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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR FOX RUN COMMUNITY AND BY-LAWS FOR
FOX RUN PROPERTY OWNERS ASSOCIATION, INC.

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This instrument prepared by:

Handwritten mark

Jack Kruesi

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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR FOX RUN COMMUNITY AND BY-LAWS FOR
FOX RUN PROPERTY OWNERS ASSOCIATION, INC.

This DECLARATION made this 28th day of December, 1977, by High Acres, Inc., a Tennessee corporation, hereinafter referred to as the "Developer."

RECITALS

Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community known as Fox Run Community, with permanent parks, playgrounds, open spaces and other Common Properties for the benefit of the community; and

Developer desires to provide for preservation of the values and amenities in the community and for the maintenance of said parks, playgrounds, open spaces and other Common Properties; and to this end, desires to subject the real property described in Article II, together with such Additional Land as may be added hereto as provided in Article II, (to the covenants, restrictions, easements, affirmative obligations, charges, and liens, hereinafter set forth,) each and all of which is and are hereby declared to be for the benefit of the Property and each and every owner of any and all parts thereof; and

Developer has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties and administering and

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enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

Developer has caused or will cause to be incorporated under the laws of the State of Tennessee, FOX RUN PROPERTY OWNERS' ASSOCIATION, INC., a Corporation Not for Profit, for the purpose of exercising the above functions and those which are more fully set out hereafter;

DECLARATION

NOW, THEREFORE, the Developer subjects the real property described in Article II, and such Additional Land as may be added and subjected hereto pursuant to Article II hereof to the terms of this Declaration and declare that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01. Additional Land. "Additional Land" shall mean real property that may become subject to this Declaration in

accordance with the terms and conditions of Article II hereof.

1.02. Association. "Association" shall mean FOX RUN PROPERTY ASSOCIATION, INC., a Tennessee Corporation Not for Profit.

1.03. Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.04. Common Expense. "Common Expense" shall mean and include (1) expenses of administration, maintenance, repair or replacement of the Common Properties; (2) expenses agreed upon as Common Expenses by the Association; (3) expenses declared Common Expenses by the provisions of this Declaration; and (4) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.05. Common Properties. "Common Properties" shall mean those areas of land with any improvements thereon which are conveyed to the Association and required to be maintained by the Association, and are intended for the common use and development of all Owners, including without limitation, parks, walks and streets and roads at such time as the same are closed to the general public.

1.06. Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments affirmative obligations and liens set forth in this Declaration.

1.07. Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for FOX RUN COMMUNITY and By-Laws for FOX RUN PROPERTY ASSOCIATION, INC., and any Supplemental Declaration filed pursuant to the terms hereof.

1.08. Developer. "Developer" shall mean HIGH ACRES, INC., a Tennessee corporation, its successors and assigns.

1.09. Dwelling Unit. "Dwelling Unit" shall mean any building situated upon the Properties designated and intended for use and occupancy by a single family.

1.10. Existing Land. "Existing Land" shall mean the real property described in Article II hereof.

1.11. First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

1.12. First Mortgagee. "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage.

1.13. Lot or Lots. "Lot" or "Lots" shall mean any improved or unimproved plat of land shown as a Lot upon any recorded final subdivision map of any part of the Properties, with the exception of Common Properties.

1.14. Manager. "Manager" shall mean a person or firm appointed or employed by the Board to manage the daily affairs of the Association in accordance with instructions and directions of the Board.

1.15. Member or Members. "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.16. Mortgage. "Mortgage" shall mean a deed of trust, as well as a Mortgage.

1.17. Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of a deed of trust, as well as a holder of a Mortgage.

1.18. Owner or Owners. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons, firms,

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associations, corporations, or other legal entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any leasee or tenant of an Owner. The Developer may be an "Owner".

1.19. Property or Properties. "Property" or "properties" shall mean the Existing Land and any Additional Land which is subject to this Declaration or any Supplemental Declaration under the provisions hereof.

1.20. Record or To Record. "Record" or "To Record" shall mean to record pursuant to the laws of the State of Tennessee relating to the recordation of deeds and other instruments conveying or affecting title to real property.

ARTICLE II

PROPERTIES, ADDITIONAL LAND AND COMMON PROPERTIES AND IMPROVEMENTS THEREON

2.01. Existing Land. The real property which is, and shall be held, transferred, sold, conveyed, leased and occupied, subject to these Covenants, is located in Hamilton County, Tennessee and is more particularly described as follows:

A. High Acres, Inc.'s Property:

IN THE THIRD CIVIL DISTRICT OF HAMILTON COUNTY, TENNESSEE:
Being part of the property conveyed to Milligan-Reynolds Guaranty Title Agency, Inc., Trustee by Deed of record in Book 2343, page 165, in the Register's Office of Hamilton County, Tennessee, and being more particularly described as follows:

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BEGINNING at the most Western corner of Lot 49, Thomas and Wilhoits Addition No. 1, as shown by plat of record in Plat Book 6, page 58, in the Register's Office of Hamilton County, Tennessee; thence South 21 degrees 11 minutes West 1,511.3 feet; thence South 51 degrees 11 minutes East 530 feet; thence South 74 degrees 40 minutes West 290 feet; thence North 19 degrees 10 minutes East 225 feet; thence North 76 degrees 00 minutes West 410 feet; thence North 29 degrees 15 minutes West 85 feet; thence North 78 degrees 10 minutes West 485 feet; thence North 32 degrees 40 minutes West 110 feet; thence North 50 degrees 40 minutes West 225 feet; thence North 68 degrees 52 minutes East 40 feet; thence North 10 degrees 52 minutes East 138.2 feet; thence North 02 degrees 08 minutes West 155.8 feet; thence North 10 degrees 30 minutes West 162.2 feet; thence North 00 degrees 38 minutes West 186.4 feet; thence North 20 degrees 08 minutes West 213 feet; thence North 18 degrees 38 minutes West 135.8 feet; thence North 23 degrees 22 minutes East 89 feet; thence North 24 degrees 08 minutes West 98 feet; thence North 0 degrees 18 minutes West 396.3 feet; thence North 81 degrees 37 minutes East 185.45 feet; thence North 81 degrees 41 minutes East 428.5 feet; thence South 3 degrees 04 minutes West 224.8 feet; thence North 89 degrees 33 minutes East 454.2 feet; thence South 87 degrees 16 minutes East 195.3 feet; thence South 28 degrees 48 minutes West 168 feet; thence North 81 degrees 35 minutes East 270 feet; thence South 72 degrees 10 minutes East 305 feet; thence South 19 degrees 54 minutes West 183.7 feet to the point of beginning.

