


*Nancy Boren*  
Deputy



**Declaration of  
Terms, Conditions, Restrictions, and Covenants  
Foxwoods**

This **DECLARATION** is made this 20<sup>th</sup> day of February, 2004, by Poignee Homes, L.L.C., a Missouri limited liability company (hereinafter referred to as "Developer").

**WHEREAS**, Developer is the fee simple owner of a certain parcel of real property located in the County of Lincoln, State of Missouri, the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "the Property"); and

**WHEREAS**, Developer has prepared a plan for residential development of the Property to be known as Foxwoods and a Plat thereof has been recorded at Book 13, Page 170 of the records of Lincoln County, Missouri; and

**WHEREAS**, for the purpose of protecting property values and for the mutual benefit of all future owners of the Property, Developer desires to impose on the Property, together with all buildings, structures, and other improvements now or hereafter erected thereon, the terms, conditions, restrictions, and covenants contained in this Declaration; and

**WHEREAS**, Developer intends that all owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Property shall at all times hold their interest subject to the terms, conditions, restrictions, and covenants contained in this Declaration; and

**WHEREAS**, Developer intends that the terms, conditions, restrictions, and covenants contained in this Declaration shall benefit and burden the Property and shall run with the land.

**NOW, THEREFORE,** Developer hereby declares the following:

**ARTICLE ONE: DEFINITIONS**

1. Developer - the person, firm, or corporation who establishes Foxwoods through the recording of the Plat and this Declaration.
2. Declaration - this instrument and any amendments thereto.
3. Fiscal Year - January 1<sup>st</sup> of one calendar year through December 31<sup>st</sup> of the same calendar year.
4. Lot(s) - that part of the Property designated as such on the Plat, including any buildings, structures, and other improvements now or hereafter erected thereon.
5. Lot Owner - the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot.
6. Residence - the dwelling, appurtenances, and garage(s) erected on a Lot.

**ARTICLE TWO: HOMEOWNERS ASSOCIATION**

1. At such time as the Developer, in its sole discretion, determines that it is necessary and proper, the Developer shall form a not-for-profit corporation under the laws of the State of Missouri known as Foxwoods Homeowners Association, Inc. (hereinafter referred to as "the Association").
2. The Association shall develop a set of Bylaws to govern its administration, election of directors, meetings, and other affairs.
3. If deemed necessary and proper, the Association shall develop a set of Rules and Regulations.
4. Each Lot Owner shall be a member of the Association. Membership shall not be transferred except in conjunction with conveyance of the property.
5. Unless otherwise specified herein or in the Bylaws, the Association shall act through its Board of Directors. When a vote of the Lot Owners is required, each Lot shall be entitled to one vote.
6. Until such time as the Developer forms the corporation described in this Article, the Developer is deemed to be the Association and shall have all the rights, duties, powers, and privileges granted the Association under the terms of this Declaration.

**ARTICLE THREE: POWERS OF THE ASSOCIATION**

The Association shall have the following powers:

1. Adopt, amend, and enforce Bylaws and Rules and Regulations.
2. Adopt and amend an annual budget for revenues, expenditures, and reserves.
3. Institute, defend, or intervene in litigation or administrative proceedings in its own name and/or on behalf of two or more Lot Owners on matters affecting Foxwoods.
4. Make contracts and incur liabilities for the benefit of the Foxwoods.
5. Regulate the use, maintenance, repair, replacement, or modification (including conveyance or dedication) of the easements, roads, and water well as shown on the recorded Plat.
6. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property.
7. Collect assessments, late charges, interest, attorney's fees, and court costs for non-payment of assessments.
8. File liens and/or lawsuits for non-payment of assessments, late charges, interest, attorney's fees, and court costs.
9. Exercise any other powers granted by this Declaration, its Articles of Incorporation, or its Bylaws.
10. Exercise any other powers necessary, proper, and authorized by law for the governance and operation of the Association.

The powers contained herein are grants of power only and the Association may or may not exercise them from time to time as it shall deem necessary and proper under the circumstances then prevailing.

## **ARTICLE FOUR: ASSESSMENTS**

The Association is authorized to levy assessments upon and against the Lots in accordance with the provisions of this Article.

### **1. Annual Assessment**

The Association shall make a uniform Annual Assessment of \$25.00 per Lot for each fiscal year. The initial Annual Assessment shall begin with the month beginning after the subsequent Lot Owner takes title from the Developer. The amount of the initial Annual Assessment shall be equal to the fraction of the fiscal year ( $x/12$ ) remaining times the Annual Assessment for that year. The initial Annual Assessment shall be due and payable at closing. Subsequent Annual Assessments shall be due and payable in advance on the first day of the fiscal year. Annual Assessments shall be used for the operating budget of the Association. No notice or other action by the Association is required for this Assessment to be deemed levied.

