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**AMENDED AND  
RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND DEDICATION OF  
EASEMENTS  
OF  
FOXBOROUGH HOMES ASSOCIATION, INC.  
A SUBDIVISION IN LEAWOOD, JOHNSON COUNTY, KANSAS**

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND DEDICATION OF EASEMENTS**

**FOR FOXBOROUGH**

**A SUBDIVISION IN LEAWOOD, JOHNSON COUNTY, KANSAS**

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AMENDED AND  
RESTATED DECLARATION OF  
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OF  
FOXBOROUGH  
A SUBDIVISION IN LEAWOOD, JOHNSON COUNTY, KANSAS

THIS AMENDED AND RESTATED DECLARATION, made this 28<sup>th</sup> day of April, 2010, by Foxborough Homes Association, Inc., (hereinafter called "Association") and the undersigned members of the Association.

WHEREAS, on February 24, 1984, Saul Ellis and Company, Inc., a Kansas Corporation, (hereafter called "Developer") made that certain Declaration of Covenants, Conditions, Restrictions of Foxborough, (hereinafter called "Declaration") recorded in Volume 1974, at page 374, et seq. in the records of the Register of Deeds of Johnson County, Kansas; and

WHEREAS, pursuant to Article XI of the Declaration, it may be amended by written consent of at least 60 percent of owners subject to the Declaration; and

WHEREAS, the Board of Directors and Owners desire to amend and restate the Declaration and its amendments in order to update the method of community governance; and

WHEREAS, the Developer desired to provide for the preservation and enhancement of the property values, amenities, and opportunities in said subdivision contributing to the personal and general health, safety, and welfare of residents and for the maintenance of the land and improvements thereon, and to this end subjected the real property described in Article I, to the covenants, restrictions, easements, charges, and liens set forth in the Declaration, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth and the intents and requirements of the County of Johnson, the Developer

incorporated under the laws of this state the Association as a Kansas not-for-profit corporation; and

WHEREAS, the Developer declared that the real property described in Article I, shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth; and

WHEREAS, the Developer delegated and assigned to the Association the power of owning, maintaining, and administering the subdivision properties and facilities, administering and enforcing the covenants and restrictions, collection and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare to the residents.

WHEREAS, owners of at least 60 percent of the Lots of Foxborough have signed this Amended Declaration as attached hereto;

NOW THEREFORE, the Declaration and its amendments are hereby amended by striking it and all amendments thereto in their entirety and substituting in its place this Amended Declaration.

### **PURPOSE**

The purpose of this Declaration is to establish a beneficial and highly desirous mechanism whereby FOXBOROUGH may continue to be an outstanding and prestigious residential area of clustered single-family homes. This Declaration is in the nature of a constitution setting forth the framework within which such desired result may be obtained.

Easements, if any, for vehicular access, utilities and beautification are among the benefits which must be established by this Declaration. For beauty, utility and continuing high values over the years, provisions must be made for the control of maintenance of all buildings and improvements in FOXBOROUGH, and such provisions must include enforceable means for the carrying out of these advantageous programs.

## **THE COMPOSITION OF FOXBOROUGH**

The aforesaid plat of FOXBOROUGH reflects a total of 74 lots, designated and numbered from 1 through 74, inclusive, and the Swimming Pool Area and are part and parcel of the subdivision known as FOXBOROUGH.

### **The Declaration**

Declarant declared that all of the land generally described above and more fully described hereinafter and filed for record of FOXBOROUGH, presently consisting of, or providing for an area of single-family residences, is and shall be held, used, occupied, sold, conveyed, hypothecated or encumbered, and improved subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above-described property or any part thereof, and shall inure to the benefit of each and every party, all of which are more fully set forth hereinafter.

### **Article I**

#### **Definitions**

"BOARD" means Board of Directors of the homes association. Directors shall be Association members elected by the members of the Association. The size of the board shall be at least five but no more than nine members.

"LOT" may mean either any lot as platted, a part or parts of one or more lots as platted and upon which a residence may be erected in accordance with the restrictions herein contained.

