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Johnson County Iowa
Kim Painter County Recorder
BK 3806 PG 650-677

Resolution No. 04-29

RESOLUTION APPROVING THE PLAT AND SUBDIVISION OF FOX RUN SUBDIVISION PART 11, NORTH LIBERTY, IOWA.

WHEREAS, the owner and subdivider, BGY Properties, has filed with the City Clerk a final plat and subdivision for the property described in Exhibit A, which is attached hereto and made a part hereof, and

WHEREAS, said real estate is owned by the above-named party and subdivision is being made with the free consent and in accordance with the desires of the owner, and

WHEREAS, said plat and subdivision has been examined by the North Liberty Planning and Zoning Commission, which recommended that the plat and subdivision known as Fox Run Subdivision Part 11, be accepted and approved, and

WHEREAS, said plat and subdivision is found to conform with Chapter 354 of the Code of Iowa and ordinances of the City of North Liberty, and

NOW, THEREFORE, BE IT RESOLVED that the City Council of North Liberty, Iowa, does hereby approve the plat and subdivision of Fox Run Subdivision Part 11, including such modifications, variances and waivers from the general requirements of the Municipal Code of North Liberty as shown on the final plat, according to the legal description as set forth herein.

BE IT FURTHER RESOLVED that the Clerk is further authorized and directed to send a copy of this Resolution to the Johnson County Recorder for recording, all at the expense of the applicant.

Passed and approved this 13 day of April, 2004.

CITY OF NORTH LIBERTY, IOWA

BY: _____
Clair Mekota, Mayor

ATTEST: Mary K. Mitchell
Mary K. Mitchell, City Clerk

See Plat BK 48 pg. 116

EXHIBIT A

Fox Run Subdivision Part 11

Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way Line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; Thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly Line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line, 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line, 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

I, Mary K. Mitchell, upon oath, being first duly sworn, do depose and state that I am the duly qualified and acting City clerk of the City of North Liberty, Iowa, and in such capacity do certify that the above and foregoing is a true and correct copy of Resolution No. 04-29, approving plat and subdivision in the City of North Liberty, Iowa, which was duly adopted on the 13 day of April, 2004.

I further certify that the original of said document has been duly recorded in the records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City on this 15 day of October, 2004.

CORPORATE SEAL

Mary K. Mitchell
Mary K. Mitchell, City Clerk

Subscribed and sworn to before me this 15 day of October, 2004.

Mary J. Byers
Notary Public in and for
Johnson County, Iowa

NOTARIAL SEAL IOWA
MARY J. BYERS
Commission Number 146203
My Commission Expires
2-11-06

Prepared by Janice M. Becker, 2210 9th St., Ste 1, Coralville, IA 52241 (319)354-6880

OWNER'S CONSENT AND DEDICATION

Re: Fox Run Subdivision - Part 11, North Liberty, Iowa

Janice M. Becker as President of BGY Properties, Ltd. does hereby certify and state that BGY Properties, Ltd. is the owner and proprietor of the following real estate, situated in North Liberty, Johnson County, Iowa:

(see attached legal description)

The subdivision of said real estate as it appears on the Final Plat of **Fox Run Subdivision - Part 11**, North Liberty, Iowa, is with the free consent and in accordance with the desire of the proprietor. All lands within the Final Plat that are designated for streets or other public use are hereby dedicated to the City of North Liberty, Iowa.

IN WITNESS WHEREOF, the proprietor has caused these presents to be signed on this 3 day of SEPTEMBER 2004.

BGY PROPERTIES, LTD., Proprietor

By: Janice M Becker
Janice M. Becker, President

State of Iowa)
)ss:
County of Johnson)

On this 3 day of September 2004 before me, the undersigned a Notary Public in and for the State of Iowa personally appeared Janice M. Becker, to me personally known, who being by me duly sworn, did say that she is the President of said corporation that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Janice M. Becker as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by her voluntarily executed.

Ann E Alton
Notary Public in and for the State of Iowa.

NOTARIAL SEAL IOWA
ANN E. ALTON
Commission Number 164031
My Commission Expires
2-21-07

Fox Run Subdivision – Part 11

Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way Line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; Thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly Line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line, 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line, 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.