Lots shown on plat of Fox Run-Unit One (1) recorded in plat
Book _____ Page _____ Registers Office of Hamilton County
Tennessee.

2.02. Additional Land. High Acres, Inc., its
successors and assigns, shall have the right from time to time,
without further consent of the Association, to bring within
the plan and operation of this Declaration, additional properties
in future stages of the Development.

The additions authorized under this and the
succeeding subsection shall be made by filing of record a
Supplementary Declaration of Covenants and Restrictions with
respect to the Additional Land which shall extend the operation
and effect of the Covenants of this Declaration to such
Additional Land.

The Supplementary Declaration may contain such comple-
mentary additions and modifications of the covenants and re-
strictions contained in this Declaration as may be necessary
or convenient, in the judgement of High Acres, Inc., to reflect
the different character, if any, of the added properties and as
are not inconsistent with the plan of this Declaration, provided
that any such additions and modifications shall have the prior
approval of the Hamilton County Planning Commission.

In the event additional properties are brought
within the plan and operation of this Declaration, adequate,
just and equitable provisions must first be made so as to
equalize the costs and burdens between the Members who own
Lots in the Existing Properties with relation to the Common
Properties including the initial costs by Developers, the cost

of facilities, improvements and the operation and maintenance of the same.

B. Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer the covenants and restrictions established by this Declaration with the Existing Land, as herein provided.

2.03. Common Properties and Improvements Thereon.

A. The Developer intends to develop the Existing Land in accordance with a master plan dated 1977; provided, however, the Developer reserves the right to review and modify the master plan from time to time, with the approval of the Hamilton County Planning Commission.

B. The Developer shall convey to the Association, from time to time, such property, as it, in its sole discretion, deems appropriate. Thereafter, such property shall be included within the term "Common Properties".

C. The Developer contemplates improving the Common Properties with Four (4) tennis courts, stables, parcours course, and a lake if applicable governmental permits can be obtained. It is presently contemplated that all such improvements will be completed on or before July 1, 1979; however, the Developer reserves the right to extend that period of time to June 1, 1984.

In the event that said improvements are not completed by the latter date, the Developer shall have the option of:

1. Requesting a further extension of time from the Board; or

2. Paying to the Association the amount necessary to complete the improvements.

D. Developer, at its sole option and expense, may build and improve the Common Properties with such other improvements as they deem desirable.

E. If the Developer subjects Additional Land to this Declaration, it will provide improvements and amenities on the Common Properties from the Additional Land as it shall deem equitable and just.

ARTICLE III

ASSOCIATION

3.01. Membership. The Developer and every person or entity who is a record owner of a fee simple interest or an undivided fee simple interest of at least fifty percent (50%) in any Lot which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be automatically transferred to the new Owner upon the conveyance of any Lot and recording of the Deed of conveyance in the Register's Office of Hamilton County, Tennessee. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

3.02. Voting Rights. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.01. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot. A Member casting a vote representing a Lot owned by such Member shall not be entitled to cast an additional vote for the Dwelling Unit upon said Lot. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a written instrument delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, the vote shall be split equally among the co-owners. The Developer shall be entitled to one (1) vote for each Lot owned by it.

ARTICLE IV

THE BOARD OF DIRECTORS

4.01 Board of Directors. Subject to Section 4.12 of this Article hereinbelow, the administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of five natural persons of legal age, each of whom shall be an Owner or a member of the household of an Owner at all times during membership on the Board.

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4.02. Election. At each annual meeting, subject to the provisions of Section 4.12 hereof, the Association shall elect those members of the Board as required under Sections 4.02 and 4.03 who shall serve the terms set out in Section 4.02; provided, however, the members of the Board elected to succeed the Developer may be elected at a special meeting duly called and specifically called for that purpose by Developer, the Board elected at that special meeting to serve until the first annual meeting of the Association held thereafter. At least thirty (30) days prior to any annual meeting of the Association, the Board shall elect from the Association a Nominating Committee of not less than two (2) Owners (none of whom shall be members of the Board) which shall recommend to the annual meeting one nominee for each position on the Board to be filled at that particular annual meeting. Nomination for a position on the Board may also be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Owners and by the nominee named therein indicating his willingness to serve as a member of the Board, if elected.

4.03. Term. Members of the Board shall serve for a term of two (2) years; provided, however, that three (3) members of the first Board elected by the Association at the annual meeting thereof shall be elected and shall serve for a term of one (1) year and the other two (2) members shall be elected and serve for a term of two (2) years. Thereafter, all Board members elected each year shall serve for a term of two (2) years. The members of the Board shall serve until their

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respective successors are duly elected and qualified, or until their death, resignation or removal.

4.04. Resignation and Removal. Any member of the Board may resign at any time by giving written notice to the President, the remaining Board members or the Manager. Any member of the Board may be removed from membership on the Board by a two-thirds (2/3 rds) majority affirmative vote of the Association except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of a majority of the Board, renders such member incapable of performing Board duties, or in the event a member shall cease to be an Owner. Whenever there shall occur a vacancy on the Board for any reason, the remaining members shall elect a successor member to serve until the next annual meeting of the Association or until a special meeting is called for filling vacancies, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

4.05. Compensation. The members of the Board shall receive no compensation for their services unless expressly provided for by the Association but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

4.06. Powers and Authority of the Board. The Board, for the benefit of the Property and the Association, shall enforce the provisions of this Declaration, these By-Laws, and the Rules and Regulations governing the Property. Subject to any provision herein, the Board shall have the

power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

A. Water, sewer, garbage collection, electrical, telephone and gas, and other necessary utility services for the Common Properties.

