

This instrument is being refiled to correct the description by adding "Block 1" on Page 4.

STATE OF KANSAS }  
COUNTY OF JOHNSON } SS  
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FOXBOROUGH  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND DEDICATION OF EASEMENTS

BY \_\_\_\_\_ DEF

THIS DECLARATION is made and entered into this 24th day of February, 1984, by SAUL ELLIS AND COMPANY, INC., a Kansas corporation, the OWNER and DECLARANT, with its principal place of business at 9401 Nall Avenue, Suite 201, Prairie Village, Kansas, and relates to each and all of the lots which have heretofore been platted, replatted and recorded, as reflected on the plat of FOXBOROUGH, said plat being filed for record on the 26th day of October, 1983, in Book 54 at Page 32 as Document 1437232 in the Register of Deeds office of Johnson County, Kansas, which is a subdivision of land now in the City of Leawood, Johnson County, Kansas, said FOXBOROUGH being a part of the South 1/2 of Section 23, Township 13, Range 25, being more fully described under ARTICLE I hereinafter.

The number of designations of said lots and the Declaration encompassing each and all of them are set forth hereinafter.

#### PURPOSE

The purpose of this Declaration is to establish a beneficial and highly desirous mechanism whereby FOXBOROUGH may become 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.

STATE OF KANSAS }  
COUNTY OF JOHNSON } SS  
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RUBIE M. SCOTT  
REGISTER OF DEEDS

BY \_\_\_\_\_ DEP

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#### THE COMPOSITION OF FOXBOROUGH

The aforesaid plat of FOXBOROUGH reflects a total of 14 lots, designated and numbered from 1 through 14, inclusive, and are part and parcel of the subdivision known as FOXBOROUGH.

#### THE DECLARATION

Declarant hereby declares 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 clustered 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 such party, all of which are more fully set forth hereinafter.

#### ARTICLE I

##### DEFINITIONS

"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 a part of FOXBOROUGH with the exception that contract purchasers shall also have the rights and obligations of owners.

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

"PROJECT" shall mean FOXBOROUGH as it may ultimately be fully developed which shall include any addition to the above plat.

"OUTBUILDING" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant, but which has a permanent location on the soil or is attached to something having a permanent location on the soil.

"ASSOCIATION" shall mean the not-for-profit corporation formed for the purpose of assuming the obligations of maintaining and operating the Project in accordance with the provisions hereof and by agreement among the Owners. Since Declarant neither has nor assumes any obligation or responsibility for future and continuing management of the Association, the Association may in its discretion deem to employ a management company to carry out the obligations of the Association as determined by it from time to time.

"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 in Leawood, Kansas, approved for development without, however, any commitment, undertaking or promise whatsoever to do so by Declarant within the approximately 5.441 acre tract lying just east of State Line at 123rd Street, in the City of Leawood, Johnson County, Kansas, and legally described as:

Part of the S 1/2 of Frac. Section 23, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the S-1/2 of said Frac. Section 23; thence S 89° 14' 26" E, along the North line of the S-1/2 of said Frac. Section 23, a distance of 50.26 feet, to a point on the Northerly extension of the East line of Lot 3, Block 1, HUNTER'S RIDGE, a subdivision of land now in the City of Leawood, Johnson County, Kansas, said point also being the true point of beginning of subject tract; thence continuing S 89° 14' 26" E, along the North line of the S-1/2 of said Frac. Section 23, a distance

of 545 feet, to a point on the Northerly extension of the Easterly right-of-way line of Pembroke Lane, as now located; thence S 0° 45' 34" W, along the Easterly right-of-way line and its extension of said Pembroke Lane, a distance of 100.82 feet, to a point of curvature; thence Southerly and Southwesterly, along the Easterly and Southeasterly right-of-way line of said Pembroke Lane, said line being on a curve to the right, having a radius of 400 feet and a central angle of 47° 02' 37", a distance of 328.43 feet, to a point of compound curvature; thence Southwesterly, along the Southeasterly and Southerly right-of-way line of said Pembroke Lane, said line being on a curve to the right, having a radius of 650 feet, a central angle of 30° 25' 48", and whose initial tangent bearing is S 47° 48' 11" W, a distance of 345.22 feet, to the Northeasterly corner of Lot 12, Block 2, HUNTER'S RIDGE, THIRD PLAT, a subdivision of land now in the City of Leawood, Johnson County, Kansas; thence N 11° 46' 01" W, a distance of 25 feet, to a point on the centerline of said Pembroke Lane; thence S 78° 56' 59" W, along the centerline of said Pembroke Lane, a distance of 15.64 feet; thence N 10° 20' W, a distance of 25 feet, to the Southeasterly corner of Lot 19, Block 1 of said HUNTER'S RIDGE, THIRD PLAT; thence N 23° 57' 31" W, along the Northeasterly line of said Lot 19, a distance of 215.42 feet, to the most Northerly corner thereof; thence N 0° 45' 34" E, along the East line and its extension of Lots 4 and 3, Block 1 of said HUNTER'S RIDGE, a distance of 310.96 feet, to the true point of beginning of subject tract, containing 5.441 Acres, more or less, of unplatted land.

Block 1,

Now known as Lots 1 through 14/ FOXBOROUGH, a subdivision in the City of Leawood, Johnson County, Kansas.

"FOXBOROUGH" shall also include any addition to the above plat.