Prepared by Thomas H. McMurray, 2210 9th St. Ste 1, Coralville, IA 52241-1569 (319)351-6881

MORTGAGE HOLDER'S CONSENT TO FOX RUN SUBDIVISION - PART 11, NORTH LIBERTY, IOWA

KNOW ALL MEN BY THESE PRESENTS:
That the Solon State Bank, Solon, Iowa, is the holder of the following mortgages given as follows:

A Purchase Money Mortgage (Open-End) by Janice M. Becker dated November 8, 2000 and recorded November 17, 2000 in Book 3019, Page 161 of the Johnson County Recorder's Office.

A Mortgage (Open-End) by BGY Properties Ltd., dated March 19, 2004 and recorded March 31, 2004 in Book 3713, Page 150 of the Johnson County Recorder's Office.

and covering the following described real estate (in addition to other real estate):

See Attached Legal Description

That the real estate covered by these mortgages is included in the property being subdivided as "Fox Run Subdivision - Part 11, North Liberty, Iowa" and the undersigned mortgagee hereby consents to the procedure and the approval of said subdivision and to the dedication to the City of North Liberty of all lands within the Final Plat that are designated for streets or other public use and does hereby release from said mortgages all lands to be so dedicated.

IN WITNESS WHEREOF, the foregoing consent has been signed this 13 day of SEPTEMBER 2004.

SOLON STATE BANK

By _____
D. Neil Erusha, President

State of Iowa)
)ss:
Johnson County)

On this 13 day of SEPTEMBER, 2004, before me, the undersigned, Notary Public in and for said County and State, personally appeared D. Neil Erusha, to me personally known, who, being by me duly sworn did say that he is the President of said corporation executing the within and foregoing instrument, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and that said President as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

_____
Notary Public in and for the
State of Iowa

JANICE M. BECKER
Commission Number 166381
My Commission Expires
09-03-07

Fox Run Subdivision – Part 11

Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way Line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; Thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly Line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line, 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line. 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.

Prepared by: William J. Sueppel, 122 South Linn Street, Iowa City, IA 52240, (319) 338-9222

DEVELOPER'S AGREEMENT

THIS AGREEMENT, made by and between the City of North Liberty, Iowa, a municipal corporation, hereinafter referred to as "City," and BGY Properties, hereinafter referred to as "Developer."

SECTION 1. REQUEST FOR PLAT APPROVAL.

Developer has requested that the City approve the final plat for a proposed subdivision known as Fox Run Subdivision – Part 11 (referred to herein as the "plat") for the following described real estate situated in North Liberty, Johnson County, Iowa, to wit:

> Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line, 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest

Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.

SECTION 2. CONDITIONS OF PLAT APPROVAL AND RIGHT TO PROCEED.

The City agrees that it will approve the subdivision upon the condition that Developer enter into and abide by this Agreement. Developer further agrees that this Agreement shall be a covenant running with the land and shall be binding on the present and future owners of the property.

The Developer may not grade or otherwise disturb the earth, remove trees, construct sanitary sewer mains, storm sewer mains, water mains, streets, utilities, public or private improvements or any buildings until the following conditions have been satisfied:

1. This Agreement has been fully executed by both parties, filed with the City Clerk, approved by the City Council and recorded at the Johnson County Recorder's Office; and

2. That the plat has been recorded in the Office of the Johnson County Recorder.

SECTION 3. PROPERTY IMPROVEMENTS.

In further consideration of the City approving the proposed subdivision, the Developer agrees, as a covenant running with the land, that, except as provided in this Agreement, the City shall not approve any dwelling on final inspection or issue any occupancy permit for any dwelling units in said subdivision until the Developer has installed and/or paid for the following improvements or complied with the following conditions:

A. Developer agrees that all streets shown on the plat will be constructed of concrete paving at least twenty-nine (29) feet in width unless otherwise provided herein;

B. Water system;

C. Storm sewer and drainageway system;

D. Concrete curb and gutter;

E. Decorative street lighting;

F. Site grading;

G. Underground utilities;

H. Setting for lot and block monuments;

I. Surveying and staking;

J. Concrete sidewalks, four (4) feet wide in width;

K. The Developer agrees, as a condition of the approval of this subdivision and Fox Run – Part 12 subdivision, to pay a traffic impact fee of $57,130.00 to be used for future road improvements to Scales Bend Road. The fee will be paid prior to the issuance of a building permit for the lot.

L. The Developer shall submit a stormwater management plan which will identify the drainage of this Development and specify the manner in which stormwater drainage and runoff will be accommodated. The Developer agrees to dispose of all stormwater through the approved stormwater and drainage system as set forth in the stormwater management plan. The Developer shall have a duty to continue the drainage across the property, and, in no event, shall the Developer create an undue hardship on the adjoining property owners through the manner in which stormwater runoff and drainage is controlled.