B. The services of a person or firm to manage its affairs (herein called "Manager"), to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Property, whether such personnel are employed directly by the Board or are furnished by the Manager. All persons employed to manage or assist in the management or maintenance of the Property shall be employed at the will of the Board; provided that a manager may be employed for successive periods not exceeding three (3) years in each case. The Board may delegate any of its duties, powers or functions relating to the daily administrative affairs of the Association to any person or firm designated by the Board to act as Manager.

C. Legal and accounting services necessary or advisable in the operation of the Property and the enforcement of this Declaration, these By-Laws, and any Rules and Regulations made pursuant thereto.

D. A fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the Board, Association and Owners as obligees, in an amount to be determined from time to time by the Board.

E. Painting, maintenance, repair, replacement and landscaping of the Common Properties. The Board shall also

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have the exclusive right from time to time to acquire and dispose of by sale or otherwise without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof.

F. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required to secure or pay for pursuant to the terms of this Declaration, these By-Laws or any Rules or Regulations promulgated hereunder or which, in its opinion, shall be necessary or advisable for the operation of the Property or for the enforcement of this Declaration, these By-Laws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security personnel, and insurance, payment for which is to be made from Common Expenses. The provision shall not be construed to prohibit the Board from delegating such authority to the Manager as it deems proper.

4.07. Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, and otherwise trade and deal with the Common Properties as may be necessary or convenient in the operation and management of the Common Properties, and in accomplishing the purposes set forth herein. The Board or any managing agent or entity designated by the Board shall be deemed the agents of the Owners and such shall manage, maintain and improve the Common Properties and also collect, conserve, allocate and expend money received from the Owners in a manner consistent with such agent's relationship

and in conformity with this Declaration, these By-Laws and the Rules and Regulations.

4.08. Meetings of the Board. Meetings of the Board shall be held at such places within or without the State of Tennessee as the Board shall determine. Three (3) members of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. Meetings of the Board shall be chaired by the President of the Association and the minutes shall be recorded by the Secretary of the Association, whether said secretary is a member of the Board or not. The Board shall annually elect all of the officers set forth in Section 5.05 hereof. The meeting for the election of officers shall be held at a meeting of the Board to be held immediately following the annual meeting of the Association. Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by all members of the Board.

4.09. Special Meetings. Special meetings of the Board may be called by the President of the Association or by any two Board members.

4.10 Notice of Meetings. Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted

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to discussions of those items listed on the agenda.

4.11. Waiver of Notice. Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

4.12. Developer Performs Functions. Until (a) October 1, 1980, or (b) the sale of seventy-five percent (75%) of the Lots, as Lots are defined in Section 8.05 (A), whichever of (a) or (b) first occurs, the rights, duties and functions of the Board shall be exercised by the following: H. Leo Brown, President of High Acres, Inc.; Paul John Kruesi, III, Vice-President of High Acres, Inc.; provided that at any time prior thereto at its option, Developer may call a special meeting of the Association to elect a Board to succeed H. Leo Brown and/or Paul John Kruesi, III, pursuant to Section 4.02 hereof. If (a) above should be the first to occur, then from October 1, 1980, until (b) occurs, but in no event after October 1, 1985, Developer shall retain the right to appoint two members to the Board, which members may or may not be Owners; provided Developer may by written notice to the Board at any time waive the right of appointment of one or both of such Directors under this Section 4.12. If any vacancies exist on the Board prior to (a) or (b) occurring, said vacancies shall be filled by

majority vote of the remaining directors.

4.13. Notice of Election. After the election of the Board to succeed the first Board, the Secretary of the Association shall execute and, where desirable, acknowledge and record a certificate stating the names of all of the members of the then Board, provided, that, in the event of the disability or other incapacity of the Secretary, the President of the Association shall be empowered to execute the aforesaid certificate. The certificate shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

4.14. Fiscal Year. The fiscal year shall be determined by the Board.

4.15. Special Committees. The Board by resolution duly adopted may designate one or more special committees, each committee to consist of two (2) or more Owners appointed by the Board, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. The Board may also rescind any such resolution by a further resolution duly adopted. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Board. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Board when required. The Board may appoint Owners to fill vacancies on Special Committees.

4.16. Rules and Regulations. The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing the details of the operation and use of the Common Properties and setting forth restrictions on,

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and requirements respecting the use and maintenance of the Common Properties. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective.

4.17. Limitation on Capital Additions, Etc. Except as permitted in Article 4.06(E) and Article XI, the Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Properties, any of which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority vote of the Association; or in excess of Ten Thousand Dollars (\$10,000.00) without approval of two-thirds of the vote of the Association; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Properties as are necessary, in the Board's reasonable judgement, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists which should be corrected before a meeting of the Association could be reasonably called and held.

4.18. Failure to Insist on Strict Performance Not Waiver. The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in this Declaration or these By-Laws, or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of

such term, covenant, condition or restriction, right, option or notice; but such term, covenant, condition or restriction, right, option or notice shall remain in full force and effect.

ARTICLE V

THE ASSOCIATION: MEETINGS, OFFICERS, ETC.

5.01. Quorum. The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the Owners of Lots subject to assessment under Section 8.05(A) or Owners entitled to cast at least fifty (50) votes, whichever is less, in response to notice to all Owners properly given in accordance with Sections 5.02 or 5.03 of the By-Laws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a majority of the votes which are represented at such meeting.