The Association may change the Annual Assessment by approval of 2/3 of the Lot Owners present at a meeting with a quorum called for such purpose.

### **2. Road Assessment**

The Association shall make a uniform Road Assessment of \$100.00 per Lot for each fiscal year. The initial Road Assessment shall begin with the month beginning after the subsequent Lot Owner takes title from the Developer. The amount of the initial Road Assessment shall be equal to the fraction of the fiscal year ( $x/12$ ) remaining times the Road Assessment for that year. The initial Road Assessment shall be due and payable at closing. Subsequent Road Assessments shall be due and payable in advance on the first day of the fiscal year. Road Assessments shall be used for the maintenance and repair of the road as shown on the recorded plat. No notice or other action by the Association is required for this Assessment to be deemed levied.

The Association may change the Road Assessment by approval of 2/3 of the Lot Owners present at a meeting with a quorum called for such purpose.

### **3. Water Well Assessment**

The Association shall make a uniform Water Well Assessment of \$240.00 per Lot for each fiscal year. The initial Water Well Assessment shall begin with the month beginning after the subsequent Lot Owner takes title from the Developer. The amount of the initial Water Well Assessment shall be equal to the fraction of the fiscal year ( $x/12$ ) remaining times the Water Well Assessment for that year. The initial Water Well Assessment shall be due and payable at closing. Subsequent Water Well Assessments shall be due and payable in advance on the first day of the fiscal year. Water Well Assessments shall be used for the maintenance and repair of

the water well as shown on the recorded plat. No notice or other action by the Association is required for this Assessment to be deemed levied.

The Association may change the Water Well Assessment by approval of 2/3 of the Lot Owners present at a meeting with a quorum called for such purpose.

**Notwithstanding anything else contained herein, Lot Three (3) shall be exempt from the Water Well Assessment.**

**4. Special Assessment**

The Association may make a uniform Special Assessment against all Lots to cover unexpected, extraordinary expenses of the Association. Such a Special Assessment must be approved by 2/3 of the Lot Owners present at meeting with a quorum called for such purpose. This Assessment shall be deemed levied at the time the approval vote is taken.

The Association may make a Special Assessment against any particular Lot for a) failure or refusal to comply with this Declaration or the Rules and Regulations; or b) damage to the Association's property caused by the Lot Owner, or their children, invitees, or guests. This Assessment shall be deemed levied at the time the Association posts notice thereof on the door of the Lot Owner.

**ARTICLE FIVE: COLLECTION OF ASSESSMENTS AND LIENS**

1. Assessments shall incur a late fee of five percent (5%) if not paid in full within ten (10) days of levy.
2. Assessments shall bear interest at ten percent (10%) per annum beginning ten (10) days after levy until paid in full.
3. Assessments that are levied and remain unpaid for ten (10) days shall become a lien on the Lot, together with late charges, interest, attorney's fees, and court costs. Such lien shall be in favor of the Association for the benefit of all Lot Owners.
4. Assessments that are levied and remain unpaid for ten (10) days shall also become a personal obligation of the person(s) or entity(ies) who were the Lot Owner(s) at the time the assessment was levied. Successors to such Lot Owner(s) shall be jointly and severally liable for same except that no first mortgagee who obtains title pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which were levied prior to such acquisition of title.
5. Recording of this Declaration constitutes record notice and perfection of liens described herein. No further claim of assessments or liens by the Association is required.

6. In the event an assessment is levied and remains unpaid after ten (10) days, the Association may institute suit to collect assessments, late charges, interest, attorney's fees, and court costs and/or foreclose its lien.
7. Each Lot Owner, by acceptance of a deed or as a party to any type of conveyance, vests in the Association, or its agents, the right and power to bring all actions against him or her or it for the collection of assessments, late charges, interest, attorney's fees, and court costs in the same manner as a mortgage on real estate with power of sale under Sections 443.290-443.380, RSMo, or any similar, successor provisions of Missouri state law.
8. The Association may bid on a Lot at any foreclosure sale and shall have the power to acquire, hold, lease, mortgage or convey any such Lot.
9. No Lot Owner may waive or otherwise escape liability for assessments provided for in this Declaration by virtue of claim of abandonment or non-use of the Lot.
10. Any payment by a Lot Owner shall be applied in the following order, as applicable: 1) court costs, 2) attorney's fees, 3) interest, 4) late charges, 5) unpaid special assessments, 6) unpaid annual assessments, 7) unpaid road assessments, and 8) unpaid water well assessments..

