

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FEARS PROPERTY**

This Declaration of Covenants, Conditions and Restrictions for Fears Property is made as of May 12, 1997 by Ball Homes, Inc., a Kentucky corporation, 3399 Tates Creek Road, Lexington, Kentucky 40502 ("Developer").

WHEREAS, Developer owns certain real property in Lexington, Fayette County, Kentucky, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), which is being developed as a single-family residential subdivision; and

WHEREAS, Developer desires to subject the real property described in Exhibit "A" to the easements, restrictions, covenants, and conditions as contained in this Declaration, all of which are for the benefit of the Property and each individual owner thereof; and

WHEREAS, Developer has incorporated under the laws of the Commonwealth of Kentucky a non-profit corporation known and identified as Lake Crossing Homeowners Association, Inc. for the purpose of maintaining and administering all Storm Water Management Easements, as hereinafter defined, and any medians within public rights-of-way, and administering and enforcing the easements, covenants, and conditions herein contained and collecting and disbursing the assessments and charges hereinafter created;

NOW, THEREFORE, Developer hereby declares that all of the Property, as hereinafter defined, shall be held, transferred, sold and conveyed, occupied, mortgaged or otherwise encumbered, subject to all easements, restrictions, covenants, conditions, charges, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of the Property, and shall run with the title to the Property and be binding on all parties having, or hereafter acquiring, any right, title or interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

ARTICLE

DEFINITIONS

Section 1. "Association" shall mean and refer to the Lake Crossing Homeowners Association, Inc., a Kentucky non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" means the board of directors of Lake Crossing Homeowners Association, Inc.

Section 3. "By-Laws" means the by-laws of Lake Crossing Homeowners Association, Inc. as amended from time to time. All provisions contained in the body of this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the By-Laws.

Section 4. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 5. "Community Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically determined and set forth by the Board of Directors or its designee.

Section 6. "Developer" shall mean and refer to Ball Homes, Inc., a Kentucky corporation, or its successors or assigns who take title to any of the unsold Lots for the purpose of sale and who are designated as the Developer hereunder in a recorded instrument executed by the immediately preceding Developer.

Section 7. "General Assessment" shall mean and refer to assessments levied to fund Common Expenses for the benefit of all "Members" (as hereinafter defined) of the Association.

Section 8. "Lot" shall mean and refer to any numbered parcel of the Property as shown on any recorded plat of any portion of the Property.

Section 9. "Majority" shall mean those votes of the owners representing more than 50 percent of the total vote in the Association. Any specific percentage of Lot Owners means that percentage of owners who in the aggregate are entitled to exercise such specified percentage of the total vote in the Association.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 12. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Person" shall mean any individual, corporation, partnership, joint venture, trustee or other legal entity.

Section 15. "Plats" means the final record plats of survey of the Property of record in the Clerk's Office for Fayette County, Kentucky, at Plat Cabinet K, Slides 212, 213 and 214 showing the number of each Lot and expressing its area, location and other data necessary for identification

as such plats may be amended from time to time.

Section 16. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and such additions thereto as may be brought within the jurisdiction of the Association.

Section 17. "Special Assessment" shall mean and refer to assessments levied in accordance with Article VI, Section 3, of this Declaration.

Section 18. "Unit" shall mean and refer to any improved residential Lot.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Members. Developer and every Owner shall be a member of the Association, provided that any person or entity who holds an interest merely as security for the performance of an obligation shall not be a Member. Such Owner and Member shall abide by the Association By-Laws, articles, rules and regulations and shall pay the assessments provided for in this Declaration when due and shall comply with decisions of the Association's Board of Directors. Conveyance of a Lot, except a conveyance to a trustee under a deed of trust or to a mortgagee in foreclosure, automatically transfers membership in the Association without necessity of further documentation. Membership shall be appurtenant to and may not be separated from any Lot which is subject to assessment. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner of a Lot is more than one Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation or a partnership shall be exercised by the individual in a written instrument provided to the Secretary of the Association subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. All Owners, including the Developer, shall be entitled to one (1) vote for each Lot owned. If more than one person is an Owner of any Lot, the vote for such Lot shall be exercised as the persons determine among themselves and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one person seeks to exercise such vote. In no event shall more than one vote be cast with respect to any individual Lot.