5.02 Annual Meeting. There shall be an annual meeting of the Association on the first Monday of February at 6:00 P.M. at such reasonable place or other time (but not more than sixty (60) days before or after such date) as may be designated by written notice by the Board delivered to the Owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to the annual meeting, the Board shall furnish to the Owners: (1) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Owner; and (2) a statement of the

Common Expenses itemizing receipts and disbursements for the previous and, if then available, for the current fiscal year, together with the allocation thereof to each Owner. Within ten (10) days after the annual meeting, the budget statement shall be delivered to the Owners who were not present at the annual meeting if not previously provided.

5.03. Special Meeting. Special meetings of the Association may be held at any time and at any reasonable place to consider matters which, by the terms hereof, require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by a majority of the Board, or by at least one-third (1/3) of the Owners by written notice, delivered to all Owners not less than thirty (30) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

5.04. Parliamentary Rules. Robert's Rules of Order (last edition) shall govern the conduct of Association meetings when not in conflict with this Declaration or other such rules adopted by the Board.

5.05. Officers. The officers of the Association shall be a President, Vice-President, Secretary, and Treasurer. Each officer shall be required to be an Owner, and the President must be a member of the Board. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Board and may be removed and replaced by the Board. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

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A. President. The President shall preside at all meetings of the Association and of the Board and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees.

B. Vice-President. In the absence or inability of the President, the Vice-President shall perform the functions of the President.

C. Secretary. The Secretary shall keep the minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded.

D. Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Board and the Association, but may delegate the daily handling of funds to the Manager and accounting to accountants selected by the Board.

ARTICLE VI

LIABILITY AND INDEMNIFICATION

6.01. Liability of Members of the Board and Officers.

The members of the Board, the officers and any agents and employees of the Association: (i) shall not be liable to the Owners or Association as a result of their activities as such for any mistake of judgement, or otherwise, except for their own willful misconduct, bad faith, or failure to exercise that degree of diligence, care and skill which ordinarily prudent

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men would exercise under similar circumstances in like positions; (ii) shall have no personal liability to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Owners in their capacity as such; (iii) shall have no personal liability in tort to an Owner or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or officers except for their own willful misconduct, bad faith, or failure to exercise that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Common Properties, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

6.02. Indemnification by Association. To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Owners or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement,

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that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association or the Board, or otherwise. The indemnification by the Association set forth in this Article VI shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

6.03. Costs of Suit in Actions Brought by One or More Owners on Behalf of All Owners. No suit shall be brought by one or more but less than all Owners on behalf of all Owners without approval of a majority of Owners and, if approval is obtained, the plaintiff's expenses, including reasonable counsel's fees and court costs, shall be a Common Expense unless such suit is brought by one or more Owners against other Owners, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Owners as defendants, in which event the plaintiff's expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

6.04. Notice of Suit and Opportunity to Defend. Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Property as a whole, shall be addressed to the President of the Association, who shall promptly provide written notice thereof to the other members of the Board and Mortgagees, and shall be defended by the Board,

and the Association and all Owners shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Owners shall be directed to such Owners, who shall promptly give written notice thereof to the Board and to the Mortgagees of the Lots affected, and shall be defended by such Owners at their Expense.

ARTICLE VII

PURPOSES, USES AND RESTRICTIONS

7.01. Common Properties. The Common Properties shall not be used except for one or more of the following purposes:

- A. Recreational facilities, the primary purpose of which is to serve the residents of Fox Run Community.
- B. Historic Sites.
- C. Parks and Parkway Areas.
- D. Natural Sites worth of scenic preservation.
- E. Walking, Jogging paths and Bicycle paths.
- F. Community Stables.
- G. Recreational Lake.

The Common Properties shall remain permanently in open space and there shall be no subdivision of same. No building, structure or facility shall be placed, installed, erected, or constructed in or on said Common Properties, unless it is purely incidental to one or more of the uses above specified.

Notwithstanding any other provision of this Declaration, no amendment shall be made hereto affecting the Common

Properties without the consent and approval of the Hamilton County Planning Commission, and no amendment shall be made hereto which in any manner impairs or diminishes the rights of the members of the Association in the Common Properties.

A. The land shall be used for private residential purposes only, and no building of any kind shall be erected or maintained on the land except the following:

(1) A private dwelling house designed and used for occupation by a single family.

(2) A private garage for the sole use of the occupants of the private dwelling house located upon the building plot, which may contain living quarters for one or more employees of such Owners.

(3) Buildings, including the garage described above, for the storage of non-commercial vehicles, equipment and tools used in maintenance of the building plot upon which erected, a private green house, spring or pump house, garden shelters and bath houses accessory to swimming pools.

(4) A guest house, not customarily occupied by anyone as permanent living quarters.

(5) A building or buildings to shelter horses or domestic pets kept for the pleasure of the occupants of the land as provided for in (S).

Not more than one residence shall be erected or maintained upon any building plot. A building plot shall be defined as not less than one (1) acre of land, unless the total land conveyed by a deed from Milligan-Reynolds Guaranty Title Agency, Inc., Trustee is less than one (1) acre, in which event the building plot shall

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not be less than the total land conveyed therein. The main dwelling must be constructed before the erection of any secondary building, except that a guest house approved by Fox Run may be constructed for use of the Owner of the premises before the main dwelling is constructed. No structure of a temporary character, trailer, tent, shack, or mobile home, shall be installed, erected or used on this property at any time. No incomplete portion of a house, and no garage or other secondary building shall be used temporarily or permanently as a residence, except that a guest house may be used as a temporary residence. All structures and their locations must be approved by the Developer and/or Fox Run Property Owners Association, when organized.

(B) No residence shall be located on any one of said residential building plots nearer to the front line or nearer to any side street line than forty (40) feet, nor nearer than twenty-five (25) feet to any side Lot line, nor nearer than twenty-five (25) feet to the rear boundary line.

(C) No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(D) Any residence being erected on a Lot shall be completed within twelve (12) months from the date of the pouring of the footings for said residence.