"UNIT" shall mean that which is designed to be and used exclusively for single-family residential purposes, and shall include both the lot and the residence.

"OWNERS" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any lot which is part of FOXBOROUGH.

"STREET" shall mean any street, road, drive or terrace of whatever name which is shown on said plat of FOXBOROUGH.

"ASSOCIATION" shall mean the not-for-profit corporation formed for the purpose of assuming the obligations of maintaining and operating Foxborough in accordance with the provisions hereof and by agreement among the Owners.

"DECLARANT" shall mean and refer to Saul Ellis and Company, Inc.

"FOXBOROUGH" shall mean and refer to the subdivision of FOXBOROUGH, a subdivision of land lying just southwest of State Line and 123<sup>rd</sup> Street, in the City of Leawood, Johnson County, Kansas and legally described as:

Lots 1 through 14, Plat of Foxborough,  
a subdivision in Leawood, Johnson County, Kansas.

Lots 15 through 40, Plat of Foxborough,  
Second Plat, a subdivision in Leawood, Johnson County, Kansas.

Lots 41 through 74, Plat of Foxborough,  
Third Plat, a subdivision in Leawood, Johnson County, Kansas.

Foxborough Swim Club, Plat of Foxborough,  
a subdivision in Leawood, Johnson County, Kansas.

## **ARTICLE II**

### **MEMBERSHIP**

1. **Membership and voting rights in the Association.** Every person or entity who is an owner of a fee simple interest in one or more units (lot and residence) shall be a member of the Association. Ownership of such unit shall be the sole qualification of membership except an Owner may designate a co-habitant of the residence as a member. If the Owner is a trust for the inhabitant/inhabitants, up to two of such inhabitants are members. All members shall be entitled to one vote for each unit in which they hold the interest required for membership as stated in this ARTICLE II herein. When more than one person holds such interest in any unit, all such persons shall be members and the vote for such unit shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any one unit. And for purposes for all obligations of the Owner hereunder, shall include, where appropriate, all family members, and tenants of such Owner and all of their guests and invitees.

2. **Quorum, Proxies, Voting.**

- a. 35 percent of the outstanding membership of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Association.
- b. At all meetings of the Association, a member may vote in person or by proxy executed in writing by such member. Such proxies shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after twelve months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his unit.

3. **Articles of Incorporation and By-Laws.** Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and By-Laws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any provisions of Kansas laws applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provision of Kansas laws shall control.

**ARTICLE III**

**RIGHTS OF OWNERS AND OF THE ASSOCIATION**

In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the homes association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the board to carry out and effectuate the purposes of this Declaration, including without limitation:

1. The Association shall have the right and power, acting by and through its Board of Directors, to grant licenses, rights-of-way and/or easements for access or for the construction, reconstruction, maintenance and/or repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person.
2. The Board of Directors of the Association shall have the right and power to fix penalties for the violation of any of its rules and regulations as stated in this Declaration or as it may be amended or approved from time to time.

3. The Association may employ a management company to carry out all the functions of the Association as delineated in this Declaration or in its Articles of Incorporation or By-Laws upon such fees, terms and conditions as may be negotiated by it with any such management company. It is contemplated that the management company will be a profit-making company with sufficient incentive to assure the Owners that they will receive high-quality management service. All expenditures of any such management company under its agreement with the Association, and all fees paid to it shall be included as maintenance costs and expenses in accordance with the provisions hereof or thereof, and all such costs and expenses shall be allocated to the Owners as herein or therein provided.

#### **ARTICLE IV**

##### **PERSONS BOUND BY THESE RESTRICTIONS**

All persons who now own or shall hereafter acquire any interest in the above enumerated lots hereby restricted shall be taken to hold and agree and covenant with the owner(s) of said other lots, and with its successors, heirs and assigns, to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residences and improvements thereon.