M. The Developer agrees that any restrictive covenants that are drafted and placed upon the property located within the subdivision shall be reported, and the Developer shall provide the City with a copy of any restrictive covenants affecting this subdivision.

The Developer shall provide for the installation of all electric lines, street lights, gas mains, telephone lines and other utility facilities that are necessary at the Developer's sole cost. Developer further agrees that all utilities shall be installed underground. Nothing in this Agreement shall be construed to impose a requirement on the City to install public improvements, nor shall the Developer be deemed to be acting as the City's agent during the construction or installation of any of the above-described improvements. The parties agree that the obligation to install the above-described improvements shall be in accordance with the plans and specifications drafted by the Developer and subject to the approval of the City. Furthermore, the obligations contained in this Agreement shall

remain on the Developer until completion by the Developer, and until acceptance by the City, as provided by law.

SECTION 4. EROSION CONTROL AND GRADING.

A. Erosion Control. Before any utility construction is commenced or building permits are issued, the Developer shall design and implement an erosion control plan which shall be reviewed and approved by the City. All areas disturbed by the excavation and backfilling operations shall be reseeded forthwith after the completion of the work in that area. All seeded areas shall be fertilized, mulched and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion, and, if the Developer does not comply with the erosion control plan or any supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion and assess the costs of such action to the Developer. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder.

B. Grading. No grading of any nature may occur on this property until a grading plan is implemented by the Developer and approved by the City. Within ninety (90) days after the completion of any grading, the Developer shall provide the City with an "as-constructed" grading plan and a certification by registered land surveyor or engineer that all ponds, swales and ditches, if any, have been constructed in accordance with the plans approved by the City.

SECTION 5. PHASED DEVELOPMENT.

If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases will not be allowed to proceed until Developer's Agreements for such phases are approved by the City.

SECTION 6. MISCELLANEOUS.

A. The Developer represents and states that the plat complies with all city, state and federal laws and regulations, including but not limited to subdivision ordinances, zoning ordinances and environmental regulations. The City may, at its option, refuse to allow construction or development work in the subdivision until the Developer complies with the appropriate law or regulation. Upon the City's demand, the Developer shall cease work until there is compliance.

B. Third parties shall have no recourse against the City under this Agreement.

C. Breach of the terms of this Agreement, by the Developer, shall be grounds for denial of building permits, occupancy permits or other permits.

D. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.

E. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers must be in writing, signed by both parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or a release.

F. This Agreement shall be binding on the Developer, its assigns or successors in interest unless otherwise provided in this Agreement.

G. The Developer's obligations under this Agreement shall continue in full force and effect even if the Developer sells a portion of the subdivision, the entire platted area or any part thereof.

H. If building permits are issued prior to the completion and acceptance of public improvements, the Developer assumes all liability for costs resulting from delays in completion of public improvements and damage to public improvements caused by the City, the Developer, its contractors, subcontractors, material men, employees, agents or third parties.

I. The Developer shall take out and maintain a public liability and property damage insurance policy covering personal injury, including death, and claims for property damage which may arise out of the Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them.

SECTION 7. OCCUPANCY PERMIT.

Prior to the issuance of an occupancy permit for any building constructed, the City, in its discretion, may require the Developer, its assigns or successors in interest, to construct and install such improvements and facilities as required by this Agreement.

SECTION 8. ASSESSMENT WAIVER.

In the event the Developer, its assigns or successors in interest, should sell or convey lots in said subdivision without having constructed or installed the improvements and facilities as provided in this Agreement; or the Developer, its assigns or successors in interest in said subdivision, shall fail to construct sidewalks, the City shall have the right to install and construct said improvements, facilities and sidewalks. The cost of said improvements, facilities and sidewalks shall be a lien and charge against all of the lots adjacent to or in front of the improvements which are made and any lots which may be assessed for improvements under the provisions of Chapter 384 of the Iowa Code. It is further provided that this requirement to construct said improvements is and shall remain a lien from the date of execution until properly released as hereinafter provided.

The Developer acknowledges and agrees that all lots of the subdivision are specifically benefited by the improvements and facilities, and the cost of such improvements and facilities need not meet the requirements of notice, benefit or value as provided by the law of the State of Iowa for assessing such improvements and facilities. The City agrees when such improvements have been installed to the satisfaction of the City, it will file in the office of the County Recorder of Johnson County, Iowa, a good and sufficient release to the various lots in said subdivision so that this Agreement will not constitute a cloud upon the title to the lots in the subdivision.