(E) No dwelling shall be erected or permitted to remain on any one of said residential Lots of less enclosed main living area of the main structure, exclusive of open porches,

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carports, or garages, than one thousand eight hundred (1,800) square feet; provided, the main living area or quarters may be included in what is known as split-level houses (any level to qualify as main living area shall be exposed for its full height on three (3) of its sides); in the event of a two (2) story house, at least one thousand two hundred (1,200) square feet of same shall be on the ground or main floor level.

(F) All dwelling houses shall have conventional and acceptable frontal appearance from the main street fronting said Lots.

(G) It shall be permissible for H. Leo Brown and/or Paul John Kruesi, III, to rearrange boundary lines of Lots, if so desired, and to combine Lots or parts of Lots into one building plot, provided the same does not result in an increase in the number of Lots once the subdivision plat has been recorded.

(H) No asbestos siding or permastone shall be used on a dwelling house on any of said Lots. If concrete blocks are used in the construction of a dwelling on the front and/or sides thereof, they must be covered with masonry; if concrete blocks are used in the construction of a dwelling on the rear portion thereof, they may, of course, be covered with masonry; but if they are not covered with masonry, then they must be covered with stucco.

(I) Before any construction is commenced or carried on, plans and specifications for any dwelling house to be constructed on any one of said Lots shall be submitted for approval to H. Leo Brown and/or Paul John Kruesi, III, and a written approval thereof procured. It is further stipulated that such

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approval shall not be unreasonably withheld. It is further provided that, in the event of the completion of any dwelling house on any Lot, without any proceedings having been instituted in the Courts of Hamilton County, Tennessee, to enjoin the construction thereof, the said dwelling shall be conclusively presumed to have had such approval.

(J) No sheep, goats, swine, horses, cattle, burros, fowls, or any like animals shall be permitted to be kept or to remain on any of the Lots hereinabove described, or to roam at large on any of the streets or way in or bordering the same, except as provided in (S). There shall be no kennels permitted on any lot in the subdivision for the Commercial breeding of domestic pets.

(K) Whether expressly stated so or not in any Deed conveying any one or more of said Lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.

(L) All of said Lots in said subdivision must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs and other debris being removed when needed). In the event that an Owner of a Lot in said subdivision fails, of his own violation, to maintain his Lot in a neat and orderly condition, H. Leo Brown and/or Paul John Kruesi, III, and/or Fox Run Property Owners Association, may enter upon said Lots without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner.

(N) No Lot may be resubdivided into Lots of smaller

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area, except for incorporating into another Lot or Lots, in which case the subdivided area and Lot to which it is attached shall be considered one Lot for the purpose of this plan, in which event, the restriction imposed by paragraph (B) pertaining to side lines, shall be construed as pertaining to the outer side lines of said two or more Lots as combined. Any resubdividing of Lots prior to January 1, 2000, must have the written approval of H. Leo Brown and/or Paul John Kruesi, III, and/or Fox Run Property Owners Association. Such restriction shall be binding upon each and every Owner and occupant of the same until January 1, 200, and shall be extended automatically to apply to each of said Lots for successive periods of ten (10) years unless by action of a minimum of sixty-six and two-thirds (66-2/3rds %) percent of the then Owners of the Lots, it is agreed to change said covenants in whole or in part, provided further that the instrument evidenceing such action must be in writing and shall be duly recorded in the Register's Office of Hamilton County, Tennessee.

(O) That, before any dwelling on said premises shall be occupied, a septic tank, or a sewage disposal system, constructed in accordance with the requirements of the Tennessee State Board of Health, shall be installed, all sewage from the premises shall be turned into such sewage disposal facility, and the same shall be continuously maintained in proper state of sanitation. The effluent from such septic tank or sewage disposal shall not be permitted to discharge into a stream, storm sewer, open ditch or drain unless first it has been passed through an absorption field approved by the public health authority.

(P) No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

(Q) No Lot or part of Lot shall be used as a right of way leading from any street in the subdivision to another adjacent tract, which would provide access from Fox Run Subdivision to any adjacent tract, unless approved by H. Leo Brown and/or Paul John Kruesi, III.

(R) Any barn or stable constructed for the housing of horses or domestic pets kept for the pleasure of the occupants shall meet the following requirements:

(1) It shall have no less than two hundred and fifty (250) square feet on the main floor and no more than one thousand (1,000) square feet.

(2) It shall not exceed two floors in height.

(3) The boarding of horses shall be limited to those owned by the resident occupant plus one additional horse, if space allows.

(4) All barns are to be of wooden, brick, or stone construction. No concrete blocks are to be used in exterior wass construction above the foundation unless covered by wood, stone, or brick.

(5) No barn is to be constructed more than fifty (50) feet from the community riding trail as provided in () without written permission from H. Leo Brown and/or Paul John Kruesi, III, or their agents and/or from any adjoining Property

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Owners.

(6) All barn locations and plans for same must be submitted for approval to H. Leo Brown and/or Paul John Kruesi, III, prior to construction as provided in (I).

(S) As designated on the Subdivision Plat by H. Leo Brown and/or Paul John Kruesi, III, a riding-jogging trail shall exist. Such trail shall be sixteen (16) feet wide and shall be for the exclusive use of the Property Owners and occupants of Fox Run and their accompanied guests.

(T) All Lots bordering the community riding trails shall be a sixteen (16) foot permanent easement across the back of said Lots. No walls, fences, shrubs, or other obstructions may be placed or erected which in any way restricts the use of the trail or any Common Property by other members of the community. No motorized vehicles of any nature shall be used or allowed within the confines of this trail except, where a public road crosses this trail. Motorized vehicles will be confined to the bounds of the public road.

(U) Only those Land Owners purchasing designated Lots which border on the riding trail may keep, maintain, or board horses. Lots not bordering the riding trail will be governed by (J).

