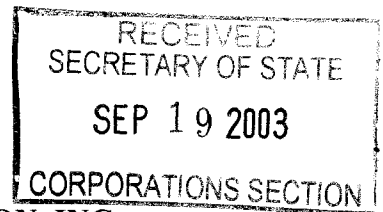


**EXHIBIT B**

**ARTICLES**

**OF**

**INCORPORATION**



**ARTICLES OF INCORPORATION  
OF  
FOXWOOD OF BURNET HOME OWNERS' ASSOCIATION, INC.**

The undersigned, being a natural person of the age of eighteen (18) years or more and who is a citizen of the State of Texas, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, does hereby adopt the following Articles of Incorporation for such corporation:

**ARTICLE I**

The name of the corporation is *FOXWOOD OF BURNET HOME OWNERS' ASSOCIATION, INC.*, hereinafter sometimes referred to as the "Corporation".

**ARTICLE II**

The Corporation is a non-profit corporation, and shall have all the powers specified in and allowable under the Texas Non-Profit Corporation Act. No part of the assets or net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay compensation for services rendered and to make payments and distribution in furtherance of the stated purposes set forth in article IV below.

**ARTICLE III**

The period of the Corporation's duration is perpetual.

**ARTICLE IV**

The purpose for which the Corporation is organized is for the cooperation of members of the Corporation for the enhancement, preservation, protection and maintenance of Foxwood Subdivision, a master-planned residential community located in Burnet County, Texas (the "Subdivision"). In order to carry out such general purpose, the Corporation shall have the general power to: (i) fix assessments (or charges) to be levied against lots within the Subdivision and establish services without the obligation to be provided for the benefit of the members of the Corporation; (ii) enforce the Declaration of Covenants, Conditions and Restrictions for the Subdivision (the "Declaration") to be recorded in the Official Records of Burnet County, Texas, and any and all agreements applicable to the Subdivision; (iii) insofar as permitted by law, these Articles of Incorporation, the Bylaws, the Declaration and any other agreements or dedicatory instruments applicable to the Subdivision, to do any other thing of a similar nature that will promote the common benefit and enjoyment of the owners of lots within the Subdivision, as authorized by the Articles of Incorporation, Bylaws, Declaration, and any other agreement or dedicatory instrument, or by applicable law; and (iv) enter into a contract with (a) 71/281 Investments, LLP, a Texas limited liability partnership, (acting

by and through its duly authorized managing partner, Greg Sellard), (b) an affiliate of 71/281 Investments, LLP, a Texas limited liability partnership, or another third-party (and such party's successors and assigns), for the management, operation, maintenance or other responsibility, either in whole or in part, of the Subdivision and the performance of the powers and duties, either in whole or in part, of the Corporation. The Corporation is organized pursuant to the Texas Non-Profit Corporation Act and does not contemplate pecuniary gain or profit to the members thereof and is organized for non-profit purposes, and nothing contained in the foregoing statement of purposes shall be construed to authorize the Corporation to carry on any activity for the profit of its members, or to distribute any gains, profits or dividends to its members as such.

#### **ARTICLE V**

The mailing address of the initial registered office of the Corporation is 1179 Corporate Drive West, Suite 100, Arlington, Texas 76006, and the name of its initial registered agent as such address is Greg Sellard.

#### **ARTICLE VI**

The Corporation shall be a membership corporation without certificates or shares of stock. All owners, by virtue of their ownership of a lot within the Subdivision, are members of the Corporation. The members shall be divided into classes and entitled to vote in accordance with the provisions contained in the Bylaws and in the Declaration.

#### **ARTICLE VII**

The business and affairs of the Corporation shall be conducted, managed and controlled by a board of directors. The board may delegate such operating authority to such companies, individuals or committees as it, in its discretion, may determine. The number of directors constituting the initial board of directors is three (3), and the names and addresses of the persons who are to serve as directors are:

1. Greg Sellard, 1179 Corporate Drive West, Suite 100, Arlington, Texas 76006.
2. Darrell Sargent,, 8900 Balcones Club Drive, Austin, Texas 78750
3. Stuart Damore, 12221 North Mopac, Austin, Texas 78758

#### **ARTICLE VIII**

To the fullest extent permitted by applicable law, as the same exist or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a director of the Corporation shall not be liable to the Corporation for monetary damages for an act or omission in the director's capacity as a director. Any amendment of these Articles of Incorporation shall be prospective only and shall not adversely offset any

limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment. In addition, the Corporation shall be entitled to indemnify its directors, officers, employees and/or members, the Subdivision manager (and its members), Declarant and others acting on Corporation's behalf, including, without limitation, members of any architectural review committee or other similar committee and any third-party agents and contractors, to the fullest extent allowed by applicable law.

#### **ARTICLE IX**

The Corporation may be dissolved only as provided in the Bylaws and by the laws of the State of Texas.

#### **ARTICLE X**

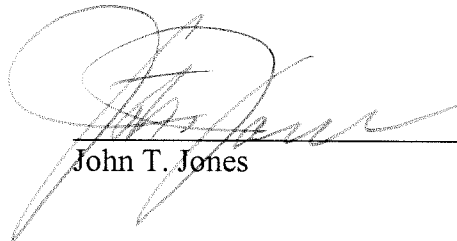
The internal affairs of the Corporation shall be regulated by the Bylaws. The Bylaws of the Corporation shall be adopted by the board of directors of this Corporation and shall thereafter be amended, altered or repealed by a vote of the board of directors of the Corporation as provided in the Bylaws.

#### **ARTICLE XI**

The name and address of the incorporator of the Corporation is:

John T. Jones, Post Office Box 9, Driftwood, Texas 78619

IN WITNESS WHEREOF, I, the undersigned incorporator of the Corporation, executed these Articles of Incorporation this 18th day of September, 2003.

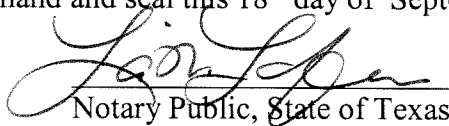


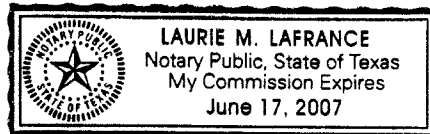
John T. Jones

THE STATE OF TEXAS   §  
                                  §  
THE COUNTY OF HAYS   §

Before me, a notary public, on this day personally appeared John T. Jones, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements contained therein are true and correct.

Given under my hand and seal this 18<sup>th</sup> day of September, 2003.