The Association shall have the right to suspend the voting rights of an Owner for any period during which an assessment against his Lot remains unpaid and for a period of time for any infraction of its published rules and regulations.

ARTICLE III

MAINTENANCE

Section 1. Association's Responsibility. The Association has been formed for the purpose of maintaining and keeping in good repair all Storm Water Management Easements included on any portion of the Property now or hereafter subjected to this Declaration (the "Storm Water Management Easements"), and any medians constructed within public rights-of-way. The Association shall maintain such areas unless such obligations are assumed by any municipal or governmental agency or other entity having jurisdiction thereof. The maintenance of any medians within public rights-of-way shall include, but not be limited to maintenance, repair, replacement and reconstruction (subject to any insurance then in effect) of any entrances, features, including landscaping, lighting and/or signage, located in such medians. The responsibility of the Association as to the Storm Water Management Easements shall be to maintain such areas so as to keep them free and clear of all silt and debris in such a fashion as not to create a potential or actual health or safety hazard and shall include ordinary maintenance (such as mowing). The Association shall have the right of ingress and egress to all Storm Water Management Easements for the purpose of performing its obligations hereunder.

Section 2. Owner's Responsibility. Each Owner shall maintain its Lot and all structures thereon in a manner consistent with the Community-wide Standard and all applicable covenants, provided that the Association shall be responsible for the Storm Water Management Easements, as more particularly shown on the Plats, so as to keep such areas free and clear of all debris and silt. If any Owner fails to properly perform its maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article VI, Section 3 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

ARTICLE IV

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to obtain, on behalf of and for the benefit of the Association, its Members, officers and directors, such insurance coverages and/or bonds as the Board of Directors in their discretion determines including, but not limited to, blanket, all-risk coverage, fire and extended coverage, public liability, workers' compensation, director's and officer's liability and a fidelity bond. Premiums for all insurance and/or bonds obtained shall be Common Expenses of the Association and shall be included in the General Assessment, as defined in Article I, Section 7, of this Declaration, and as more particularly described in Article VI, Section 1, of the Declaration.

Section 2. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 3. Damage and Destruction.

A. Any damage or destruction to the medians within public rights-of-way, if insured, shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether such damage or destruction shall be repaired or reconstructed.

B. In the event that it should be determined in the manner described above that the damage or destruction to the medians within public rights-of way, if insured, shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be restored to their natural state and maintained by the Association in a neat and attractive condition, consistent with the Community-Wide Standard.

Section 4. Repair and Reconstruction. If the damage or destruction to the medians within public rights-of way which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for General Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Maintenance. The Association shall be responsible for the maintenance of the Storm Water Management Easements and the medians within public rights-of-way as provided for hereinabove.

Section 2. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, which rules

and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

Section 3. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VI

ASSESSMENTS

Section 1. Creation of Assessments. There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 6 of this Article. There shall be two (2) types of assessments:

- A. General Assessments to fund expenses for the benefit of all Members of the Association;
- B. Special Assessments as described in Section 3 below.

General Assessments shall be levied on all Lots as hereinafter set forth. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of its deed, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay these assessments. The Developer shall be obligated to pay these assessments as to its property subject to this Declaration in the same manner as all other Owners.

All assessments, together with interest at a rate not to exceed eighteen percent (18%) or the highest rate allowed by Kentucky law as computed from the date the delinquency first occurs, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and its grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except to the extent the lien securing same may have been extinguished by judicial proceedings.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association

may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual General Assessments for delinquents. Unless the Board otherwise provides, the General Assessment shall be paid in monthly installments which shall be due and payable on or before the first day of each month. Any installment not paid within ten (10) days of the due date shall be deemed delinquent without notice or demand.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by abandonment of the Lot. No diminution or abatement of assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 2. Computation of Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of the calendar year and thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The amount of the General Assessment to be levied for each calendar year against each Lot under Section 7 below shall be computed as of the 1st day of January of each calendar year for the succeeding calendar year based on the record ownership of each Lot as of such date. The Board shall cause a copy of the budget and the amount of the General Assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of Members or their alternates representing at least a majority of the total vote in the Association.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided such assessment shall have the affirmative vote or written consent of Members or their alternates representing at least a majority of the total vote in the Association.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and its Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Uniform Rate of Assessment. Both the General Assessments and Special Assessments (except those levied against a Member for costs incurred by the Association in bringing a Lot into compliance) shall be fixed at a uniform rate for all Lots. The Board of Directors may, at its discretion, waive the assessment for any year or part of a year for any Lot not occupied by residents.