(V) The riding-jogging trail and its aforesaid restrictions, conditions, and covenants shall be subject thereto and the same shall be binding upon each and every Owner and occupant bordering on said trail until January 1, 2000, and shall be extended automatically to apply to each of said Lots for successive periods of ten (10) years unless by action of

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minimum of sixty-six and two-thirds percent (66-2/3 %) of the then Owners of the Lots bordering on the riding jogging trail, it is agreed to change said covenants in whole or in part, provided further that the instrument evidencing such action must be in writing and shall be duly recorded in the Register's Office of Hamilton County, Tennessee. Neither the undersigned nor any party or parties claiming under them shall or will convey, devise, or demise any or either of said Lots or any part of same except as being subject to the said covenants, conditions and restrictions, and the obligation to observe and perform the same. The said covenants, conditions and restrictions shall run with and be appurtenant to the said Land and every part thereof as fully as if expressly contained in proper and obligatory covenants or conditions in each and every contract or conveyance of or concerning any part of said Land or the improvements to be made thereon.

7.02. Tanks and Garbage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a Dwelling Unit, within any accessory building, within a screened area or buried underground.

7.03. Easements Reserved. The Developer reserves unto itself, its successors and assigns, and to the Association, its successors and assigns, a perpetual alienable and release-able easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer,

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water, or other public conveniences or utilities on, in or over those portions of each Lot, parcel or tract of land within ten (10) feet of each side lot line and fifteen (15) feet of each rear lot line for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Lot, parcel, or tract as may (a) have been used prior to the installation of such utilities for construction of a building whole plans were approved pursuant to the provisions of Article X by the Association or (b) have been designated as the side for construction of a building on a plot plan which has been filed with the Association and which has been approved in writing by the Association. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Developer and the Association further reserves the right to locate wells, pumping stations, and tanks within residential area and on the Common Properties, or to locate same upon any Lot with the permission of the Owner of such Lot. Such rights may be exercised by any successor licensee of the Developer or the Association but his reservation shall not be considered an obligation of the Developer or the Association to provide or maintain any such utility or service.

7.04. Combining Lots. Nothing herein shall prevent an Owner of two (2) or more adjoining Lots from building a single Dwelling Unit upon said Lots provided the minimum square

footage requirements of Section 7.01 (E) are complied with and the set-back requirements of 7.01 (B) as to the outside property lines of said Lots are complied with. The Owner of multiple Lots shall pay an assessment on each Lot.

7.05. Swimming Pools. Swimming pools may be erected and installed on the Lots provided: (a) approval is obtained in accordance with Article X; and (b) no part thereof shall be erected or maintained in front of the rear line or elevation of a Dwelling Unit unless approved by the Board and applicable governmental authorities, if required.

7.06. Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of this Article or of this Declaration, the Developers, their successors or assigns, or the Association, its successors or assigns, including all parties hereafter becoming Owners of any one or more of the Lots to which the provisions of this Declaration apply, may bring an action or actions against the Owner seeking to enjoin such violation, or attempted violation, and the Owner shall be further liable for such damages we may accrue, including any court costs and reasonable attorney's fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. In the event of a violation of set-back lines, either side or front, which may be minor in character, a waiver thereof may be made by the Developer, its successors or assigns, or the Board. Further, the Developer or the Board may grant variances as to the enclosed dwelling area requirement of a Dwelling Unit, or other restrictions set forth in this Article, if such vari-

ances do not, in the sole discretion of the Developer of the Board adversely affect the purposes sought to be attained hereby.

By reason of the rights of enforcement of the provisions of this Article being given unto Owners of Lots (subject to rights of variance reserved by the Developer and the Board), it shall not be incumbent upon the Developer or upon the Association to enforce the provisions of this Article or to prosecute any violation thereof.

ARTICLE VIII

ASSESSMENTS

8.01. Creation of the Lien and Personal Obligation of Assessments. The Developer, by recordation of this Declaration, for each Lot owned by it within the Properties, each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of these covenants and pay to the Association annual assessments and special assessments for the purposes set forth in Section 8.04 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more co-owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot. The annual and special assessments, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and

continuing lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably realated to the economic situation.

8.02. Purpose of Assessments. The assessments leivied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties.

The special assessments shall be used for the purposes set forth in Section 8.04 of this Article.

8.03. Basis and Maximum Amount of Annual Assessment. Until the year beginning January 1, 1979, the annual assessments shall not be more than One Hundred Twenty Dollars (\$120.00) per year per Lot unless a higher annual assessment is approved by three-fourths (3/4ths) of the vote at the annual or any special meeting of the Association. The Owner of one or more Lots who also owns one or more Dwelling Units located upon the Lots(s) shall pay one assessment for each Lot but shall not be assessed for the Dwelling Units located thereon. From and after January 1, 1979, the annual assessment may be increased each year by a percentage which equals the rise in the cost of living for the previous year as reflected in the Consumer Price Index - United States for Urban Earners and Clerical Workers (including single workers) (or similar publication to be selected by the Board if it ceases to be published) for such year unless three-fourths (3/4ths) of the vote

at the annual or any special meeting of the Association votes against said increase or votes to increase said annual assessment by a greater amount or to decrease the annual assessment.

8.04. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 8.03 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of three-fourths (3/4ths) of the vote of the Lot Owners, excluding the Lots owned by Developers, at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the Meeting.

8.05. Property Subject to Assessment.

A. Only land within the Properties which have been subdivided into Lots, and the plats thereof filed for public record, shall constitute a Lot for purposes of these assessments. Projected locations for future platted Lots shown on the Master Plat will not be subject to assessment, unless and until such locations are subdivided into Lots, filed of record, and subjected to this Declaration.

B. Lots subject to assessment under the preceding paragraph and owned by the Developer are assessable at one-half (1/2) the assessment on Lots owned by others.

8.06. Exempt Property. No Owner may exempt himself from liability for any assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Lot or in any other way.

The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from assessment, charge and lien created herein:

- (a) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All common Properties as defined in Article I hereof.
- (d) All properties exempted from taxation by the laws of the State of Tennessee, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the Owners.