SECTION 9. ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.

The Developer shall submit to the City, for approval by the City Engineer, plans and specifications for the construction of improvements in the subdivision which have been prepared by a registered professional civil engineer. The Developer shall obtain all necessary permits from the appropriate city, state and/or federal agencies before proceeding with construction. In addition, the Developer shall cause to have its engineer provide adequate field inspection personnel to insure that an acceptable level of quality control is maintained.

The Developer shall pay the reasonable costs of engineering administration, which will include review of the Developer's final construction plans and specifications, monitoring of construction, consultation with the Developer and its engineer on the status, progress or other issues regarding the project. The Developer shall pay for the reasonable construction observation performed by the City staff or consulting City Engineer. Construction observation will consist of examination of proposed public utilities, street construction and other infrastructure improvements. The engineering administrative fee and construction observation fees to be paid by the Developer shall be based upon the

agreed amount between the City and Developer in accordance with the standard hourly fee schedule in effect between the City Engineer and the City on file at City Hall.

SECTION 10. RELEASE.

The City agrees that when the improvements and facilities required by this Agreement have been installed to the satisfaction of the City, it will promptly issue a release to the Developer, its assigns or successors in interest, for recording in the Johnson County Recorder's Office so that this Agreement will no longer constitute a cloud on the title of the lots in said subdivision.

SECTION 11. LIABILITY.

The Developer agrees and is fully obligated to perform as provided in this Agreement. The Developer is liable and responsible for each and every obligation agreed to be undertaken pursuant to this Agreement. Failure of the Developer, its employees, agents or assigns, to perform is not a defense for the Developer against any action to be taken by the City.

SECTION 12. FEES.

The Developer agrees to record this Agreement and to pay all necessary recording and filing fees that accrue as a result of any work that is performed under this Agreement or made necessary as a result of this subdivision project. A copy of this recorded Agreement will be provided to the City.

SECTION 13. TIME OF PERFORMANCE.

Developer shall install all required public improvements within one (1) year from the date of City approval of this Agreement. In the event that the Developer fails to install the required public improvements within the above-referenced time, authorization to proceed with the development shall cease, and the Developer shall be required to seek reauthorization and approval of this development. Developer may, however, request an extension of time from the City. If an extension is granted, it may be conditioned upon updating any security posted by the Developer or requiring the Developer to provide security to reflect cost increases and extended completion date.

SECTION 14. NOTICES.

Required notices to the Developer shall be in writing and shall either be hand delivered to the Developer, its agents or employees, or mailed to the Developer by registered mail at the following address:

Janice M. Becker
1400 Fifth Street
Coralville, IA 52241

Notices to the City shall be in writing and shall be either hand delivered to the City Administrator or mailed to the City by registered mail in care of the City Administrator at the following address:

City of North Liberty
P.O. Box 77
North Liberty, IA 52317

Notices mailed in conformance with this section shall be deemed properly given.

SECTION 15. SUCCESSORS AND ASSIGNS.

This Agreement shall be a covenant running with the land and inure to the benefit of and be binding upon the parties, their successors and assigns.

DATED this 15 day of October, 2004.

DEVELOPER

CITY OF NORTH LIBERTY, IOWA

BGY PROPERTIES, L.C.

By: _____
John Soukup, Mayor Pro Tem

By: Janice M Becker
Janice M. Becker, President

ATTEST: Mary K Mitchell
Mary Kae Mitchell, City Clerk

CORPORATE SEAL

STATE OF IOWA)
) ss:
JOHNSON COUNTY)

On this 15 day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John Soukup and Mary Kae Mitchell, to me personally known, who, being by me duly sworn, did say that they are the Mayor Pro Tem and City Clerk, respectively, of the City of North Liberty, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the municipal corporation; and that the instrument was signed and sealed on behalf of the municipal corporation by the authority of its City Council, as contained in Resolution No. 04-29 of the City Council on the 13 day of April, 2004; and that John Soukup and Mary Kae Mitchell acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Mary J. Byers
Notary Public in and for the State of Iowa

MARY J. BYERS
Commission Number 146203
My Commission Expires
2-11-06

STATE OF IOWA)
) ss:
JOHNSON COUNTY)

On this 14th day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Janice M. Becker, to me personally known, who being by me duly sworn, did say that she is the President of the corporation executing the within and foregoing instrument; that (no seal has been procured by the ~~(the seal affixed thereto is the seal of the~~) corporation; that said instrument was signed ~~(and sealed)~~ on behalf of the corporation by authority of its Board of Directors; and that the said Janice M. Becker as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation, by it and by her voluntarily executed.