Section 5. Lien for Assessments. The General and Special Assessments and all other sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association, which lien shall not be diminished in any way by a transfer, subdivision and/or consideration that occurs after the 1st day of January of each calendar year. Such lien shall be prior and superior to all other liens and encumbrances on such Lot except:

- A. all taxes, assessments and other levies which by law would be superior thereto, and
- B. the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, to which first Mortgage the lien created herein shall be subordinate and inferior in all respects.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period of time which a Lot is owned by the Association following foreclosure:

- A. no right to vote shall be exercised on its behalf;
- B. no assessment shall be assessed or levied on it; and
- C. each other Lot shall be charged, in addition to its usual assessment, an equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and an opportunity for a hearing, the Board may temporarily suspend the voting rights of a Member who is in default in payment of any assessment.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest, then to delinquent assessments, then to any unpaid installments of the General Assessments or Special Assessments which are not the subject matter of suit, in the order of their coming due, and then to any unpaid installments of the General Assessments which are the subject matter of suit, in the order of their coming due.

Section 6. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget to take into account the number and nature of replacable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution shall be fixed by the Board and included within and distributed with the budget and assessment as provided in Section 2 of this Article.

Section 7. Date of Commencement of Assets. The assessments provided for herein shall commence as to all Lots upon the recording of the first deed to any Lot. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year at the time assessments commence on the Lot. The Developer's obligation to pay assessments shall commence with respect to any Lot on which Developer has constructed a Unit and thereafter retains ownership as of the six (6) month anniversary date of the issuance of a Certificate of Occupancy for such Unit.

Section 8. Capitalization of Association. Upon acquisition of record title to a Lot by the first purchaser thereof other than the Developer, such purchaser shall make a contribution to the working capital of the Association in an amount equal to one-sixth (1/6) of the amount of the annual General Assessment for such Lot for that year as determined by the Board. This amount shall be used by the Association to meet unforeseen expenditures, purchasing equipment deemed necessary or desirable, or otherwise covering operating expenses properly incurred by the Association. Such contributions shall not be considered an advance payment of regular assessments.

Section 9. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VII

RESTRICTIONS

Section 1. Land and Building Type. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height, unless provided for herein.

Section 2. Construction and Area. Any dwelling erected, placed, altered or permitted to remain on any Lot shall be of brick veneer or wood or non-masonry construction and all house plans and designs shall be approved in writing by the Developer prior to beginning construction. The type wood or non-masonry material used for construction must be approved in writing by the Developer prior to construction.

Section 3. Approval of Building Plans. Developer is hereby granted the right, but is not obligated, to approve all plans and specifications for the erection of improvements on all Lots, except as herein set out concerning all wood construction which shall be approved or rejected in writing by Developer.

Section 4. Detached Garages and other Outbuildings. Detached garages and other outbuildings are not permitted on the Lots.

Section 5. Temporary Structures. No structure of a temporary character, trailer, basement or uncompleted structure, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No immobile or "junk" cars, trailers or recreational vehicles shall be allowed to be parked upon any Lot, streets or public rights-of-way in the Property. No microwave, dish, or other receiver or transmitter exceeding thirty (30) inches in circumference, outside clothes lines, antenna, shortwave or "ham" radios and shortwave towers shall be allowed on or within the Property.

Section 7. Easements. Any Lot shall be conveyed subject to the building line and easements as shown or noted on the Plat.

Section 8. Lot Condition. In the event the Owner of any Lot fails to keep and maintain the Lot in a good condition, free of trash or weeds and grass over 8" in height, the Developer shall have the right to clean, mow and maintain the said Lot and charge the Owner.