  
Notary Public, State of Texas



THE STATE OF TEXAS  
COUNTY OF BURNET

§  
§  
§

DECLARATION OF COVENANTS AND RESTRICTIONS

*(Assessment Lien Subordinated to any Valid Vendor's or Deed of Trust Lien)*

This Declaration of Covenants and Restrictions is made as of the \_\_\_\_\_th day of \_\_\_\_\_, 2003, by 71/281 Investments, LLP, a Texas limited liability partnership, acting by and through its duly authorized managing partner, Greg Sellards, (hereinafter sometimes referred to as "Declarant"), and is as follows:

WITNESSETH

WHEREAS, Declarant is the owner of the following described real property (the "Property") situated in Burnet County, Texas:

All of the Lots in FOXWOOD, Phase One, a subdivision in Burnet County, Texas, as shown by the plat thereof recorded in Volume \_\_\_\_, Pages \_\_\_\_, of the Plat Records in Burnet County, Texas (the "Subdivision");

NOW, THEREFORE, Declarant declares that all of the above mentioned lots in the Subdivision are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, and uses hereinafter set forth:

1. DESIGNATION OF USE Lot 1A will be used for commercial purposes and will not be subject to these restrictions. All other Lots shall be used for single family residential purposes with not more than one residence on any legal Lot provided that no legal Lot will contain less than two (2) acres of land, except if any Lot is financed through the Texas Veteran's Land Board then the Texas Veteran's Land Board may convey one (1) acre of land to the purchaser under its contract of sale, which is for the purpose of these restrictions will qualify as a legal Lot. Any legal Lot may also have a guest house and/or servants quarters, provided that the same are of the same design and style as the main residence. Any legal Lot may be used for professional offices when such offices are contained within the home or residential structure.

Except as permitted above, no trade, profession, business commercial purpose of any kind shall be carried on within or on any of said Lots. No portion of the Property will be used as a junkyard, wrecking yard, spare parts yard, or used as storage for used cars, trucks, buses, or other vehicles or equipment of any kind. Two or more vehicles in disrepair or non-running condition which are located on any Lot for more than two (2) weeks will constitute a junkyard and will be considered in violation of this paragraph. No business, trade, dirt pit or manufacturing shall ever be conducted on any Lot nor will any noxious or offensive trade or activity be carried on or upon any Lot in the Property, nor shall anything be done thereon which may be or become an annoyance to the neighborhood, nor shall storage tanks containing inflammable fluids or gases be maintained above the surface of the ground, except for liquid propane tanks for residential use. All Lots in the Property will be kept free of debris and kept in a presentable condition at all times.

Notwithstanding anything to the contrary, recreational vehicles will be permitted, provided that they are hidden from view from the street.

2. RETENTION OF EASEMENTS A fifteen (15') foot utility easement is reserved adjacent and parallel to the property line of each Lot for utility installation and maintenance. Within these easements, no structures, trees, vines, plants or any other thing shall be placed or permitted to remain which would prevent the use intended by the easement, and the easement area for each Lot will be maintained continuously by the owner of each Lot, except for the improvements for which a public utility or public authority is responsible. In addition there is a twenty-five (25') foot wide "Nature Trail Easement" as shown on the above referenced plat. This easement will be maintained by the Foxwood Home Owner's Association and will be for the use of the owners of the Lots in the subdivision

3. TIME FOR CONSTRUCTION AND TEMPORARY STRUCTURES AND GARAGE APARTMENTS Construction of improvements will be continuous and proceed in an orderly fashion without interruption. Any improvements which started must be completed within a reasonable time, which in no event will

be longer than twelve months from the commencement of construction. No tent, shack, mobile home, manufactured home, house trailer, garage apartment, or other outbuilding shall be placed, erected or permitted to remain on any of the Lots nor shall any structure of any temporary character be used at any time as a residence thereof. The foregoing will not prevent the storage of personal recreational vehicles on any Lot provided that they are not used as a residence.

4. SIZE AND CONSTRUCTION OF DWELLINGS, GARAGES AND GUEST HOUSES: All dwellings shall be recognized standard construction and shall have a minimum floor area of not less than one thousand seven hundred (1,700) square feet, exclusive of porches (open and closed), patios, garages, balconies or decks. The exterior of each dwelling will be at least seventy (70%) percent masonry. If the architecture of the dwelling is a recognized architecture that does not lend itself to the minimum masonry requirement, then the Declarant or the Foxwood Home Owner's Association may grant a variance to permit the dwelling to have less than seventy (70%) percent masonry. Any such variances granted must be in writing in recordable form and must be filed with the County Clerk to be valid. Hardy Plank is not considered masonry. The granting of any such variance is totally discretionary on the part of the Declarant. Declarant has no obligation to grant any such variance. Declarant will not be liable to anyone for refusing to grant any such variance. Any such variance so granted must be in writing and in recordable form and filed with the County Clerk of Burnet County, Texas. Declarant has the right to assign this "right to grant variances" to any other person or entity. The assignment of this right must be in writing and in recordable form and filed with the County Clerk of Burnet County, Texas.

5. Architectural Control Committee

- A. For the purposes of ensuring the development of the Subdivision as a residential area of high standards of workmanship, materials and harmony of design, an Architectural Control Committee (the "ACC") composed of one or more persons designated by the Declarant until such time as the Declarant assigns in writing such duty to the Foxwood Home Owner's Association, Inc. ("HOA") or until the Declarant has conveyed seventy-five (75%) of the lots in the subdivision, at which time the HOA will appoint the members of the ACC. The member(s) of such committee may appoint additional members, may designate their successor, may appoint persons to fill vacancies or may designate an agent to act for such committee.
- B. **The Architectural Control Committee shall have final say with regard to any and all regulations regarding the installation, construction, placement of all structures and the exterior color approval for all homes in the subdivision.**
- C. The ACC will consist of not less than one (1) and no more than four (4) voting members and such additional non-voting members serving in an advisory capacity as Declarant, its successor or assigns deems appropriate.
- D. The voting members may from time to time designate advisory, non-voting members.
- E. No dwelling, residence, wall, fence or other structure shall be placed upon any Lot until the plan thereof, and the plot plan has been approved, in writing, by the ACC. Refusal or approval of the plans and specifications by the ACC may be based on any grounds, including purely aesthetic reasons, in the sole discretion of the ACC. No person or entity shall incur any liability in connection with the approval or disapproval of any plans. All plans and specifications submitted to the ACC shall become property of the ACC. No alterations in the exterior appearance of any dwelling or structure shall be made without the approval by the ACC. In the event the ACC, or its designated representative, fails to approve or disapprove within 30 days after the plans and specifications have been submitted to the ACC, such plans shall be deemed approved. When a waiver or modification of any of the restrictive covenants would not impair or detract from the quality of the Subdivision, it may, by written instrument, recorded in the Official Public Records of Burnet County, Texas, waive or modify any such restriction.
- F. The ACC's approval is required on all architectural designs prior to construction.
- G. The ACC's approval is required on all exterior house colors and materials prior to their use.

- H. Declarant or its assigns and successors shall have the right to appoint and remove all members of the ACC. Declarant may delegate this right to a Home Owner's Association by written consent, thereafter the Home Owner's Association shall have the right to appoint and remove all members of the ACC.

6. SET-BACK, FRONT LINE AND REAR LINE No structure shall be located or erected on any Lot nearer to any property line than twenty-five (25') feet.

7. SIGNS No signs or other type of advertisement shall be permitted on any Lot, except one professional sign of not more than five (5') square feet advertising the property is for sale.

8. GUNS AND OTHER FIREARMS The discharge of firearms shall not be permitted on any of the property except to rid the property of pests.