ANN E. ALTON
Commission Number 164031
My Commission Expires
2-21-07

Ann E. Alton
Notary Public in and for the State of Iowa

Prepared by Thomas H. McMurray, 2210 9th St. Ste 1, Coralville, IA 52241-1569 (319)351-6881

TITLE OPINION OF ATTORNEY

RE: FOX RUN SUBDIVISION - PART 11, NORTH LIBERTY, IOWA,

I, Thomas H. McMurray, a regular practicing attorney of Coralville, Johnson County, Iowa, do hereby certify that I have examined an abstract of title to a tract of land designated as Fox Run Subdivision - Part 11, North Liberty, Iowa, more particularly described as follows:

See Attached Legal Description

I hereby certify that fee simple title to said property is in:

BGY PROPERTIES, LTD, an Iowa Corporation

and the same is free from liens and encumbrances except the following mortgages to Solon State Bank covering the above described property and additional property.

A Purchase Money Mortgage (Open-End) by Janice M. Becker dated November 8, 2000 and recorded November 17, 2000 in Book 3019, Page 161 of the Johnson County Recorder's Office.

A Mortgage (Open-End) by BGY Properties Ltd., dated March 19, 2004 and recorded March 31, 2004 in Book 3713, Page 150 of the Johnson County Recorder's Office.

The mortgage holder has provided its written and acknowledged consent to said subdivision.

DATED at Coralville, Iowa, this 13th day of October 2004.

THOMAS H. MCMURRAY
2210 9th Street, Suite 1
Coralville, IA 52241-1569
(319) 351-6881

Fox Run Subdivision – Part 11

Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way Line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; Thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly Line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line, 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line, 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.

Prepared by Janice M. Becker 2210 9th Street, Suite 1, Coralville, IA 52241 (319)354-6080

CERTIFICATE OF COUNTY TREASURER

I, THOMAS L. KRIZ, hereby certify that I am the County Treasurer of Johnson County, Iowa, and that the property designated as **Fox Run Subdivision - Part 11 North Liberty, Iowa** more particularly described as follows:

Beginning at the Southeast Corner of the Northwest Quarter of the Southwest Quarter of Section 1, Township 80 North, Range 7 West, of the Fifth Principal Meridian; Thence N89°56'07"W, along the South Line of said Northwest Quarter of the Southwest Quarter, 225.40 feet, to its intersection with the Northeasterly Right-of-Way Line of Iowa Highway #965; Thence N42°29'54"W, along said Northeasterly Right-of-Way Line, 698.96 feet; Thence N05°45'36"E, 316.15 feet; Thence Southeasterly, 11.73 feet, along a 120.00 foot radius curve, concave Northeasterly, whose 11.72 foot chord bears S87°02'23"E; Thence S89°50'23"E, 2.50 feet; Thence N00°09'37"E, 145.00 feet; Thence S89°50'23"E, 332.50 feet, to the Northwest Corner of Fox Run Subdivision Part 10, in accordance with the Recorded Plat thereof; Thence S00°09'37"W, along the Westerly Line of said Fox Run Subdivision Part 10, a distance of 145.00 feet; Thence N89°50'23"W, along said Westerly Line, 20.01 feet; Thence S00°09'37"W, along said Westerly Line, 157.00 feet; Thence S05°55'11"E, along said Westerly Line, 66.07 feet; Thence S42°29'54"E, along said Westerly Line, 567.44 feet; Thence S00°09'37"W, along said Westerly Line, 60.00 feet; Thence S89°50'23"E, along said Westerly Line, 41.56 feet; Thence S00°09'37"W, along said Westerly Line, 127.55 feet, to the Southwest Corner thereof, and a Point on the South Line of the Northeast Quarter of the Southwest Quarter of said Section 1; Thence N89°56'07"W, along said South Line, 91.59 feet, to the Point of Beginning. Said Tract of Land contains 8.72 acres, more or less, and is subject to easements and restrictions of record.
(08/2004)

and shown on the Final Plat to said subdivision, is free from certified taxes and certified special assessments.

DATED at Iowa City, Johnson County, Iowa this 19th day of October 2004.