Section 9. Fences. No fences of any kind, shrubbery or hedge shall be permitted within the area between the minimum setback line and the street. Fences shall not obstruct any drainage easements and shall provide no less than an 8 inch clearance above the drainage easement's ground level. In order to allow maintenance and repair to an adjoining dwelling, no fences shall be constructed any closer than 3 feet from the side property line when they are placed along side a dwelling on the adjoining lot. In any event, side lot fences shall not be allowed any closer than 3 feet to a dwelling on any adjoining lot. A wooden fence as approved by Developer shall be the only type of fence allowed. The fence must be no more than 6 feet in height. Notwithstanding the foregoing,

the Owner of any Lot which adjoins the real property owned by Kentucky American Water Company (the "KAWC Property") shall be responsible for maintaining that portion of an eight foot (8') tall chain link fence, topped with three (3) rows of barbed wire (the "Chain Link Fence"), which lies upon the common boundary between such Lot and the KAWC Property. Developer shall be responsible for the initial installation of the Chain Link Fence.

Section 10. Conformation. All land development and building construction shall conform to the Lexington-Fayette Urban County Government's Land Subdivision Regulations and Zoning Ordinances adopted by the Urban County Council on December 18, 1983, as amended from time to time.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation of Additional Property. (a) As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Developer shall have the unilateral right, privilege and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or until January 1, 2005, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof, whether owned in fee simple or subject to a leasehold, by filing in the public records of Fayette County, Kentucky, a Subsequent Amendment annexing such property. Such Subsequent Amendment to this Declaration shall not require the consent of Members. Any such annexation shall be effective upon the filing of record of such Subsequent Amendment unless otherwise provided therein. Developer shall have the unilateral right to transfer to any other person the said right, privilege and option to annex additional property which is herein reserved to Developer, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" attached hereto and that such transfer is memorialized in a written, recorded instrument executed by the Developer.

(b) Subject to the consent of the Owner thereof, the Developer may annex real property other than that shown on Exhibit "B" and, following the expiration of the right described in subsection (a) hereof, the Property shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association until all the Property described on Exhibit "B" has been subjected to this Declaration or until January 1, 2005, whichever is earlier. Such annexation shall require the affirmative vote of Members or alternates representing a majority of the votes present at a meeting duly called for such purpose and of the Developer. Any such annexation shall be effective upon the filing of record of such Subsequent Amendment unless otherwise so provided therein.

Section 2. Amendment. This Article VIII shall not be amended without the prior written consent of Developer so long as Developer owns any property described in Exhibits "A" or "B".

ARTICLE IX

GENERAL PROVISIONS

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Developer, the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a Majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate said covenants and restrictions, in which case this Declaration shall be terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Lot, Developer may unilaterally amend this Declaration. After such conveyance, the Developer may amend this Declaration so long as Developer owns property described in Exhibit "A" and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, and except as otherwise provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Fayette County Clerk's office, Lexington, Kentucky.

If an Owner consents to any amendment to this Declaration or the By-Laws it will be conclusively presumed that such owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

Section 3. Indemnification; Liability of Directors.

A. Each person who is or was a member, director, trustee, committee member, or officer of the Association, whether elected or appointed, and each person who is or was serving at the request of the Association as a member, director, trustee, or officer of another corporation, whether elected or appointed, including the heirs, executors, administrators, or estate of any such person, shall be

indemnified by the Association to the full amount against any liability, and the reasonable cost or expense (including attorney fees, monetary or other judgments, fines, excise taxes, or penalties and amounts paid or to be paid in settlement) incurred by such person in such person's capacity as a member, director, trustee, officer, committee member, or employee or arising out of such person's status as a member, director, trustee, officer, committee member, or employee; provided, however, no such person shall be indemnified against any such liability, cost, or expense incurred in connection with any action, suit, or proceeding in which such person shall have been adjudged liable on the basis that personal benefit was improperly received by such person, or if such indemnification would be prohibited by law. Such right of indemnification shall be a contract right and shall include the right to be paid by the Association the reasonable expenses incurred in defending any threatened or pending action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) in advance of its final disposition; provided, however, that such advance payment of expenses shall be made only after delivery to the Association of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall be determined that such person is not entitled to such indemnification. This right of indemnification shall also provide that the officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Furthermore, the officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any repeal or modification of this Article IX shall not affect any rights or obligations then existing. If any indemnification payment required by this Article IX is not paid by the Association within 90 days after a written claim has been received by the Association, the member, director, trustee, officer, committee member, or employee may at any time thereafter bring suit against the Association to recover the unpaid amount and, if successful in whole or in part, such person shall be entitled to be paid also the expense of prosecuting such claim. The Association shall maintain insurance, as a common expense, to protect itself and any such person against any such liability, cost, or expense, whether or not the Association would have the power to indemnify such person against such liability, cost, or expense under the Kentucky Nonprofit Corporation Acts or under this Article IX, if such insurance is reasonably available. The indemnification provided by this Article shall not be deemed exclusive of any other rights which those seeking indemnification may have or hereafter acquire under any bylaws, agreement, statute, vote of members or board of directors, or otherwise. If this Article IX or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify each such person to the full extent permitted by any applicable portion of this Article IX that shall not have been invalidated or by any other applicable law.