#### **ARTICLE V**

##### **MAINTENANCE**

Because of the fact that units, although separately owned, are a part of Foxborough, and said Foxborough is an outstanding and prestigious residential area, the Association and the undersigned owners restate and set forth herein certain stipulations which shall govern the ownership of the Units, and shall be binding on the Owners thereof. These stipulations, without having been limited thereto, relate to such things as interior and exterior maintenance and repairs, and are in detail as follows:

1. Each Owner shall maintain the interior of each such Unit, including patio area(s), in a neat, clean and orderly condition. This requirement of maintenance shall particularly extend to all items which can be seen externally, including exterior

and interior cleaning of windows, and replacement of broken glass and burned-out light bulbs, if any.

2. Each owner shall maintain the exterior of each such Unit except to the extent that the maintenance of the exterior of any Unit as herein set forth shall be the obligation of the homes association, which shall as a minimum provide for, and carry out contracted maintenance of lawns, including the shrubs, street trees and common area plants; trash, ice and snow removal; maintenance of streets, curbs, walkways and storm sewers, if any.
3. Materials used in any replacement of any and all major exterior components of the residential structure shall be the same as or similar to the original thereof, and must be approved in writing by the Board prior thereto.
4. Each Owner shall fully repaint and/or stain the exterior of his residence as needed to insure that FOXBOROUGH remains an outstanding and prestigious residential area, and each owner in complying therewith shall also be required to use paint of the same original color combination unless otherwise approved in writing by the Board.
5. The cost of maintenance and upkeep of Foxborough as agreed to by the Owners with their homes association shall be divided among all the Units which are from time to time subject to, and as set forth under ARTICLE VI, 3, of this Declaration. Such costs of maintaining Foxborough shall be the total cost necessarily expended for the proper maintenance, repair and aesthetic appeal of Foxborough.

## **ARTICLE VI**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

1. **Creation of the Lien and Personal Obligation Assessments.** Each owner of a Unit, by acceptance of a Deed , whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association all assessments or charges, general and special, to be fixed, established, levied and collected from time to time as herein provided. Such assessments, together with such interest thereon and such costs of collection thereof as may be hereinafter provided, shall be a charge on the land and/or improvements, and shall be a continuing lien upon the property against which each such assessment is made. Regardless of any alleged claim, reason, assertion or defense believed, advanced or made by any Unit Owner, timely

payments are agreed to, and shall be made by any such Unit Owner of all such assessments.

2. **Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in Foxborough, and, in particular, for the maintenance within Foxborough as agreed by the Owners.
3. **Payment of Annual Assessment.** Annual assessments or charges, shall remain constant from January 1 through December 31 of each year except as hereinafter set forth. Assessments are based upon the required minimum services of the homes association as agreed to by the members of, and to be rendered by the homes association, as follows:
  - a. cutting and spraying lawns;
  - b. trimming and spraying of shrubs and street trees;
  - c. trash removal;
  - d. snow and ice removal;
  - e. maintenance of statuary and entrance markers;
  - f. maintenance of streets, curbs and storm sewers;
  - g. any maintenance within Foxborough not performed by the City or a utility company; and any of the following optional services that may be thereafter agreed to by no less than 75 percent of the then members of the homes association:
    - h. painting or staining of the exterior of Units;
    - i. repair of the roof of any Unit;
    - j. replacement of window glass;
    - k. replacement of light bulbs; and
    - l. maintenance of all sprinkler systems.

The amount of the assessment per Unit shall be determined by the Board of Directors of the Association. Said assessments shall be paid monthly on or before the first day of each calendar month in each calendar year and shall be deemed delinquent after the tenth day of each month. The annual assessment may not be increased more than ten percent above the assessment for the previous calendar year, and allocated on monthly basis. The annual assessment may be increased above the amount provided immediately hereinabove by an affirmative vote of at least 51 percent of all the then members who are present and voting in person or by proxy, at a meeting called for such purpose by no less than ten nor more than 40 days notice in writing to each such member stating