9. LOT MAINTENANCE, GARBAGE, REFUSE STORAGE AND DISPOSAL The owner or occupants of all Lots shall at all times maintain Lot and the improvements situated thereon, in a neat, orderly, healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. All trash, metal, plastic, or masonry materials shall be placed in containers with tightly-fitting lids, which containers shall be maintained in a clean and sanitary condition and kept from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced, and may be maintained thereon for a reasonable time so long as the construction progresses without reasonable delay, until completion of the improvements, after which materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No garbage, trash debris, or other waste matter, of any kind, shall be burned on any Lot.

10. ANIMALS Only household pets, not to exceed two (2) dogs and (2) cats will be allowed on any lot. For lots containing four (4) acres or more, one (1) horse may be kept per each four (4) acres, provided that appropriate facilities are available and that keeping and/or maintaining the horse or horses does not create a nuisance.

11. CLEANLINESS No trash, ashes or any other refuse may be thrown or dumped on any vacant Lot, park or drainage area in the Property, and no inoperable automobiles, appliances, discarded furniture or similar types of articles shall be stored or kept on any Lot unless such articles are enclosed and shielded from the public view by an adequate fence.

12. OIL, GAS, MINERAL, MINING AND EXCAVATION OPERATIONS No oil, gas, mineral, mining or excavation operations, of any kind or character, shall be permitted upon any Lot or area of the Property.

13. SEWAGE No dwelling in the Property shall be serviced other than by a public or private sanitary system, or approved septic tank.

14. PROPERTY ENTRANCE All owners subsequent to the Developer are required at their own expense to provide a culvert adequate for the normal flow of drainage at the entrance of their property. The construction and maintenance of access roads on the individual properties shall conform to good engineering practices and shall in no way or manner concentrate or divert or obstruct natural drainage or water run-off in a way that creates a burden or nuisance upon any other property owner. The driveway may be concrete or asphalt. Such driveway will not have less than (16') feet of frontage on the street and will be reduced proportionately to not less than ten (10') feet wide.

15. THE FOXWOOD HOME OWNERS' ASSOCIATION: The Foxwood Homeowners' Association shall be created and empowered as follows (herein "Association"):

- A. The Association shall be a Texas non-profit corporation created, or to be created by Declarant for the purposes, and charged with the duties and vested with the powers, prescribed, by law as set forth



in its Articles and Bylaws of Incorporation or this Declaration. Neither the bylaws or articles shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration; if any inconsistency exists, this Declaration shall control. The Articles and Bylaws are attached hereto as Exhibits and are incorporated herein for all purposes as if set out in their entireties.

- B. Subject to such limitation and restrictions as are set forth in this Declaration, the Bylaws and Articles, the Association shall have the powers of a Texas non-profit corporation, including but not limited to, all powers provided under the provisions of the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute. It shall further have the power to do and perform any and all acts, which may be necessary or proper for, or incidental to, the exercise of any of the express powers granted to it by the laws of Texas by this Declaration. To the fullest extent permitted by applicable law, as the same exist or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a Director of the Association shall not be liable to the Association for monetary damages, or otherwise, for an act or omission in the Director's capacity as a Director. Any amendment of these Bylaws shall be prospective only and shall not adversely offset any limitation on the personal liability of a Director of the Association existing at the time of such repeal or amendment. In addition, the Association shall be entitled to indemnify its Directors, officers, employees and/or members, the subdivision manager, if any, and others acting on the Association's behalf, including without limitations, members of the Architectural Control Committee or other similar committees and any third-party agents and contractors, to the fullest extent allowed by applicable law. The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, Architectural Control Committee member, or employee of the Association ("Indemnified Party or Parties") against reasonable expenses to be paid directly and as actually and reasonably incurred (including attorney's fees, judgments, fines and amounts paid in settlement, including interest, costs and expenses) by the indemnified party in connection with such action, suit or proceeding if it is found and determined by the Board or a Court of Law that the Indemnified Party acted in good faith and in a manner the Indemnified Party reasonably believed to be in, or not opposed to, the best interests of the Association or with respect to any criminal action or proceeding, had not reasonable cause to believe the Indemnified Party's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *Nolo Contendere* or its equivalent, shall not of itself create a presumption that the Indemnified Party did not act in good faith or in a manner which the Indemnified Party reasonably believed to be in, or not opposed to, the best interests of the Associations, or with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnified Party's conduct was unlawful.

Furthermore, without limiting the foregoing in any way, the Association does hereby agree to INDEMNIFY AND HOLD HARMLESS and does hereby INDEMNIFY AND HOLD HARMLESS the Indemnified Parties, jointly and severally, from any and all claims, debts, demands, liabilities, damages, defenses, counter-claims, cross-claims, third party actions, offsets, actions, judgments and causes of action, whether in contract, tort or equity, of whatever nature or character, both known and unknown, whether held or to accrue in the future, including reasonable attorneys fees and expenses incurred, which may hereafter be asserted by any Person, firm, corporation or other entity, arising out of or in any way related to or connected with, directly or indirectly, any act or omission committed by the Indemnified Party in such Indemnified Party's official capacity as a director, officer, architectural control member, or employee. This indemnity provision applies even if such claims, debts, demands, liabilities, damages, defenses, counter-claims, cross-claims third party actions, offsets, actions, judgments and causes of actions were caused in whole or in part by any obligation, act, omission, negligence, breach of contract, misconduct, violation of statutory or common law, breach of warranty, product defect, or conduct of any type by such Indemnified Parties.

- C. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a general obligation of the Association; provided, however, that nothing contained in this Section shall be deemed to obligate the Association to indemnify any member or owner, who is

not a Declarant, who is or has been a director, officer, Architectural Control Committee member, or non-compensated agent of the Association, with respect to any duties or obligations assumed or liabilities incurred by him or her under and by virtue of the restrictive covenants as a member of the Association or owner of a Lot covered thereby.

- D. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, Architectural Control Committee member, employee, servant or agent of the Association, against any liability asserted against or incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability hereunder or otherwise.

16. ASSESSMENTS:

- A. Assessments may be established by the Declarant up to one (1) year after recording of any final plat of the Subdivision, or by the Board of the Association upon the establishment of the Association, pursuant to the provisions of this Section and shall be levied on a uniform basis against each Lot within the Subdivision, subject to the limitations and exceptions as contained herein. The amount of the Assessments shall be determined in accordance with the provisions of this Declaration.

Notwithstanding the foregoing, the Assessments provided for herein shall not, without the consent of the Declarant, apply to the Lot(s) or Undeveloped Lot(s) owned by the Declarant, as long as owned by the Declarant; however upon any sale of such Lot(s) by Declarant, to a third party, the such assessments thereafter shall thereupon be applicable to such Lot(s).

Each unpaid Assessment(s), together with such interest thereon and costs of collection thereof, as hereinafter provided, is the personal obligation of the owner of the Lot(s) against which the Assessment(s) is due, and is secured by a continuing lien against the Lot(s) and all improvements thereon. The Association may enforce payment of such Assessment(s) in accordance with the provisions of this Section.