B. The liability of each and all of the directors of this Association shall be and is hereby limited to the greatest extent permitted by law and no director of the Association shall be liable to the Association for monetary damages for breach of such director's duties as a director, except for the following (which exceptions shall be construed as narrowly as legally permissible):

1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the Association;

2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; or

3. For any transaction from which the director derives an improper personal benefit.

In addition to the limitation on a director's liability stated hereinabove, no action taken as a director and no failure to take action as a director shall be the basis for monetary damages or injunctive relief unless:

4. The director has breached or failed to perform the duties of the director's office in compliance with the general standards for directors as set forth in KRS 273.215; and

5. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.

If the Kentucky Nonprofit Corporation Acts are amended after approval of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be deemed to be eliminated or limited by this provision to the fullest extent then permitted by the Kentucky Nonprofit Corporation Acts, as so amended. Any repeal or modification of this Article IX shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

Section 4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Right of Entry. The Association shall have the right to enter upon the land comprising any Lot for the purpose of performing maintenance of the Storm Water Management Easements.

Section 6. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 7. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of two-thirds (2/3) of the Board of Directors. Any meeting called for such purpose shall be subject to the same notice and quorum requirements and other procedures as provided in the By-Laws for meetings of the membership. This Section shall not apply, however, to:

- A. actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),
- B. the imposition and collection of assessments as provided in Article VI hereof,
- C. proceedings involving challenges to ad valorem taxation, or
- D. counterclaims brought by the Association in proceedings instituted against it.

This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

ARTICLE X

DEVELOPER'S RIGHTS

Any or all of the special rights and obligations of the Developer may be transferred to other Persons, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained herein, and provided further, no transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Fayette County Clerk's office, Lexington, Fayette County, Kentucky.

Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, and amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Developer, its successors and assigns, and any builder or developer approved by Developer, to maintain and carry on sales and promotional activities on Lots owned or leased by Developer, its successors and assigns, or such builder or developer; and to construct and operate business offices, signs, construction trailer, and sales offices on such Lots.

No rights, privileges and easements granted or reserved herein shall be merged into the title of the Property but shall be held independent of such title and no such right, privilege or easement shall be surrendered, conveyed or released except by delivery of a quitclaim deed from Developer releasing such right, privilege or easement by express reference thereto.

So long as Developer continues to have rights under this Article, no Person shall record any

declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Property without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer.

This Article may not be amended without the express written consent of the Developer; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Developer of a written statement that all sales activity has ceased.

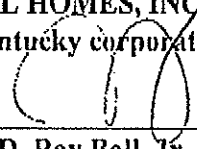
ARTICLE XII

CONSENTS AND APPROVALS

Whenever the consent or approval of any party is required pursuant to this Declaration, such consent or approval shall not be unreasonably withheld.

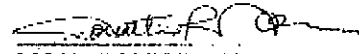
IN WITNESS WHEREOF, the undersigned Developer has executed this Declaration of Covenants, Conditions and Restrictions for Fears Property this 12th day of May, 1997.

BALL HOMES, INC.,
a Kentucky corporation

BY: 
D. Ray Ball, Jr., President

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing Declaration was on this 12th day of May, 1997, acknowledged before me by D. Ray Ball, Jr., as President of Ball Homes, Inc., a Kentucky corporation, referred to as Developer, for and on behalf of said corporation.