the time, purpose and place of said meeting. After consideration and determination of current routine repair, maintenance, care and operational costs, and other needs of the Association, the Board of Directors shall levy the annual assessments for the forthcoming calendar year for each Unit payable monthly in an amount not in excess of the maximum allowable by this paragraph. Annual assessments for each Unit owner of a completed Unit payable monthly for the ensuing calendar year shall be established by the Association on the basis that said costs as estimated under the budget shall be borne by the Owners of such Units as set forth under ARTICLE VI. In the event there is an excess of money collected from such annual assessments paid monthly over the costs of any such year, excluding, however, any total mandatory separate annual reserve accruing in the budget to provide required funds for repair or replacement of major items in the community, any such excess shall also be taken into consideration in preparing the budget and annual assessments to be paid monthly for the following calendar year. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with generally accepted accounting practices, and, as a part of the cost, the Association may employ a certified public accountant to render a written audit of its operations for each calendar year, with a copy thereof being made available to the Owners of each such Unit.

4. **Uniform Rate of Fees or Charges.** All fees or charges shall be fixed by the Board of Directors of the Association at a uniform rate for all Units.
5. **Late Charge.** If an assessment or special assessment is not paid when due, the Association may consider, determine and assert that a default in one month's payment constitutes a default for eleven additional months' payments, and assess the total thereof against any such Unit Owner and/or the Association may exact a reasonable Late Charge for each dollar not paid per month or part thereof until paid, and any such total default sum and/or such Late Charge shall become a lien on a defaulting Unit as any other assessment until paid. Default sums and/or Late Charges, when collected, shall be credited to the Maintenance Fund.
6. **Notice.** The mortgage, if any, under each Unit will be given written notice by the Association if the Owner is in default of the payment of any dues or assessments imposed by the Association, or is in default with respect to any other obligation imposed by the Association, and the mortgagee will receive written notification from the Association of any default which is not cured within 30 days.

7. **Lien for Unpaid Assessments.** The annual and special assessments together with such interest thereon, late charges and costs of collection as herein provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with any interest or late charges and costs of collection shall also be the personal obligation of the person who was the owner of such property at the time the assessment became due. A statement of delinquent assessments after notice as provided herein shall be filed with the Register of Deeds, Johnson County, Kansas, and thereafter said lien may be foreclosed as provided below.
8. **Foreclosure of Lien.** If any assessment made pursuant to the provisions hereof by the Association remains unpaid for 30 days after the date upon which it is due, it may be foreclosed by suit by the Association in a like manner as a mortgage on real property, and the Unit Owner shall be required to pay reasonable rental therefore. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired, as a result of a successful bid. Suit to recover money charged for unpaid Maintenance assessments may be maintained without foreclosing or waiving the lien securing same.

## **ARTICLE VII**

### **TAXES AND INSURANCE**

1. **Taxes.** Each Unit Owner shall be responsible for and pay when due his own individual real estate, personal property, and any other taxes and assessments, both general and special, which may be assessed against his property by the State of Kansas, County of Johnson, or other legal entity.
2. **Insurance.** The Owner of any Unit shall obtain and maintain casualty insurance, insuring the home and all improvements owned by the Owner against loss by fire, lightening, windstorm or other casualty and extended coverage in an amount equal to full replacement value (i.e., 100 percent of replacement costs exclusive of the land, foundation and excavation). All premiums for such insurance shall be paid by each Owner. Insurance proceeds are to be used to fully repair and restore the damaged Unit to substantially the same or better condition in which it existed prior to the fire, casualty or other disaster, with each Unit having the same vertical and other boundaries as previously existed and to comply with all applicable building codes and to be approved by the Board of Directors. Assessments for common expenses shall not be abated during the

period of insurance adjustment, repair and restoration. The Board of Directors may require proof of such insurance.