8.07. Date of Commencement of Annual Assessments.

A. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board to be the date of commencement, but not earlier than January 1, 1978, nor later than December 1, 1978. The Developer shall maintain the Common Properties until the date of commencement of such assessments.

B. The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for

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any year, after the first year, shall become due and payable the first day of January of said year, however, the Board may authorize payment in four (4) equal quarterly payments.

C. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 8.03 hereof as the remaining number of months in that year bears to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any Lots in Additional Land if the assessment commences at a time other than the beginning of any assessment period.

D. The due date of any special assessment under Section 8.04 hereof shall be fixed in the resolution authorizing such assessment.

8.08. Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute

a default, and this lien may be foreclosed by the Association.

8.09. Lease, Sale or Mortgage of Lot. Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, which lease, sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Lot, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the Association under this Declaration. Such statement shall be executed by an officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the rent, proceeds of such purchase or mortgage shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before payment of any rent, proceeds of purchase or mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Lot, the grantee(s) shall be jointly and severally liable with the grantor(S) for

all unpaid assessments against the grantor(s) and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefor.

ARTICLE IX

MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO

9.01. Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Lot to a third party, the purchaser or transferee shall notify the Association Board in writing of his interest in such Lot, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Lot. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Lot, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

9.02. Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Lot if, and only if, all assessments, whether annual or special, with respect to such Lot having a due date on or prior to the date such Mortgage is recorded have been

paid. In the event a First Mortgagee shall acquire title to any Lot by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Lot subsequent to date of acquisition of such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as a part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

9.03. Amendments. No Amendment to this Article IX shall adversely affect the rights of any First Mortgagee whose Mortgage was recorded prior to the Amendment unless such Mortgagee consents to such Amendment.

9.04. Extension of Benefits to Other Mortgagees. By subordination agreement executed by a majority of the Board, the benefits of Sections 9.02 and 9.03 of this Article may be extended to Mortgagees not otherwise entitled thereto.

9.05. Mortgagees' Approval of Certain Actions. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each First Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition,

subdivide, encumber, sell or transfer the Common Properties owned, directly or indirectly, by the Association;

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

C. By act or omission change, waive or abandon the plan of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the units, the maintenance of the Common Properties or the upkeep thereof; or

D. Use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Common Properties.

9.06. Notice of Default to First Mortgagees. If requested by a First Mortgagee, the Association shall notify each First Mortgagee of any default by the Mortgagor of a Lot in the performance of said Mortgagor's obligations under this Declaration which is not cured within sixty (60) days.

9.07. Examination of Books. Each Owner and each Mortgagee of a Lot shall be permitted to examine the books and records of the Board and Association during regular business hours.

ARTICLE X

EMINENT DOMAIN

10.01. Board's Authority. If all or any part of the Common Properties (excluding personalty) is taken or threatened to be taken by Eminent Domain, the Board is authorized and directed to proceed as follows:

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A. To obtain and pay for such assistance from such attorneys, appraisers, architects, engineers, expert witnesses and other persons, as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (i) determining whether or not to resist such procedure or convey in lieu thereof, (ii) defending or instituting any necessary proceedings and appeals, (iii) making any settlements with respect to such taking or attempted taking, and (iv) deciding if, how and when to restore the Common Properties.

B. To negotiate with respect to any such taking, to grant any permits, licenses and releases and to convey all or any portion of the Common Properties and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same.

C. To have and exercise all such powers with respect to such taking or proposed taking and such restoration as those vested in Boards of Directors of corporations with respect to corporate property, including but not limited to, purchasing, improving, demolishing and selling real estate.

10.02. Notice to Owners and Mortgagees. Each Owner and each First Mortgagee on the records of the Association shall be given reasonable written advance notice of all final offers before acceptance, proposed conveyances, settlements and releases, contemplated by the Board, legal proceedings and final plans for restoration, and shall be given reasonable opportunity to be heard with respect to each of the same and to participate in and be represented by counsel in any litigation and all hearings, at such Owner's or Mortgagee's own expense.

10.03 Reimbursement of Expenses. The Board shall be reimbursed for all attorneys', engineers', architects' and appraisers' fees, and other costs and expenses paid or incurred by it in preparation for, and in connection with, or as a result of, any such taking out of the compensation, if any. To the extent that the expenses exceed the compensation received, such expenses shall be deemed a Common Expense.

ARTICLE XI

OWNER COMPLAINTS

11.01 Scope. The procedures set forth in this Article for Owner Complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board of Directors of the Association.

11.02 Grievance Committee. There shall be established a Grievance Committee (referred to in this Article as "the Committee") to receive and consider all Owner complaints. The Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors.

11.03 Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the President of the Association and sent in the manner provided in Section 14.03 for sending notices.

11.04. Consideration by the Committee. Within twenty

(20) days of receipt of a complaint, the Committee shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within ten (10) days after notice of the decision, the complainant may proceed under Section 11.05; but if complainant does not, the decision shall be final and binding upon the complainant.

11.05. Hearing Before the Committee. Within ten (10) days after notice of the decision of the Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his expense, and the Committee, at the expense of the Association, shall be entitled to legal counsel or representation at such hearing. The hearing shall be conducted before at least two members of the Committee and may be adjourned from time to time as the Committee in its discretion deems necessary or advisable. The Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefor within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 11.07, the decision shall be final and binding upon the complainant.

11.06. Questions of Law. Legal counsel for the Association shall decide all issues of law arising out of the complaint, and such decisions shall be binding upon the complainant.

11.07. Questions of Fact; Arbitration. If there shall

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be any dispute as to any material fact, either the Committee or the complaint may, at their option, within ten (10) days after notice of the decision as provided for in Section 12.05, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other party a notice of its intention to do so. The decision of the arbitrator shall be final and binding upon the complaint and the Committee. In the event of arbitration, each party shall bear one-half (1/2) of the expense thereof.

11.08. Exclusive Remedy. The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his capacity as such member without first complying with the procedures from complaints herein established.