- B. The Association shall establish one or more funds into which all monies paid to the Association shall be deposited and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association shall be used solely for the purposes authorized by this Declaration, as it may from time to time be amended.
- C. Prior to the beginning of each calendar year, the Declarant, initially, or the Association, after its formation, shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to, the cost of taxes, insurance, maintenance of roadways, rights-of-way, easements, median strips, sidewalks, paths and trails, playing fields, fences, trees, landscaping, irrigation systems and pipelines, repairing of all Common Areas, the cost of enforcing this Declaration, the cost of management of the Subdivision and any contractual obligations related to such management, the cost of providing a fund for contingencies and appropriate replacement of reserves, less any expected income and any surplus from the prior years' fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of the Assessment set by the Association, or initially by the Declarant, shall be final and binding, so long as it is made in good faith. If the sums collected pursuant to such levy prove inadequate for any reason, including non-payment of any individual Assessments, the Association may, at any time and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the Calendar Year or during the Calendar Year in monthly installments, or in such other manner as the Association may designate in its sole and absolute discretion. Notwithstanding the foregoing, each owner, excluding Declarant, shall pay an Assessment to the Association at the rate of One Hundred Eighty and No/100 Dollars (\$180.00) per calendar year per Lot, prorated, beginning on the first day following such owner's acquisition of title to his or her Lot(s), which rate shall continue until changed by the Association as herein provided. At the closing of the acquisition of any Lot(s) from the Declarant, any Builder, in the business of building homes, shall pay a one-time processing fee of \$200. In no event shall the regular annual Assessment per Lot for the year 2003 exceed

the sum of Two Hundred And No/100 Dollars (\$200.00). Thereafter, the regular annual Assessment hereunder shall not be increased by more than ten percent (10%) above the maximum annual Assessment for the preceding calendar year without the affirmative vote of two-thirds (2/3s) of the owners of the Association who are voting in person or by proxy, at a meeting duly called for such purposes. Each time a Lot is transferred after the initial purchase from the Developer, except for Lots sold to a builder who has paid the \$200.00 one time fee, the Association will charge a "Transfer Fee" of \$75.00. The Transfer Fee will be the expense of the new purchaser.

- D. In addition to regular Assessments provided for above, the Declarant or Association, as the case may be, may levy Special Assessments, whenever in the Declarant/Association's opinion such Special Assessments are necessary to enable the Association to carry out the functions of the Association under the **Foxwood Restrictions**. The amount of any Special Assessments shall be at the reasonable discretion of the Association. Notwithstanding the foregoing, any Special Assessment in excess of Two Hundred And No/100 Dollars (\$200.00) per Calendar Year per Lot shall be approved by the affirmative vote of two-thirds (2/3s) of owners who are voting at a meeting duly called for such purpose, who are entitled to vote in accordance with the By-laws.
- E. All Assessments provided for herein shall be the personal and individual debt owed to the Association by the owner of the Lot(s) covered by such Assessment(s). In event of joint ownership or ownership as tenants-in-common by more than one (1) person of any Lot covered by such Assessment, such personal obligations shall be joint and several for each of said owners. No owner, except Declarant, may exempt himself or herself from liability for such Assessments, and in the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at a rate per annum equal to the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest lawful rate, at the rate per annum of eighteen percent (18%)), together with all costs and expenses of collection, including reasonable attorney's fees and court costs.
- F. To the extent permitted by applicable governmental requirements, the payment of the Assessments levied in accordance with this Declaration against each Lot, together with interest thereon as provided above and the costs and expenses of collection, including reasonable attorney's fees, as provided below, is secured by, and there is hereby reserved, created and granted, a continuing lien and charge on and against each Lot to secure payment of the Assessments levied against the subject Lot in accordance with this Declaration, and any interest thereon as provided above and the costs and expenses of collections, including reasonable attorney's fees as provided below. Such lien securing the payment of Assessments shall attach with the priority above set forth from the date that the Lot is purchased by the owner, which lien shall be further evidenced by a Vendor's Lien reserved by the Declarant in the Deed from the Declarant against a Lot to the first purchaser of the Lot. Said vendor's lien retained in the deed being transferred and assigned to the **Foxwood Homeowners' Association, Inc.**, a Texas non-profit corporation, to secure the payment of Assessments shall bind and attach to the Lot and shall be a valid and subsisting lien against the Lot, the owner of the such Lot, and such owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except such lien is or will be automatically subordinated to and only for tax liens and all sums unpaid on any obligations evidencing sums owing or borrowed against such Lot, and secured by a valid and enforceable vendor's lien and/or deed of trust lien created against such Lot, only with respect to the Assessments becoming due after the date the subject mortgage or deed of trust lien was recorded in the Official Records of Burnet County, Texas. It being the intent that in the event of a trustee's sale by the beneficiary of a mortgage lien, vendor's lien and/or a deed of trust lien, that the assessments then due would be extinguished, but the lien securing the assessments would not be extinguished, but would continue to secure any future delinquent assessments. Notwithstanding the above, the Association shall have the power, in the Association's sole and absolute discretion to subordinate the lien created by this Section against any Lot to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Official Records of Burnet County, Texas. Upon written request of any Beneficiary holding a lien on any Lot that is superior to the lien for payment of Assessments as provided herein, the Association shall report to said beneficiary the amount of any Assessment levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

- G. The Association may prepare written notice of Assessment lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the owner of such Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Official Records of Burnet County, Texas. The aforesaid lien for payment of Assessments shall attach with the priority set forth above from the date the payment of such Assessments become due. The association may enforce such lien by the foreclosure sale of the defaulting owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute suit against the owner personally obligated to pay the Assessment for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The owner of the affected Lot shall be required to pay all costs and expenses, including but not limited to reasonable attorney's fees, incurred by the Association in connection with any foreclosure proceedings, whether judicial or non-judicial, and in connection with any collection proceeding the Association or Declarant shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.
- H. The liens for payments of the Assessments provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided however, that in the event of foreclosure of lien of any mortgage superior to the lien for the delinquent Assessment, the lien for the delinquent Assessment will be extinguished, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien mortgage. The extinguishing of any lien for payment of Assessments as herein provided will not relieve any owner from the obligation to pay Assessments subsequently becoming due and payable or affect or impair the lien created and reserved under this Declaration to secure payment of any such Assessments.