## **Article VIII**

### **Restrictions**

1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties nor shall any exterior additions to, or change or alteration therein be made including reconstruction after a casualty loss, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same and/or any other proposed form of change including, without limitation, any other information specified by the Association shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for Foxborough by the Board.
2. No unit or part of any Unit shall be used for a purpose other than private, single-family residence as zoned by the City of Leawood, Kansas; provided, however that part of a Unit, in conjunction with its use as a single-family residence and purely as an ancillary use with no regular customers or inviting of customers to the Unit, or signs or advertising of any type, on or off the Unit, also may be used as an office by the occupant.
3. No power or telephone distribution or service connection lines may be erected or maintained above the surface of the ground on any of said lots without the consent in writing of the Board.
4. No radio or television transmitting or receiving antenna may be erected or maintained outside of or attached to any residence on any of said lots without the consent in writing of the Board. No lights or other illumination shall be higher than the house on any lot covered by these restrictions without the consent of the Board.
5. No pergola, or any detached structure for purely ornamental purposes, may be erected on any part of said lots without the consent in writing of the Board.
6. No building or any part thereof, exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys, and similar projections, shall be nearer the street line than the building setback lines shown on said plat; provided, however, that said Board must consent to any projection more than four feet beyond the building line.

7. Any provision of this restriction pertaining to construction of a dwelling upon any lot may be waived or a variance permitted provided such variances shall not exceed ten percent of the area required or ten feet of the setback requirement and such variance shall be by written modification applicable only to the particular lot and approved by the Board. This waiver of variance shall not exclude any requirement of the City of Leawood.
8. No tank for the storage of fuel may be maintained on any of said lots without the consent in writing of the Board.
9. No sign shall be hung or displayed either on the inside or the outside of any residence or otherwise or so as to be seen from the exterior, and no apparatus or unsightly projection shall be affixed to, or placed upon an exterior wall or roof of the Unit's premises without the prior written consent of the Board; provided, however, one "for sale" sign at any one time may be displayed on or on behalf of the Owner solely in the ground area in front of his Unit until sold all in accordance with the laws of the City of Leawood, Kansas.
10. No animals, livestock or poultry of any kind shall be raised, kept or maintained on any building site in Foxborough other than household pets, which shall be limited in accordance with the laws of the City of Leawood, Kansas. All pets shall be leashed when beyond the confines of the home and patio, but not to any fence. No pet will be kept, bred or maintained for commercial purposes.
11. No noxious or offensive trace or activity shall be carried on, upon or within any Unit nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit.
12. No vehicles shall be parked on streets or driveways so as to obstruct ingress and egress by Owners of Units, their families, guests and invitees except for the reasonable needs of emergency, construction, or services vehicles, and then limited to as brief period of time as possible. No camper, trailer, bus, van, boat or similar vehicles shall be permitted to stand exposed to view on any driveway or other portion of any lot longer than 14 hours in any 24-hour period; provided, however, one recreational vehicle may be parked for a period not to exceed 36 hours for the purpose of loading or unloading, and shall be forthwith removed thereafter.
13. All garages shall be attached to the residence.

14. No swimming pools or appurtenances to same may be built, constructed or erected without the prior written consent of the Board. Swimming pools allowed may be covered with flat storage covers to protect the pools from leaves, animals, etc., when the pools are inoperable. No pool enclosures referred to as glass, plastic, aluminum, metal and fiber enclosures or air structures, air bubbles and air covers shall be allowed at any time. No pool enclosures, fences and appurtenant structures shall be allowed that the Board deems unsightly or objectionable to other lot owners in Foxborough. Any pool permitted and allowed shall be properly maintained at all times.

## **ARTICLE IX**

### **EASEMENTS**

The property subject to this Declaration shall be subject to a perpetual utility easement in gross to the Association, its successors and assigns, for ingress and egress, to perform its obligations and duties as may be required by this Declaration or amendments thereto.

The Association shall have, and does hereby reserve the right, to locate, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, sanitary storm sewers, gas and water mains and lines, electrical and telephone lines, cable television, master television antenna system, individual sprinkler systems and other utilities, and conduits to said Unit premises for any and all pumps and systems, and to give or grant right of use of easement therefore, over, under, through, and upon any part of the land subject to this Declaration except the portions thereof upon which residences have been erected.