11.09. Expenses. All expenses incurred by complaint, including, without limitation, attorneys' fees and arbitration expenses and the like shall be the sole responsibility of complainant. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

ARTICLE XII

REMEDIES ON DEFAULT

12.01. Scope. Each Owner shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be

responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

12.02. Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the By-Laws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest as provided for in Section 8.01, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or , if appropriate and not in conflict with the provisions of this Declaration and By-Laws, by an aggrieved Owner.

12.03. Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall, in addition to the relief provided for in Section 12.02, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

12.04. Waiver. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

12.05. Election of Remedies. All rights, remedies

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and privileges granted to the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration and By-Laws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

ARTICLE XIII

GENERAL PROVISIONS

13.01. Duration. The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developers, or Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

13.02. Amendments. This Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in Section 5.02, and, if a special meeting, similar notice shall be included in the notice of the special meeting provided for in Section 5.03. Notice of any meeting to consider an amendment shall also be sent to each Mortgagee listed upon the

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register of the Association.

B. At any such meeting, the amendment must be approved by an affirmative three-fourths (3/4ths) vote of those Owners present and voting.

C. If an amendment is approved as set forth in Paragraph B of this Section, the Secretary shall mail a true copy of the amendment to each Owner, informing each Owner that he shall have twenty (20) days from such notice within which to reply, in writing, to the Secretary and to indicate his approval or disapproval of such amendment. If seventy-five (75%) percent of those Owners responding within said twenty (20) day period shall indicate their approval of the amendment, it shall be deemed adopted.

D. An amendment adopted under paragraph C of this Section shall become effective upon its recording in the Register's Office of Hamilton County, Tennessee, and the President and Secretary shall execute, acknowledge and record the amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided, that in the event of the disability or other incapacity of either, the Vice President shall be empowered to execute, acknowledge and record the amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this Section.

E. The certificate referred to in paragraph D of this

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Section shall be in substantially the following form:

C E R T I F I C A T E

I, _____, do hereby certify that I am the Secretary of Fox Run Homeowners' Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Fox Run Community and By-Laws for Fox Run Property Owners Association, Inc. was duly adopted by the Owners of said Association in accordance with the provisions of Section 14.02 of said Declaration.

Witness my hand this _____ day of _____, _____.

Secretary
Fox Run Property
Association, Inc.

No amendment shall be made affecting the Common Pro-
perites which is any manner inconsistent with the permitted
uses and purposes for such properties set out in Section 7.01.
Until seventy-five percetn (75%) of the Lots have been sold,
no amendment to this Declaration shall be made without the prior
approval of the Hamilton County Planning Commission. No amend-
ment to this Declaration shall be made which shall adversely
affect the rights of Mortgagees under Section 9.03.

13.03. Notices. Any notice required to be sent to
any Owner under the provisions of this Declaration shall be
deemed to have been properly sent, and notice thereby given,
when mailed, postpaid, to the last known address of the Owner
on the records of the Association at the time of such mailing.
Notice to one of two or more co-owners of a Lot shall constitute
notice to all co-owners. It shall be the obligation of every

Owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developer under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

1100 Maclellan Building
Broad Street
Chattanooga, Tennessee

The address for the Board, the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging, and recording an amendment to this Declaration stating the new address or addresses. Likewise, any Developer may change his or its address by executing, acknowledging, and recording an amendment to this Declaration stating his or its new address.

13.04 Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgement shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

13.05. Captions. The captions herein are inserted only as a matter of convenience and for reference and are in no way intended to define, limit or describe the scope of this Declaration nor any provision hereof.

13.06. Use of Terms. Any use herein of the masculine shall include the feminine, and the singular, the plural, when such meaning is appropriate.

13.07. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

13.08. Law Governing. This Declaration is made in the State of Tennessee, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that State.

13.09. Effective Date. This Declaration shall become effective upon its recording.

By virtue of the fact that Milligan-Reynolds Guaranty Title Agency, Inc., as Trustee, is the record Owner of the Lots being hereby subjected to the terms of this Document, it does hereby join in the execution hereof, at the request and instruction of High Acres, Inc.

IN WITNESS WHEREOF, High Acres, Inc., has hereunto caused its corporate name to be signed, by its duly authorized officers, and Milligan-Reynolds Guaranty Title Agency, Inc., Trustee, has hereunto caused its corporate name to be signed, by its duly authorized officers, on this the 19th day of July, 1977.

HIGH ACRES, INC.

BY: [Signature]
BY: [Signature]

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MILLIGAN-REYNOLDS GUARANTY
TITLE AGENCY, INC., TRUSTEE

By: S. P. Hale, Chairman of Board
By: L. F. Ellis, President

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

On this 28th day of December, 19 77, before me personally appeared W. Leo Brown and Paul J. Reese III with whom I am personally acquainted, and who upon oath acknowledged themselves to be the W. Leo Brown and Paul Reese III, respectively of HIGH ACRES, INC., the within named bargainer, a corporation, and that they as such Officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such Officers thereof.

IN WITNESS WHEREOF I have hereunto set my hand and Notarial Seal.

Patricia J. Ledford
NOTARY PUBLIC

My commission expires:

7-12-81

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

On this 28th day of December, 19 77, before me personally appeared S. P. HALE and L. F. ELLIS, with whom I am personally acquainted, and who upon oath acknowledged themselves to be the Chairman of the Board and President and Treasurer, respectively of MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., the within named bargainer, a corporation, and that they as such Officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation, as Trustee, by themselves as such Officers thereof.

IN WITNESS WHEREOF I have hereunto set my hand and Notarial Seal.

Martha K. White
NOTARY PUBLIC

My commission expires:

July 9, 1979

670873

IDENTIFICATION REFERENCE
DEC 28 1 26 PM '77
DOROTHY P. BRAMMER
REGISTER
HAMILTON COUNTY
STATE OF TENNESSEE

DEC 28

MISC

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