17. COMMON AREAS AND EASEMENTS:

- A. The Association shall own all Common Area unless further conveyed in accordance with this Declaration. Title conveyed to any Lot by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Area or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power or any other pipes, lines, poles or conduits on or in any utility facility or appurtenance constructed by Declarant.
- B. No land within the acreage designated "Common or Green Area or Green Belt" on the subdivision plat shall be improved, used, or occupied except in such manner as shall have been approved by Declarant, or the Association, as applicable. The use of the Common Areas is restricted to the homeowners, owner's guests and prospective owners.
- C. Any proposed construction or installation of recreational improvements within a Common Area shall be subject to approval by the Architectural Control Committee.
- D. The Association shall pay for all costs and expenses necessary to operate and maintain all improvements within the Common Area including but not limited to the grading and filling of the walking/jogging trail through out the subdivision, mowing and maintaining of all green areas and lawns within the Common Area, irrigation costs, if any associated with delivering water to the Common Area.
- E. Declarant or his successor and assigns, may from time to time lease the sports playing fields, if any to third-party groups. Such leased uses will be limited to the specific function of each playing field. Any income received from such leases will be allocated to the operations and maintenance account for the general up keep of the Common Areas.
- F. Each and every owner shall have a non-exclusive right and easement in and to the Common Area and a non-exclusive right and easement of ingress and egress to and from and through the Common

Area which non-exclusive rights and easements shall be appurtenant to and shall pass with title to each and every Lot, subject to the following provisions:

- a. The right of the association to establish and publish rules and regulations governing the use of the Common Area affecting the health, safety and welfare of the owners and authorized guests, as well as good stewardship of the Common Area and its improvements
- b. The right of the Association to suspend the right and use of the Common Area and the voting rights of any owners for a period during which any assessment against the subject owner's Lot remains unpaid beyond the period in which such Assessment is due and for any period during which the owner is in violation of this Declaration and/or any subdivision rules and regulations.
- c. The right of the Association to borrow money from any Person for the purpose of improving the Common Area with the ability to mortgage the Common Area as collateral for said loan. (Maybe assign rights or partial rights to assessments versus lien against greenbelt areas)

#### 18. GENERAL PROVISIONS:

These provisions are hereby declared to be restrictions, conditions, covenants and uses running with the land and shall be fully binding on all persons acquiring title to property in the Subdivision, whether by descent, device, purchase, or otherwise, and every person, by the acceptance of title to any Lot in the subdivision, shall thereby agree to abide by and fully perform the foregoing restrictions, conditions, covenants and uses which shall be binding until December 31, 2022. On and after December 31, 2022, said restrictions, conditions, covenants and uses shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part, by the a vote of the owners of three-fourths (3/4s) of the Lot owners in the Property.

#### 19. ENFORCEMENT:

If any person or persons shall violate or attempt to violate any of the above restrictions, conditions, covenants and uses, it shall be lawful for any other person or persons owning any of the Lots in the Property to bring suit to specifically enforce the provisions of these covenants and restrictions; the prevailing party in such suit shall be entitled to recover from the non-prevailing party all costs incurred in such suit, including reasonable attorney's fees and court costs.

No act or omission on the part of any of the beneficiaries of the covenants, conditions, restrictions, and uses herein contained shall ever operate as a waiver of the operation or endorsement of any such covenants, conditions, restrictions, and uses.

#### 20. SEVERABILITY:

Invalidation of any one or part of these conditions, restrictions, covenants, and uses by judgment or court order shall in no way affect any of the others, which shall remain in full force and effect.

#### 21. WAIVER:

Notwithstanding anything herein to the contrary, the Architectural Control Committee, or its assigns or designated representatives, by unanimous vote may waive and/or grant variances of any provision hereof except the covenants contained in Paragraph one (1), hereof, that all Lots shall be used for residential purposes only.

#### 22. ADDITION AND WITHDRAWAL OF LAND:

A. Addition of Land: Declarant may develop certain real property now owned or hereafter acquired by Declarant. Declarant may, at any time and from time to time, add additional lands to the Property and upon the filing of a Notice of Addition of Land as hereinafter described, this Declaration and the covenants, restrictions and obligations set forth herein, shall apply to the added lands and the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. Permission from the Association and/or the Owners is not required for the addition of land. In order to add lands to the Property hereunder, Declarant shall be required only to record in the

Official Records of Burnet County, Texas a notice of Addition of Land (which notices may be contained within any Supplemental Declaration affecting such land) containing the following provisions:

- (a) a reference to this Declaration, which reference shall state the book and page number of the Burnet County Official Records wherein this Declaration is recorded;
- (b) a statement that all of the provisions of this Declaration shall apply to the added land, subject only to the slab and foundation size which shall vary at the discretion of the Declarant, but in no event be less than the sizes designated for Paragraph 4 SIZE AND CONSTRUCTION OF DWELLINGS, GARAGES AND GUEST HOUSES: described above.
- (c) a legal description of the added land; and
- (d) a legal description of all Common Areas or Greenbelts to be owned by the Association with in the added land.

B. Withdrawal of Land: Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions, obligations and liens set forth herein shall not longer apply to those lands withdrawn. The procedure for withdrawal of land shall be substantially the same as set forth above for the Addition of Land except that the instrument shall be designated as a Notice of Withdrawal of Land and the provisions of such Notice shall be modified as necessary to provide for the withdrawal of land rather than the addition of land.

EXECUTED this \_\_\_\_\_ day of September, 2003.

DECLARANT:

71/271 Investments, LLP, a Texas limited liability partnership

\_\_\_\_\_  
By Greg Sellards, Managing Partner

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**THE STATE OF TEXAS**

**COUNTY OF BURNET**

This instrument was acknowledged before me on September \_\_\_\_, 2003, by Greg Sellards, Managing Partner, 71/281 Investments, LLP, a Texas limited liability partnership, as the act and deed of said partnership.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary's Name Printed

**EXHIBIT C**

**BYLAWS**

**OF**

**FOXWOOD HOME OWNERS' ASSOCIATION, INC.**

**BYLAWS**  
**OF**  
**FOXWOOD HOME OWNERS' ASSOCIATION, INC.**



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**BYLAWS**  
**OF**  
**FOXWOOD HOME OWNERS' ASSOCIATION, INC.**

**ARTICLE I**

Name, Principal Office, and Definitions

A. Name. The name of the corporation shall be Foxwood Home Owners' Association, Inc. ("HOA").

B. Principal Office. The principal office of the HOA initially shall be located at Greg Sellard, 1179 Corporate Drive West, Suite 100, Arlington, Texas 76006.

C. Definitions. Capitalized terms used but not defined in these Bylaws shall have the same meaning as set forth in that Declaration of Covenants Conditions and Restrictions for Foxwood recorded in the Official Public Records of Burnet County, Texas (said Declaration, as amended, renewed, or extended from time, is hereinafter sometimes referred to as the "**Declaration**"). Foxwood Home Owners' Association, Inc. shall be referred to herein as "HOA" or the "Association".

**ARTICLE II**

HOA: Membership, Meetings, Quorum, Voting, Proxies

A. Membership. The HOA shall have (2) classes of membership, Class "A" and Class "B". All Owners of Lots shall be Members of the HOA. The total number of Lots currently planned for the subdivision is sixty-nine (69).

Section 1. **"Class "A" Members"** shall be all Members with the exception of the Class "B" Member. Each Class "A" member shall be entitled to one (1) vote per Lot owned by such Class "A" Member (the **"Class "A" Votes"**).

Section 2. The sole **"Class "B" Member"** shall be the Declarant by 71/281 Investments, LLP, a Texas limited liability partnership, acting by and through its duly authorized managing partner, Greg Sellards – and its successor and assigns. The Class "B" Member shall be entitled to four (4) votes per Lot owned by the Class "B" Member (the **"Class "B" Votes"**).