Thomas L Kriz

THOMAS L. KRIZ
County Treasurer
Johnson County, Iowa

SEAL

Parcel No. 0601301003
Parcel No. 0601326002

Prepared by Thomas H. McMurray, 2210 9th Street, Ste 1, Coralville, IA 52241-1569

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOX RUN SUBDIVISION - PART 11, NORTH LIBERTY, IOWA

According to the Plat thereof Recorded in Book ____, Page ____, Plat Records of Johnson County, Iowa.

THIS DECLARATION, made on the date hereinafter set forth by the undersigned, being the owner of all lots in the subdivision known as Fox Run Subdivision - Part 11, North Liberty, Iowa, the Dedication of which subdivision is recorded in Book _____, page _____, in the office of the Recorder, Johnson County, Iowa;

NOW, THEREFORE, the undersigned hereby declares that each lot in Fox Run Subdivision - Part 11 (excluding all outlots) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the properties and for the mutual benefits of those persons who own or may purchase any of the lots in said subdivision and shall be binding on all parties having any right, title or interest in the properties, or any part thereof, their heirs, successors, and assigns, as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of said properties.

1. **NAME.** This subdivision shall be known and designated as Fox Run Subdivision - Part 11, North Liberty, Iowa.

2. **DEFINITIONS.**

2.1 "Association" There shall be no homeowner's association.

2.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot (excluding all Outlots) which is a part of the subdivision, including contract vendees, but excluding those having such interest merely as security for the performance of any obligation such as mortgagees.

2.3 "Subdivision" shall mean and refer only to Fox Run Subdivision – Part 11, North Liberty, Iowa located on the real estate described in the Dedication thereof.

2.4 "Plat" shall mean and refer to the subdivision plat or plats as recorded in the office of the Recorder, Johnson County, Iowa, as the same may be hereafter amended or supplemented.

2.5 "Lot" shall mean and refer to the numbered lots (excluding all outlots) shown upon a plat as recorded in the office of the Recorder, Johnson County, Iowa.

2.6 "Building" shall mean and refer to any structure that is constructed on a lot within the Subdivision.

2.7 "Developer" shall mean and refer to BGY Properties Ltd. and its successors and assigns as a Declarant.

2.8 "Board of Directors". There shall be no Board of Directors and no Association.

2.9 "Streets" shall mean and refer to the dedicated streets shown on the recorded plat of the subdivision.

3. LOTS.

3.1 Number of Lots. Fox Run Subdivision – Part 11, North Liberty, Iowa contains 25 lots numbered 88 through 112.

3.2 Land Use. All lots shall be used exclusively for single family residential purposes. No trailer, basement, shack, garage, barn or other outbuilding on a lot shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary nature be permitted. No act constituting a nuisance as defined under the provisions of Chapter 657 of the 2001 Code of Iowa, or the Common Law of Iowa, shall be permitted.

3.3 Conveyance of Lots. Each lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions, and restrictions contained herein.

3.4 Subdivision. No lot shall be subdivided. This provision shall not prevent a conveyance of a portion of one lot to the abutting owner of another so long as said

conveyance does not result in an additional building lot being created thereby, or violate any setback requirements.

4. PUBLIC IMPROVEMENTS AND PUBLIC OPEN SPACE.

4.1 Developer's Obligation to Install Public Improvements. The Developer shall install public improvements in accordance with the Developer's Agreement entered into with the City of North Liberty in connection with the approval of the Final Plat of the subdivision.

4.2 Transfer of Public Improvements and Public Open Space. Once the Developer has completed the required improvements to the water and sewer systems and streets and the public open space, the same shall be dedicated by the Declarant to the City of North Liberty, as required by the Developer's Agreement, after which dedication the City of North Liberty shall be responsible for the maintenance of such public improvements and public open space.

5. ARCHITECTURAL CONTROL AND CONSTRUCTION.

5.1 Plan Approval. No building, fence, wall or other structure shall be commenced, erected or maintained within the Subdivision, nor shall any exterior addition to or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by the Developer as hereinafter provided.

5.2 Contents of approval Application. Complete plans and specifications for the proposed construction shall be submitted to the Developer or its nominee or assignee for approval. In addition to plans and specifications for proposed structures, the application for approval shall show the location and type of any fences, parking areas, plantings, landscaping, exterior lighting and other relevant matters, including the location on the lot of all proposed improvements, the materials to be used and the color scheme proposed. The application shall also set forth a time schedule for the construction of such improvements, and in no event will an application be approved when the proposed construction will not be commenced within one (1) year from the date of application.