NOTARY PUBLIC
My Commission Expires: 8/16/99

THIS DOCUMENT PREPARED BY:

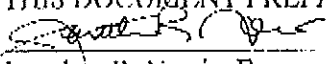

Jonathan R. Norris, Esq.
3399 Tates Creek Road
Lexington, Kentucky 40502
(606) 268-1191
J022697A

EXHIBIT "A"

Being all of Lot Nos. 1, 101, 102, 103, 104, 105, 106, 107 and 108, of Unit 1-A, Section 1, as shown on the final record plat of the Fears Property, Unit 1-A, Section 1 and Unit 2, Lexington, Fayette County, Kentucky, of record in Plat Cabinet K, Slide 212, in the Fayette County Clerk's office.

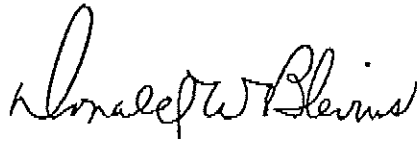
Being all of Lot Nos. 40, 41, 42, 43, 81, 109, 110, 111, 112, 113, 114 and 115, of Unit 1-B, Section 1, as shown on the final record plat of the Fears Property, Unit 1-B, Section 1, Lexington, Fayette County, Kentucky, of record in Plat Cabinet K, Slide 213, in the Fayette County Clerk's office.

Being all of Unit 1-C, as shown on the final record plat of the Fears Property, Unit 1-C, Lexington, Fayette County, Kentucky, of record in Plat Cabinet K, Slide 214, in the Fayette County Clerk's office.

EXHIBIT "B"

Being all of Lot Nos. 1 and 2, as shown on the non-building minor subdivision plat of the Fears Property, 3260 Richmond Road, of record in Plat Cabinet J, Slide 939, in the Fayette County Clerk's office.

I, Donald W Blevins, County Court Clerk
of Fayette County, Kentucky, hereby
certify that the foregoing instrument
has been duly recorded in my office.



By: Marcia DERR, dc

199705220231

May 22, 1997

14:03:39 PM

Fees	\$42.00	Tax	\$0.00
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Total Paid	\$42.00
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19 Pages

320 - 338

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FEARS PROPERTY**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FEARS PROPERTY (the "Amendment") is made as of the 12th day of May, 1997, by **BALL HOMES, INC.**, a Kentucky corporation, 3399 Tates Creek Road, Lexington, Kentucky 40502 ("Developer").

WITNESSETH:

WHEREAS, Developer has executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Fears Property (the "Declaration") which appears of record in Deed Book 1912, Page 320, in the Fayette County Clerk's office; and

WHEREAS, pursuant to the terms and provisions of the Declaration the Developer retained the right and privilege to subject all or certain portions of the property described in Exhibit "B" of the Declaration to the terms and provisions of the Declaration; and

WHEREAS, the Developer now desires to exercise its right and privilege to subject to the terms and provisions of the Declaration all real property described in Exhibit "A" hereto which has not heretofore been subjected to the Declaration.

NOW, THEREFORE, Developer hereby declares that the term "Property," as such is used and referred to in the Declaration, shall, as of the effective date of this Amendment, mean and refer to all real property that is described in Exhibit "A" hereto.

FURTHERMORE, the Developer declares and acknowledges that the Declaration, as such has been amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer has executed this Amendment as of the date and year first above written.

BALL HOMES, INC.
a Kentucky corporation

By: _____
Its: _____

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing Amendment was subscribed, acknowledged and sworn to before me on this
the _____ day of _____ by _____ as _____ of Ball Homes,
Inc., a Kentucky corporation, for and on behalf of the corporation.

NOTARY PUBLIC

My commission expires: _____

This instrument was prepared by:

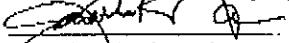

Jonathan R. Norris, Esq.
3399 Tates Creek Road
Lexington, Kentucky 40502
(606) 268-1191
J082798A

EXHIBIT "A"

Being all of Lot Nos. 1 and 2, as shown on the non-building minor subdivision plat of the Fears Property, 3260 Richmond Road, of record in Plat Cabinet J, Slide 939, in the Fayette County Clerk's office.

HOWEVER, there is excepted from the property described above all of Lot Nos. 1, 2 and 3, of Unit 2 of the Fears Property, as shown on the Final Record Plat of Unit 1-A, Section 1 and Unit 2 of the Fears Property, which appears of record in Plat Cabinet K, Slide 212, in the aforesaid Clerk's office.