B. Place of Meetings. Meetings of the HOA shall be held at the principal office of the HOA or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

C. Annual Meetings. The first meeting of the Members of the HOA, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the HOA. Subsequent regular annual meetings shall be set by the Board of Directors.

D. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the HOA if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least thirty-three percent (33%) of the total Class "A" Votes. Any such petition shall include a statement as to all items expected to be presented at such special meeting. Such petition shall only be valid if the matter(s) to be presented are matter(s) which Members are entitled to vote on pursuant to Article II, Section H, below. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof.

E. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Such notice shall contain an agenda for such meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as authorized and as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail first class addressed to the Member at his or her address as it appears on the records of the HOA, with postage thereon prepaid.

F. Waiver of Notice. Waiver of notice of a meeting of the HOA shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the HOA, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised in writing before the business is put to a vote.

G. Adjournment of Meetings. If any meeting of the HOA cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, in person (or by proxy), may adjourn the meeting to a time not less than three (3) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business that might have been transacted

at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

H. Voting. The voting rights of the Members shall be as set forth herein and in the Declaration. Each Class A member as of the date of the notice of such meeting shall be entitled to one vote at such meeting, such notice date being the date of record for purposes of these Bylaws. Except as otherwise specifically provided herein or in the Declaration, the votes allocated to each Lot shall be cast only by the Owner of such Lot, or his or her proxy, as more particularly provided herein or in the Declaration. The Members shall have the right to vote only on the following matters: 1) Nomination and election of the Board (requiring a majority); 2) Removal of Directors (requiring a majority); 3) Amendment of the Declaration in accordance with the terms of the Declaration; 4) Mergers, dissolution or sale of substantially all of HOA assets (requiring two thirds of the total eligible number of votes); and 5) Any other matter(s) authorized by the Declaration. Any Member who is delinquent in the payment of any HOA assessment or is otherwise in violation of any of the terms of the Declaration or of the HOA rules and regulations as of the date of record (for which violation written notice had been delivered by the HOA to such Member prior to the date of record shall not be entitled to vote at such meeting. Class B Member(s) may vote at such meeting in accordance with Article II, A, Section 2 of these Bylaws.

I. Joint or Common Ownership. Any Property interest entitling Member(s) thereof to vote as herein provided, jointly or in common by more than one Person, shall require Member(s) to designate, in writing, the individual Person or Member who shall be entitled to cast such vote(s) and no other Person shall be authorized to vote on behalf of such Property interest. A copy of such written designation shall be filed with the Secretary of the Board before any such vote may be cast, and upon the failure of Member(s) thereof to file such designation, such votes shall neither be cast nor counted for any purpose whatsoever.

J. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number of votes.

K. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of Members representing ten percent (10%) of the total eligible votes in the HOA (i.e. Class "A" Votes plus Class "B" Votes) shall constitute a quorum at all meetings of the HOA.

L. Conduct of Meetings. The President shall preside over all meetings of the HOA, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted at the meeting and all transactions occurring at the meeting.

M. Action Without a Meeting. Any action required by law to be taken at a meeting of the HOA or any action that may be taken at a meeting of the HOA, may be taken without a meeting if written consent setting forth the action so taken is signed by the Owners of two thirds of the total eligible number of votes with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Members.

N. Proxies. At all meetings of the HOA, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

### ARTICLE III

#### Board of Directors; Number, Powers, Meetings

##### A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the HOA shall be governed by a Board of Directors, each of whom shall have one (1) vote. After Class "B" Membership ceases to exist, all directors must be Members. However, so long as Class B Membership exists, directors are not required to be Members. In the case of a Member that is a corporation or a partnership, the person designated in writing by either proxy or a resolution to the Secretary of the HOA as the representative of such corporation or partnership shall be eligible to serve as a director.

##### Section 2. Directors During Class "B" Membership Existence.

(a) During the existence of Class "B" Membership, the Class "B" Member shall retain control and authority to appoint all members of the Board of Directors of the HOA. Class "B" Membership ceases on January 1, 2020 or when eighty percent (80%) of the Lots (69) reflected on the final plat of the Subdivision are sold, whichever occurs later or at any earlier time as may be determined by the Class "B" member. At such time, the Class "B" Votes of the Class "B" Member shall be converted to Class "A" Votes.

Section 3. Number of Directors. The number of directors of the HOA shall be not less than three (3) nor more than nine (9), as provided in Section 5 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation. After Class "B" Membership ceases to exist, the Board shall consist of not less than seven (7) directors.

##### Section 4 Nomination and election of Class "A" Directors After Class "B" Membership Ceases To Exist.

(a) Once Class "B" Membership ceases to exist, nominations for election of Directors to the board of directors shall be made by a Nominating Committee. The Nominating Committee shall consist of the Chairman of the Board of Directors, and three (3) or more Class "A" Members of the HOA elected by Class "A" Members. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the HOA to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting.

(b) Elections of Directors to the Board of Directors shall be by secret written ballot at annual meetings of the HOA. At such election, the Class "A" Members or their proxies may cast, in respect to each vacancy as many Class "A" Votes as they are entitled to exercise under the provisions of these Bylaws. The person(s) receiving a majority of Class "A" shall be elected. No cumulative voting shall be permitted.

Section 5. Term of Office: Removal of Directors and Vacancies.

(a) The term of the initial three (3) Directors shall expire on July 1, 2004, July 1, 2005, and July 1, 2006 respectively. The length of term of each of the initial directors will be agreed upon among them. Any vacancy created during the term of any Director may be filled by appointment by the Class "B" Member.

(b) Thereafter, at each annual meeting of the Members held during the period of Class "B" Membership, the Class "B" Member shall appoint the applicable number of Directors to serve for the following calendar year. The Directors shall serve one (1) year term from July 1<sup>st</sup> to June 30<sup>th</sup>. Directors may be reappointed and/or reelected, as applicable.

(c) Any director appointed by the Class "B" Member may be removed, with or without cause, by the Class "B" Member shall appoint a successor to fill the vacancy for the remainder of the term of such director. After Class "B" Membership ceases to exist, a Director who was elected at large by the votes of Class "A" Members may be removed from office prior to the expiration of his or her term only by the votes of a majority of Class "A" Members. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected within thirty (30) days by the Class "A" Members entitled to elect the Director so removed to fill the vacancy for the remainder of the term of such Director.

(d) At each annual meeting of the HOA, immediately following appointment and/or election of the directors (as applicable), the directors shall elect (by a majority vote of the directors) a Chairman who will preside over all Board of Director meetings held during the following calendar year.

B. Meetings.

Section 1. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the Membership shall be held within sixty (60) days thereafter at such time and place as shall be fixed by the Chairman of the Board.

Section 2. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Chairman of the Board, but at least one (1) such meeting shall be held during each fiscal year. Notice of the time and place of the meeting shall be communicated to the directors not less than three (3) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. Board of Director meeting may be conducted by telephone communication provided that all directors are properly notified of such telephonic meeting in accordance with these Bylaws and provided further that all directors who are participating in such telephonic meeting can hear each other for the duration of such telephonic meeting. Alternatively, the Board of Directors may schedule a regular meeting date, place and time and, after forwarding notice of the same, shall not have the obligation to give future notices until a change is made.

