelve Percent (12%) per annum from the date same becomes effective until paid.

Section 3. Remedies of the Residents Association shall be in accordance with Article IV, Section 10 and 11 of the Declaration of Covenants, Conditions, and Restrictions.

Article XXIII Amendment of By-laws

Section 1. These By-laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, provided that those provisions of these By-laws which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matter stated herein to be or which is in fact governed by the Declaration of Covenants, Conditions, and Restrictions applicable to The Properties, may not be amended except as provided in such Declaration of Covenants, Conditions, and Restrictions.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-laws, the By-laws shall control; and in the case of any conflict between the Declaration of Covenants, Conditions, and Restrictions applicable to The Properties referred to in Section 1 of these By-laws, the By-laws shall Control.

Article XXIV Severability

Section 1. In the event that any provision of these By-laws of the application hereof is deemed invalid, unlawful, or unenforceable, such invalidity, unlawfulness or unenforceability shall not affect any other provision of these By-laws or applications hereof which can be given effect in the absence of the invalid provision or application, and to this end, the provisions of these By-laws are declared severable.

Resolution Appended to Foxgate's Declaration of Covenants, Conditions, and Restrictions & Association By-laws

Insomuch as the primary function of the Foxgate Residents Association is to preserve the value of properties within Foxgate (hereafter referred to as “the properties”), pursuant to Article XX, Section 2 of the Foxgate By-laws, be it resolved that on August 8, 2006, the Board of Directors of the Foxgate Residents Association voted to consider the following a nuisance:

1. Landscaping beds that have been overtaken by weeds or other vegetation not customary to residential landscaping applications. Professional landscapers recommend mulch every year, with every two years being the minimum (excluding beds composed of permanent materials); landscape beds not edged or trenched in a manner that separates the beds from the lawn area (as a guideline, the common ground of the properties is mulched and trenched/edged every year).
2. The presence of tree stumps: Tree stumps must be ground below grade or pulled from the ground; the area must then be covered with soil and either over-seeded with a turf grass or covered with sod.
3. Tree limbs that restrict passage on sidewalks or streets.
4. Dead or fallen trees or any portion thereof.
5. Failure to keep a lawn regularly mowed: While seasonal and weather conditions affect the exact number of times a lawn should be mowed, it is generally expected that lawns be mowed a minimum of once per week; following any mowing, excess clippings should not be visible on the lawn, sidewalk, or driveway, nor should any clippings be discharged into the street and remain there.
6. Visible presence of broadleaf weeds and other turf growth not customarily known as turf grasses.
7. Bermuda, Zoysia, and other such grasses. These grasses are invasive and will eventually grow beyond the property of one homeowner potentially to the property of another.

8. Any sidewalks, curb lines, or driveways visibly in need of edging with turf grass encroaching on same.
9. Homes noticeably in need of painting. Signs of paint wear include cracking, peeling, or fading.
10. Any rotting or visible deterioration of windows, passage doors, garage doors, underhang, siding, fences, decks, gutters and downspouts.
11. Home sites not regularly raked of leaves.