5.3 Approval or Disapproval. The Developer or its nominee or assignee shall approve or disapprove the application within a period of thirty (30) days, and in the event of disapproval, shall specify the exact reasons therefore. Disapproval shall be for substantial cause only, it being the intent of this restriction to permit

improvements that will enhance the aesthetics of the subdivision and maintain or improve property values.

5.4 Duration of Approval. In the event any proposed construction is not commenced within one (1) year from the date said construction has been approved by the Developer, said approval shall lapse and it shall be the responsibility of the lot owner to re-apply for approval prior to the commencement of construction. Once commenced, construction shall proceed in a reasonably diligent manner to completion; provided, however, that landscaping may be staged over a period not to exceed a period of three (3) years with the prior approval of the Developer.

5.5 Responsibility for Construction Site. During construction, it shall be the responsibility of each lot owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials are kept in a neat and orderly manner. During the course of construction, all building contractors shall keep mud, dirt, debris and building materials off of all subdivision roads and other building lots.

5.6 Erosion Control. As a part of the construction, each lot owner shall be responsible to grade, landscape and maintain his lot in such manner so as to minimize damage which might result to other lots or common areas as a result of erosion and surface water drainage.

5.7 General Provisions.

5.7.1 No building shall be erected on any lot having a ground floor living area of less than one thousand four hundred (1,400) square feet in the case of a one (1) story structure, nor less than one thousand (1,000) square feet in the case of a one and one-half (1 1/2) or two (2) story structure, provided that said one and one-half (1 1/2) or two (2) story structure contains a minimum total of one thousand six hundred (1,600) square feet. Garages, breezeways, screened porches, open porches, decks, or third story square footage shall not be considered as ground floor area.

5.7.2 No trailer, mobile home, tent, boat, unattached garage or barn shall be placed upon any lot except as specifically provided in these Covenants. Detached storage buildings shall be no larger than 6 feet x 10 feet in size, sided and roofed with the same material as the principal dwelling unit, in the same color, and constructed upon a concrete foundation. The design

and location of any storage building must be approved, in advance, by the Developer.

5.7.3 No building shall be constructed nearer than 25 feet to the front line or 10 feet to any side lot line, and 30 feet to any rear lot line, and all applicable provisions of the City of North Liberty, Iowa, zoning ordinances shall be observed. To the extent permitted by the City of North Liberty zoning ordinances, the Developer may approve set backs of less than those provided where unusual terrain features or unusual circumstances exist.

5.7.4 The Developer must approve all building elevations, including requirements for walkout or conventional basements. All building foundations shall be not less than twelve inches (12") above curb level, unless otherwise approved by the Developer. The installation of walkout basements will be permitted only if, in the absolute discretion of the Developer, the same will not adversely affect surface water drainage or the continuity of topography within the subdivision.

5.7.5 Not less than twenty-five percent (25%) of the total front surface of each dwelling shall be constructed of brick, stone or other masonry material. All other exterior surfaces of the dwellings shall be constructed only of brick, stone, or horizontal lap siding. No vertical siding of any kind is permitted. T-1-11 inverted bat or board and batten siding is not permitted. Other materials may be specifically approved in writing by the Developer.

5.7.6 All dwelling roofs shall be surfaced with Certainteed Hearthstead asphalt shingles, or an equivalent shadow accent or laminate "Shangle", 25 year wear shingle. All dwelling roofs must have a minimum pitch of 5/12 (i.e., 5" of rise for each 12" of run). No "three-tab" shingles are allowed.

5.7.7 All vehicle parking areas, driveways and sidewalks shall be constructed of concrete, and shall be completed within the twelve-month period set forth above. All sidewalks must be four feet in width and also must comply with City of North Liberty requirements.

5.7.8 No fences will be installed unless the same is wood or poly-covered chain link fence construction four (4) feet in height. No fence will extend along any boundaries of the front yard. No fence shall extend closer to the front of the dwelling than the rear outside corner of said dwelling. No wire strand, barb wire or woven wire fences shall be permitted. Swimming

pools must be located in the rear yard and may be bordered by a five to six foot high poly-covered chain link fence, and must comply with City of North Liberty regulations.

5.7.9 Each lot owner shall plant in the front yard two trees, each with a minimum trunk diameter of 3 inches and of one or more of the following types: Betula nigra (River Birch); all Lindens; all maples except silver maple; all oak; all seedless ash; all spruce; all pine; all fir; Ginko; and thornless honeylocust. Immediately upon obtaining an occupancy permit, each lot owner shall install grass sod (not seed) in the front yard and side yards of the lot.