Section 3. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice issued at the request of the Chairman of the Board or by any three (3) directors; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting. The notice shall be given to each director by one of the following methods: (i) by personal delivery; (ii) written notice by first class mail, postage prepaid; (iii) by telephone communication, facsimile or other such communication methods, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the HOA. Notices sent by first-class mail shall be deposited into a United States mailbox at least five (5) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 4. Waiver of Notice. The transaction of any meeting (regular or special) of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting, each of the directors not present signs a written waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting in writing before or at commencement about the lack of adequate notice.



Section 5. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present (or participating, if a telephonic meeting) at a meeting at which a quorum is present (or participating, if a telephonic meeting) shall constitute the decision of the Board of Directors. If any meeting of the Board cannot be held because a quorum is not present (or participating), a majority of the directors who are present (or participating) at such meeting may adjourn the meeting to a time not less than three (3) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present (or participating), any business that might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Compensation. No director shall receive any compensation from the HOA for acting as such; provided, however, that a director may be reimbursed for actual expenses incurred on behalf of the HOA in the performance of his or her duties upon approval of a majority of the other directors.

Section 7. Conduct of Meetings. The Chairman of the Board shall preside over all meetings of the Board of Directors, and a secretary appointed by the Board at such meeting shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 8. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 1. Powers. The Board of Directors shall be responsible for the affairs of the HOA and shall have all of the powers and duties necessary for the administration of the HOA's affairs. The Board of Directors shall delegate to one or more of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager that might arise between meetings of the Board of Directors. In addition to the duties imposed by these Bylaws, Texas law or by any resolution of the HOA that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, to the extent deemed necessary by the Board, if at all, the following, in way of explanation, but not limitation:

(a) entering into a contract with (a) 71/281 Investments, LLP, a Texas limited liability partnership, acting by and through its duly authorized managing partner, Greg Sellards (b) an affiliate of 71/281 Investments, LLP, or (c) another third-party (and such party's successors and assigns), for the management, operation, maintenance or

other responsibility, either in whole or in part, of the Property and the performance of the powers and duties, either in whole or in part, of the HOA set forth herein;

(b) preparing and adopting of annual budgets;

(c) establishing periodic HOA dues and assessments, establishing the means and methods of collecting such dues and assessments, and establishing the payment schedule for special assessments, if other than annual;

(d) collecting HOA dues and assessments, depositing and investing the proceeds thereof in a bank depository that it shall approve, and using the proceeds to operate the HOA; provided, any reserve fund may be deposited and invested, in the directors' reasonable business judgment, in accounts, securities and/or investments other than bank depository accounts (the Board shall have no liability, either jointly, personally or individually, for the loss of said sums);

(e) accepting, owning and operating, caring, up keeping and maintaining all Common Area;

(f) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area, in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(g) designating, hiring, and dismissing the personnel or contractors necessary for the operation of the HOA and the maintenance, operation, repair, and replacement of the Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of rental of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(h) making and amending HOA rules and regulations and those imposed by the Declaration;

(i) opening of bank accounts and investment accounts on behalf of the HOA and designating and signatories required;

(j) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by the HOA and bringing or defending any proceedings that may be instituted on behalf of or against the Owners concerning the HOA;

(k) obtaining and carrying insurance, if available, against casualties and liabilities (including, without limitations, directors and officers liability insurance) with policy limits, coverage, and deductibles as deemed reasonable by the Board of Directors and paying the premium cost thereof;

(l) paying the cost of all bills, taxes (real and personal property), assessments and services rendered to the HOA;

(m) keeping books and detailed accounts of the receipts and expenditures affecting the HOA and its administration;

(n) maintaining a membership register reflecting, in alphabetical order, the names, property addresses and mailing addresses of all Members;

(o) making available upon request to any prospective purchaser, any Owner, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, for any proper purpose during normal business hours by advance appointment, copies of the Declaration, the Articles of Incorporation, the Bylaws, HOA rules and regulations governing such Lot and all other books, records, and financial statements of the HOA for a reasonable charge;

(p) permitting utility suppliers, the Declarant and others to use portions of the Common Areas as may be reasonably necessary for the ongoing development or operation of the Subdivision;

(q) leasing any Common Area(s) to third-parties, including Declarant, for a) agricultural purposes and the right to occupy and operate any Common Area(s) for agricultural purposes including, without limitation, the following activities: cultivating the soil, producing crops for human food, animal feed or for the production of fibers; floriculture, and horticulture; of fiber, leather, pelts, or other tangible products having a commercial value; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure, b) soccer and baseball fields, and c) private entertaining and catering of Members and non-members;

(r) establishing and maintaining wildlife management program(s) within any Common Area(s);

(s) providing or causing to be provided services to Members for a fee and the right to contract with third parties to provide such services;

(t) entering upon any Lot at any time in an emergency, involving an immediate threat of serious injury to persons or property, or in a non-emergency after twenty-four hours' written notice, without being liable to any Owner, for the purpose of enforcing the Declaration, maintaining or avoiding any injury to persons or property or repairing any area, Improvement or other facility to conform to the declaration, reasonably calculated to notify the Owner of the HOA's intentions so as to provide the owner an opportunity to address them prior to such entry. The expense incurred by the HOA in connection with the entry made in accordance herewith upon any Lot and the maintenance and repair work conducted thereon shall be the personal obligation of the Owner of the Lot entered upon, shall be secured by a lien upon the Lot entered upon and

the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VI of the Declaration. The HOA shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Declaration. The HOA is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Declaration;

(u) Indemnifying and reimbursing and/or advancing expenses and/or purchasing and maintaining insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any Person who is or was a director or officer of the HOA against any liability asserted against such Person and incurred by such person in such a capacity or arising out of his status as such a Person to the maximum extent permitted by Article 1396 S 2.22A of the Texas Non-Profit Corporation Act, as such Act may from time to time be amended (without regard, however, to Section Q of such Article with respect to officers of the HOA who are not directors of the HOA). Further, the HOA, acting through the Board, may indemnify and agree to reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any Person, other than any Person who is a director of the HOA, who is or was an officer, employee or agent of the HOA or a member of the Architectural Committee, or is or was serving at the request of the HOA as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan to other enterprise, against any liability incurred against such Person and incurred by such Person in such a capacity or arising out of his status as such a Person, to such extent (or, in the case of officers the HOA, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of the Section shall not be deemed exclusive of any other rights to which any such Person may be entitled under any section of the Declaration, agreement, insurance policy, vote of Members or otherwise. All costs and expenses of the insurance and other arrangements described herein shall be covered by Assessments; and

(v) Any other power and duty provided for by the Declaration.

Section 3. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) Accrual or cash accounting, as defined by generally accepted accounting principles, shall be employed.

(b) Accounting and controls should conform to generally accepted accounting principles.

(c) Cash accounts of the HOA shall not be commingled with any other accounts.

(d) No remuneration without full disclosure and prior agreement of the Board of Directors, or as contained in a written management contract, shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the HOA, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the HOA.