#### **ARTICLE SIX: RESTRICTIONS AND COVENANTS**

The following restrictions and covenants shall apply to the Property:

1. No Lot shall be improved, used, or occupied other than for residential occupancy by a single family. Lots may not be subdivided. There shall be only one residence per Lot. No Lot shall be used for any business or commercial purposes.
2. Each residence shall have an attached, minimum two-car garage, with side or rear entry. No outbuildings of any sort are allowed without prior written approval of the Association.
3. Minimum square feet of living space for ranch-style homes shall be 1650 square feet. Minimum square feet of living space for two-story homes shall be 1800 square feet. These minimums are exclusive of garages and other appurtenances.
4. No animals, livestock, or poultry shall be raised, bred, or kept on any Lot, except that a total of three (3) household pets may be kept and one horse, cow, or lamb per acre may be kept. No household pet or other animal shall be permitted off the Lot unless on a leash controlled by a person physically able to prevent its escape. No outside kennels shall be allowed without prior written approval of the Association. No household pets or other animal shall be tied outside. No household pet or other animal shall be allowed to

be a nuisance to other property owners. In the event a household pet or other animal is determined to be a nuisance by the Association, same shall be promptly removed by the owner. No keeping of swine, including pot-bellied pigs, is allowed.

5. Motor Vehicles

- a) No campers, recreational vehicles, trailers of any kind, or boats shall be parked or permitted to remain on any Lot unless garaged.
- b) No motor vehicle requiring what is commonly called a "commercial license" under the laws of the State of Missouri, vehicle licensed over thirty thousand pounds (30,000 lbs) under the laws of the State of Missouri, semi-tractor trailer truck, construction motor vehicle, dump truck, or other open-fender motor vehicle shall be parked or permitted to remain on the property, lots, driveways, or roads; provided however that Developer, its successors and assigns, shall be permitted to park all types of construction motor vehicles and equipment during the construction of residences upon the various lots.
- c) No motor vehicle of any kind may be dismantled, assembled, repaired or maintained in any manner upon the property, lots, driveways, or roads, unless such is conducted inside a garage, screened from public view.
- d) No motor vehicle of any kind which is unable to move under its own power shall be parked or permitted to remain on the property, lots, driveway, or roads.
- e) No motor vehicle of any kind which is unlicensed shall be parked or permitted to remain on the property, lots, driveways, or roads.

Any motor vehicle found in violation of this Declaration may be promptly removed by the Association, or its agents, and the owner(s) thereof shall be charged with the reasonable expenses so incurred. The Association may, in its sole discretion, employ, hire, or contract with third parties to perform the right granted herein. The Association, its agents or employees, shall not be deemed guilty or liable for performing the rights granted herein.

- 6. All fences must be of new material and may not encroach on easements, building lines or roads as shown on the recorded Plat. The location and design of fences must be pre-approved in writing by the Association. Any fence not so pre-approved may be removed by the Association at the Lot Owner's sole expense.
- 7. The building lines, easements, and roads as shown on the recorded Plat are hereby created, established, and reserved. No structure or other material shall be placed or permitted to remain which might interfere with use thereof.

8. All grasses, weeds, brush, trees, shrubbery, and flowers shall be trimmed and cut back. Lawns shall be mowed not to exceed 12 inches in height. Any Lot found in violation of this Declaration may be promptly abated by the Association, or its agents, and the owner(s) thereof shall be charged with the reasonable expenses so incurred. The Association may, in its sole discretion, employ, hire, or contract with third parties to perform the right granted herein. The Association, its agents or employees, shall not be deemed guilty or liable for performing the rights granted herein.
9. No mobile home, recreational vehicle, trailer, basement, or garage shall be used as residence, temporarily or otherwise, on the Property. No residence shall occupied until finally completed. No manufactured, mobile, or modular homes shall be placed on the Property.
10. No unsightly junk, rubbish, or garbage shall be kept on the Property. The Association shall designate one company for trash pickup. Lot Owners shall arrange for at least weekly pick up of their garbage through said company. Garbage shall be kept in a sanitary container with a lid until picked up. Garbage containers shall not be put at the curb until the night before pick up and shall be brought from the curb no later than noon on the day following the pick up.
11. No sign of any kind shall be displayed to public view except one professional sign of not more than 3' x 3' advertising the property for sale. However, the Developer shall be permitted to use whatever signs it deems necessary to advertise and sell the Property.
12. No above-ground propane or other fuel tanks, except small tanks used for gas grills, shall be placed on the Property. Buried tanks are permitted.
13. Lot Owners shall maintain the exterior of the residence, including but not limited to the roof, windows, masonry, and siding, consistent with the style, standards and quality of the surrounding residences.
14. Lot Owners shall maintain comprehensive (current replacement value) hazard insurance and shall annually provide the Association with a certificate of insurance. Said insurance shall provide sufficient coverage to repair or rebuild the residence and appurtenances thereto in the event of flood, fire, weather, vandalism, or other hazards. In the event any part of the residence or appurtenances thereto is damaged or destroyed by flood, fire, weather, vandalism, or other hazards, the Lot Owner shall repair or rebuild same to the pre-existing condition within one hundred twenty (120) days. In the event the Lot Owner fails to repair or rebuild within one hundred twenty (120) days, the Association may proceed to do so and make assessments against the Lot and the Lot Owners for the cost thereof.
15. Pools must be located in rear yards. Pools must be located at least fifteen (15) feet from

all Lot lines. Pools must be secured by fencing. Plans for pools and fencing must be pre-approved in writing by the Association. Any pools or fencing not so pre-approved may be removed by the Association at the Lot Owner's sole expense.