An easement of ingress and egress from the streets and common areas, if any, as delineated, described, defined and set forth on that certain plat of FOXBOROUGH, is hereby established whereby the owners of each and all of said lots and their invitees shall have the mutual common right of non-exclusive vehicular access to their respective lots and residences located in and on the FOXBOROUGH plat.

An easement of ingress and egress is also hereby established permitting a mutual common right of non-exclusive, non-vehicular access by walkways, if any, to and from their respective lots and residences of the above Owners.

## **ARTICLE X**

### **RELEASE OR AMENDMENT**

The covenants, restrictions and provisions of this instrument shall be deemed covenants running with and binding the land subject to this declaration, and unless such covenants, restrictions and provisions are amended, modified, changed or cancelled, in whole or in part, by a written agreement signed by not less than 60 percent of the Owners subject to this Declaration. Any agreement modifying, changing, or cancelling these restrictions shall become effective upon the date of its recording in the office of the Register of Deeds of Johnson County, Kansas.

## **ARTICLE XI**

### **RIGHT TO ENFORCE**

The restrictions herein set forth shall run with the land and bind the present Owner, its successors, heirs and assigns, and all parties claiming by, through and under it shall and do agree and covenant with the Owners of the lots hereby restricted and with their successors, heirs and assigns, and with each of them, to conform to and observe said restrictions as to the use of said lots and the construction of improvements thereon, but no restriction herein set forth shall be personally binding on any corporation, person or persons, except in respect of breaches committed during its, his or their assigns of, or title to said land; and the Association, and also the Owner or Owners of any of the lots hereby restricted shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of the restrictions above set forth, in addition to ordinary legal actions for damages; and failure of the Association, its successors or assigns, or of any Owner or Owners, their heirs and assigns, of any lot or lots in this subdivision, to enforce any of the restrictions herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter. In enforcing this restriction, the Association shall have the right to recover its costs, including attorney fees.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

1. **Swimming Pool Area**. The developer of FOXBOROUGH constructed a swimming pool for the use of FOXBOROUGH owners and the owners within

HUNTER'S RIDGE. The Association reserves the right with respect to the swimming pool:

- a. To adopt and publish rules of membership including fees for use;
  - b. To extend privileges of membership or pool use to other adjacent subdivisions in the event it is determined by Association that the subdivisions of FOXBOROUGH and HUNTER'S RIDGE do not adequately support the facility.
2. **Incorporation by Reference on Resale.** In the event any owner sells or otherwise transfers any Unit, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, conditions, easements and restrictions set forth in this Declaration; but failure to include such a provision in any such deed shall not affect the validity, priority or enforceability of the covenants, conditions, easements and restrictions set forth in this Declaration or against such sold or otherwise transferred unit.
  3. **Notices.** All notices required to be given hereunder shall be deemed to have been properly sent when deposited with the United States Postal Service, ordinary mail, postage prepaid, addressed to the Owner at the street address assigned to his Unit by the governing body of the City of Leawood, Kansas or its delegate.
  4. **Separability.** Invalidation of any provision or restriction set forth herein or any part thereof by an order, judgment or decree of any court of law or equity, or otherwise, shall not invalidate or affect any of the other restrictions or any part thereof as set forth herein, but they shall remain, and continue in full force and effect.
  5. **Captions.** The captions contained in this Declaration are for convenience only and are not part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of the Declaration.
  6. **Safety and Security.** Each Owner and occupant of a Unit, and their respective guests and invitees shall be responsible for their own personal safety and the security of their property in Foxborough. The Association may, but shall not be obligated to, maintain or support certain activities within Foxborough designed to enhance the level of safety or security which each person provides for himself and his property. The Association shall not be considered insurer or guarantor of security within Foxborough, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting

access to Foxborough, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees are not guarantors of security or safety and that each Person using Foxborough assumes all risks of personal injury and loss or damage to property, resulting from acts of third parties.

IN WITNESS WHEREOF, the undersigned officers of Foxborough Homes Association, Inc. hereby certify that this Amended Declaration has received the requisite approval pursuant to Article XI of the Declaration.