(e) Any financial or other interest that any director, Member or the managing agent may have in any firm providing goods or services to the HOA shall be disclosed in advance to the Board of Directors.

(f) Commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the HOA quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual or cash basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period;  
and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments that remain delinquent.

(g) An annual report consisting of at least the following shall be made available at each meeting of Members to all Members within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant.

Section 4. Borrowing. The HOA shall have the power to borrow money from any Person (and may pledge HOA assets as collateral for any such loan) for the purpose of maintenance, repair, restoration of the Common Area, or for any other proper purpose without the approval of the Members of the HOA.

Section 5. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Lot of the violating Owner, and to suspend an Owner's right to vote or limit any person's right to use the Common Area, if any, for violation of any duty imposed under the Declaration, these Bylaws, or any rules

and regulations duly adopted by the HOA; provided, however, nothing herein shall authorize the HOA or the Board of Directors to limit ingress and egress to or from a Lot. In addition, the HOA shall be entitled to suspend any services provided by the HOA to a Lot in the event that the Owner of such Lot is more than thirty (30) days delinquent in paying any assessment due to the HOA. In the event that an occupant, guest or invitee of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the HOA. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

As provided in the Declaration, any assessment and/or fine not paid by an Owner to the HOA following notice and within applicable cure period(s) may result in a lien being imposed against the Lot, which can be acted upon and /or foreclosed by the HOA. In addition, the HOA, Bylaws, or the rules and regulations of the HOA by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations and perform exterior maintenance) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible attorney's fees actually incurred.

## **ARTICLE IV**

### Officers

A. Officers. The officers of the HOA shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

B. Election, Term of Office and Vacancies. The officers of the HOA shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the HOA. A vacancy in any office arising because of death resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

C. Removal. Any officer may be removed, with or without cause, by a majority vote of the Board of Directors whenever in its judgment the best interests of the HOA will be served thereby.

D. Powers and Duties. The officers of the HOA shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the HOA. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and these Bylaws and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

E. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

F. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the HOA shall be executed by such officer or officers or such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE V

### Committees

A. General. The Board of Directors is hereby authorized to establish committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee established by the Board shall operate in accordance with such rules as are adopted by the Board of Directors. All committees of the HOA, except the Architectural Committee, shall be vested with advisory powers only and is not authorized to act on behalf of the HOA. Officers of the HOA may also serve as committee members.

## ARTICLE VI

### Indemnification

To the fullest extent permitted by applicable law, as the same exist or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a director of the HOA shall not be liable to the HOA for monetary damages, or otherwise, for an act or omission in the Director's capacity as a Director. Any amendment of these Bylaws shall be prospective only and shall not adversely offset any limitation on the personal liability of a Director of the HOA existing at the time of such repeal or amendment. In addition, the HOA shall be entitled to indemnify its Directors, officers, employees and/or Members, the Subdivision Manager (and its constituent partners and their respective directors, officers, employees, shareholders and/or members) and others

acting on the HOA's behalf, including, without limitation, members of the Architectural Committee or other similar committees and any third-party agents and contractors, to the fullest extent allowed by applicable law. The Association shall indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, Architectural Committee Member, or employee of the Association (the "Indemnified Party or Parties") against reasonable expenses to be paid directly and as actually and reasonably incurred (including attorney's fees, judgments, fines and amounts paid in settlement, including interest, costs and expenses) by the Indemnified Party in connection with such action, suit or proceeding if it found and determined by the Board or a Court of Law that the Indemnified Party 1) acted in good faith and in a manner the Indemnified Party reasonably believed to be in, or not opposed to, the best interests of the Association or 2) with respect to any criminal action or proceeding, had not reasonable cause to believe the Indemnified Party's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *Nolo Contendere* or its equivalent, shall not of itself create a presumption that the Indemnified Party did not act in good faith or in a manner which the Indemnified Party reasonably believed to be in, or not opposed to, the best interests of the association, or with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnified Party's conduct was unlawful.

Furthermore, without limiting the foregoing in any way, the Association does hereby agree to INDEMNIFY AND HOLD HARMLESS and does hereby INDEMNIFY AND HOLD HARMLESS the Indemnified Parties, jointly and severally, from any and all claims, debts, demands, liabilities, damages, defenses, counter-claims, third party actions, offsets, actions, judgments and causes of action, whether in contract, tort or equity, of whatever nature or character, both known and unknown, whether held or accrued in the past, present or to accrue in the future, including reasonable attorneys' fees and expenses incurred, which may hereafter be asserted by any Person, firm, corporation or other entity, arising out of or in any way related to or connected with, directly or indirectly, any act or omission committed by the Indemnified Party in such Indemnified Party's official capacity as a director, officer, Architectural Committee Member, or employee. This indemnity provision applies even if such claims, debts, demands, liabilities, damages, defenses, counter-claims, cross-claims, third party actions, offsets, actions, judgments and causes of action were caused in whole or in part by any obligation, act omission, negligence, breach of contract, misconduct, violation of statutory or common law, breach of warranty, product defect, or conduct of any type by such Indemnified Parties.

## ARTICLE VII

### Miscellaneous

A. Fiscal Year. The fiscal year of the HOA shall be January 1st to December 31 of each year.



B. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of HOA proceedings when not in conflict with Texas law, the articles of Incorporation, the Declaration, or these Bylaws.

C. Conflicts. If there are conflicts between the provisions of Texas law, the Articles of Incorporation, the Declaration, and/or these Bylaws, then the provisions of Texas law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

D. Books and Records.

Section 1. Inspection by Members and Mortgagees. The Declaration, Bylaws, and Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the HOA, books of account, and the minutes of meetings of the HOA shall be made available for inspection and copying by any holder, insurer or guarantor of the first Mortgage on the Lot, a Member of the HOA, or by the duly appointed representatives of any of the foregoing at any reasonable time and for a proper purpose during normal business hours at the office of the HOA or at such other place within the subdivision as the Board shall prescribe, by appointment.

Section 2. Rules for Inspection. The Board shall establish reasonable rules with respect to: (i) notice to be given to the custodian of records; (ii) hours and days of the week when such an inspection may be made by appointment for a proper purpose; and (iii) payment of the cost of reproducing copies of documents requested.

Section 3. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the HOA and the physical property owned or controlled by the HOA. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the HOA.

E. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first-class postage prepaid:

(a) if to a Member, at the address that the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the HOA, the Board of Directors, or the managing agent, at the principal office of the HOA or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

F. Amendment. These Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of a majority of the Board of Directors and the consent of the Class "B" Member, so long as such membership exists. Notwithstanding the above, the percentage of votes or other approval necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Class "B" Member without the written consent of Declarant or the assignee of such right or privilege.

### **CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Foxwood Home Owners' Association, Inc., a Texas non-profit corporation;

That the foregoing Bylaws constitute the original Bylaws of said HOA, as duly adopted at a meeting of the Board of Directors thereof held on September \_\_\_\_, 2003.

IN WITNESS WHEREOF, I have executed these Bylaws on behalf of the HOA on this \_\_\_\_ day of September, 2003.

\_\_\_\_\_  
Darrell Sargent, Secretary