16. Swing sets and play equipment should be located in the rear yard and be appropriate to the size of the Lot. Materials should be environmentally safe and should blend with the color of the residence and the other surroundings.
17. No outside antenna may be installed without pre-approval in writing by the Association. Any antenna not so pre-approved may be removed by the Association at the Lot Owner's sole expense.
18. Exterior lighting shall not be directed outside the Lot.
19. Driveways and culverts connecting to the road as shown on the Plat shall be built, maintained and repaired by the Lot Owner.
20. No open sewage or drainage system shall be permitted for the disposal of the sewage or water from the residence. Any septic tank placed on any Lot shall be at least one hundred fifty (150) feet from any Water Well. Any part of the septic leach field shall not be any closer than one hundred fifty feet (150) feet from any Water Well.

#### **ARTICLE SEVEN: ROAD MAINTENANCE AND REPAIR**

1. The Association shall be responsible for the maintenance and repair of the road as shown on the recorded plat. The assessments collected under Article Four, section 2, and Article Four, section 4, as needed, are to be used for this purpose.
2. An easement and right-of-way for the road as shown on the recorded plat is hereby created, established, and reserved. Each lot is hereby burdened and benefitted by said easement and right-of-way.

#### **ARTICLE EIGHT: WATER WELL MAINTENANCE AND REPAIR**

1. The Association shall be responsible for the maintenance and repair of the water well and appurtenances as shown on the recorded plat. The Association shall also be responsible for the main water line running from the Lots to the water well. The assessments collected under Article Four, section 2, and Article Four, section 3, as needed, are to be used for these purposes.
2. An easement and right-of-way for the water well and appurtenances and main water line as shown on the recorded plat is hereby created, established, and reserved. Each lot is hereby burdened and benefitted by said easement and right-of-way.

3. Lot owners shall be responsible for maintenance and repair of water lines running from their residence to the main water line.

#### **ARTICLE NINE: MISCELLANEOUS**

1. Remedies for Breach. Any violation of the terms, conditions, restrictions, or covenants of this Declaration shall, in addition to the other rights contained herein, give the Association the right to enter upon the Lot to abate and/or remove said violation at the expense of the Lot Owner without being deemed guilty of trespass or other liability and the right to obtain a judgment from the appropriate Court ordering the Lot Owner to abate said violation and awarding damages for said violation. The Lot Owner shall be responsible for all court costs and attorney's fees incurred by the Association in enforcing this Declaration.
2. Amendment. This Declaration may be amended by the Developer until the corporation described in Article Two is formed. After said corporation is formed, Lot Owners may amend this Declaration by approval of 2/3 of the Lot Owners present at a meeting with a quorum called for such purpose. Such amendment shall not require the signature of any mortgage holder or other lien against the Lots. Such amendment shall not be effective until recorded in the Lincoln County records.
3. Severability. Invalidation of any term, condition, restriction, or covenant of this Declaration shall in no way affect any other provision thereof, which shall remain in full force and effect.

#### **LEGAL DESCRIPTION:**

Part of the East  $\frac{1}{2}$  of Sec. 24 T49N, R2W

In witness whereof, the Developer has caused this Declaration to be executed the day and year above written.

Poignee Homes, L.L.C.

  
Michael J. Poignee, Member

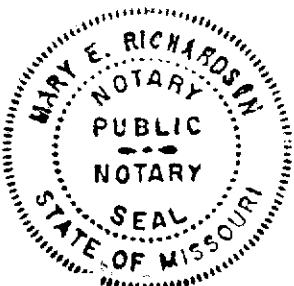
  
Melinda K. Poignee, Member

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF LINCOLN    )

On this 20<sup>th</sup> day of February, 2004, before me appeared Michael J. Poignee and Melinda K. Poignee, to me personally known, being duly sworn did say that they are members of Poignee Homes, L.L.C., a limited liability company of the State of Missouri, and that said instrument was signed and sealed on behalf of said company by authority of its members and that they acknowledged said instrument to be the free act and deed of said company.

In testimony whereof, I have hereunto set my hand and affixed my official seal in my office in Troy, Missouri the day and year first above written.

  
Notary Public



MARY E. RICHARDSON  
Lincoln County  
My Commission Expires  
July 28, 2007