5.7.10 Each dwelling shall have an attached garage with a minimum of a two car capacity. The capacity may be for more than two cars, but the garage door openings may not exceed those of a typical three car garage.

5.7.11 Motor vehicles used by residents shall be parked in areas designated in the building plans as parking areas. There shall be provided on each lot sufficient off-street parking area including driveway for the parking of at least two (2) automobiles, which area shall be concrete. All campers, trailers, boats, recreational vehicles, or snowmobiles shall be stored within a garage or at such other enclosed place where such items are not visible from the street.

5.7.12 No satellite dish unless approved in writing by the developer, ham radio tower, or antenna, and no outbuildings except for a storage building and/or a gazebo whose location and plans are approved in writing in advance of construction by the developer, shall be located on any lot, or the improvements thereon.

5.7.13 Outdoor lighting must be approved, in writing, by the Developer. Only decorative poles may be used. No wooden poles will be permitted.

5.7.14 No overhead wiring of any type will be permitted, including wiring to outdoor lighting, outbuildings, or antennas. All wiring and utility service, including cable television shall be delivered by buried cable.

5.7.15. Each lot owner shall be responsible for the installation of a sidewalk on said owner's lot in accordance with the Developer's Agreement with the City of North Liberty, Iowa, and in accordance with the City of

North Liberty sidewalk requirements, and also in accordance with the terms of these covenants.

5.7.16. There shall be at least one window on each of the four sides of the dwelling.

6. MAINTENANCE.

6.1 General: The owner of each lot shall be responsible for maintaining such lot free of weeds, debris or other waste, and all waste shall be placed in sanitary containers having proper fitting lids. There shall be no open burning within the subdivision, except as provided by the City of North Liberty.

6. 2 Trees, Shrubs, and Plants. No live tree having a trunk diameter of six inches or more shall be removed without the prior permission of the Developer, provided that the Developer may permit the removal of such trees in connection with the approval of construction on any lot, pursuant to the provisions of Article 5 hereof. Any diseased and dead trees, shrubs and plants shall be removed.

6.3 Restoration of Damage. The owner of any building damaged by fire or other Act of God shall within ninety (90) days after such event commence restoration of said building and said restoration shall be completed within one (1) year of its commencement. In the event of a total destruction of any building, the owner shall within ninety (90) days after such event commence removal of the debris and restore the site to a satisfactory condition. Said removal shall be completed within thirty (30) days of its commencement date.

7. PETS.

7.1 General. No animals, livestock, or poultry shall be raised or kept within the subdivision, except for usual household pets, provided that such household pets shall not be kept or maintained for commercial purposes. Pets shall be managed in such a way that they do not interfere with the quiet enjoyment of the property of other lot owners. Pets that continue to make loud noises, damage shrubs or other flora, attack other pets or persons or habitually be found upon property other than that of the owner shall be considered a nuisance.

8. EASEMENTS.

8.1. Easements Shown on Plat. There are strips of ground marked as utility, storm sewer and drainage easements on the Plat which are hereby reserved for public utilities, for the installation and maintenance of poles, mains, sewers, drains, ducts, lines, wires and the like and for storm sewer and drainage purposes. The Owners of Lots shall take title subject to the easements, hereby created and subject at all times to the rights of proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, including fences, shall be built, erected or maintained on said easements.

9. GENERAL PROVISIONS.

9.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

9.2 Amendment and Termination. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder, Johnson County, Iowa, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by at least seventy-five percent (75%) of such Owners; provided, however, none of the rights of Developer reserved hereunder may be amended or changed without Developer's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the office of the Recorder, Johnson County, Iowa. Any lot owner may extend this Declaration and preserve said covenants from termination under the provisions of Section 614.24, Code of Iowa, by timely filing the necessary claim in the manner set forth in Section 614.25, Code of Iowa. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

IN WITNESS WHEREOF the Developer has caused this Declaration to be executed this 3 day of September 2004.

BGY Properties Ltd.

Janice M Becker

By: JANICE M. BECKER, President

State of Iowa)
)ss:
County of Johnson)

On this 3rd day of September 2004 before me, the undersigned a Notary Public in and for the State of Iowa personally appeared Janice M. Becker, to me personally known, who being by me duly sworn, did say that she is the President of said corporation that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Janice M. Becker as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by her voluntarily executed.

Ann E Alton

Notary Public in and for the State of Iowa.

NOTARIAL SEAL IOWA
ANN E. ALTON
Commission Number 184031
My Commission Expires
9-27-07