## 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. 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.

2. Quorum, Proxies, Voting.

a. Fifty-one percent (51%) 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 a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his unit. No one owner of a membership may vote more than one additional vote by proxy.

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 provisions of Kansas laws shall control.

ARTICLE III

RIGHTS OF OWNERS AND OF THE ASSOCIATION

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, the Declarant 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 may be amended or approved from time to time.

3. The Association may employ a management company to carry out all of 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

##### LOT AREA AND SETBACK OF RESIDENCES FROM STREET

Declarant shall have the right at any time and from time to time to alter the size and shape of any and all lots in the plat, either more or less, as the case may be, but only upon compliance with the ordinances or approval of the City of Leawood, Kansas, and by appropriate recording of any such changes.

Declarant shall also have the right at any time and from time to time to change the location of the building lines shown on said plat which shall be exercised only after the proposed change(s) shall have been approved by the City of Leawood, Kansas.

#### ARTICLE VI

#### MAINTENANCE

Because of the fact that units, although separately owned, are a part of this Project, and said Project is designed to become an outstanding and prestigious residential area, Declarant does hereby 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 maintenance of lawns, including the shrubs, trees and 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 Declarant and/or homes association prior thereto.

4. Each Owner shall fully repaint and/or stain the exterior of his residence at least every four (4) years commencing from the date of the original recording of his warranty deed to the premises unless an extension of time is granted in writing by the homes association, 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 homes association.

5. The cost of maintenance and upkeep of the Project as agreed to by the Owners with their homes association shall be divided among all of the Units which are from time to time subject to, and as set forth under ARTICLE VII, 3, of this Declaration. Such costs of maintaining the Project shall be the total cost necessarily expended for the proper maintenance, repair and aesthetic appeal of the Project.

#### ARTICLE VII

##### COVENANT FOR MAINTENANCE ASSESSMENTS

###### 1. Creation of the Lien and Personal Obligation Assessments.

Each owner of a Unit, by acceptance of a Deed therefor, 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. Prior to the consummation of the transaction whereby Owner has fee simple title to the Unit, there shall



be paid by all such members to the Association or to the manager on behalf of the Association a sum equal to three (3) months of installments of respective and varying assessments which will be, and become a part of the initial working capital contributions to the Association; thereafter, payment of annual assessments on a monthly basis shall be in accordance with paragraph 3. of this ARTICLE hereinafter.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Project, and, in particular, for the maintenance within the Project as agreed by the Owners.

3. Payment of Annual Assessments. Annual assessments or charges, shall remain constant from January 1 through December 31 of each year except as hereinafter set forth, and shall be subject to the following limitations thereon: Initial assessments are based solely on initial estimates by Declarant which do not represent what may then or thereafter reflect actual costs, and so assessed from time to time and for which Declarant does not and shall not assume any responsibility or liability therefor; that said initial assessments are based upon the initial 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 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 other maintenance within the project 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 seventy-five percent (75%) of the then members of the homes association and provided:

- a) painting or staining of the exterior of Units;
- b) repair of the roof of any Unit;
- c) replacement of window glass;
- d) replacement of light bulbs; and
- e) maintenance of all sprinkler systems.

The costs, expenses, responsibilities and services of the homes association will commence immediately upon the date of the recording of the warranty deed conveyed by Declarant to the purchaser of the first Unit sold in the Project, but until such time, each and all of the aforesaid shall be performed and paid by Declarant. The amount of the assessment per Unit shall be determined by the Declarant initially and after organization of the Homes Association, then 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. From and after January 1 of the year immediately following such conveyance of the first Unit to a member, the annual assessment may not be increased more than ten percent (10%) above the assessment for the previous calendar year, and allocated on a monthly basis. From and after January 1 of the year immediately following the conveyance of the first Unit to a member, the annual assessment may be increased above the amount provided immediately hereinabove by an affirmative vote of at least fifty-one percent (51%) 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 (10) nor more than forty (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 VII. 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 thirty (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 thirty (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 therefor. 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 VIII

##### 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 lot and Unit shall obtain and maintain casualty insurance, insuring all improvements owned by the Owner against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount equal to full replacement value (i.e., one hundred percent (100%) of replacement costs exclusive of the land, foundation and excavation), respectively, with an "agreed amount" endorsement without deduction or allowance for depreciation, and the insurer shall waive any "increase of Hazard" provision of its policy and any "apportionment of loss" provision of its policy in the event there is any other insurance insuring the same risk. All premiums for such insurance shall be paid by each Owner. Such insurance policies shall be in a form acceptable to the Board of Directors of the Association or its manager, if any, and shall include a loss payable clause in favor of Foxborough Homes Association, as insurance trustee, or its designated nominee, for the benefit of each Owner and their mortgagees, if any, as their interests may appear, or jointly, to the Unit Owner, Foxborough Homes Association and the mortgagee. In the event of loss, each Owner shall give notice to the Board of Directors of the Association or its manager, if any, and the Board of Directors of the Association or its manager, if any, shall be authorized to make proof of loss if the same is not promptly made by each Owner. All insurance companies are authorized to make payments for such loss directly to Foxborough Homes Association as insurance trustee, or its designated nominee for each Owner and their mortgagee as their interests may appear. The Association, as insurance trustee, or its designated nominee, shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds nor for the form or content of the policies. The sole duty of the Association shall be to receive such proceeds as are paid, and hold the same in trust for the purposes stated herein for the benefit of the Unit Owners and their respective mortgagees as their interests may appear. No mortgagee shall

have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of any mortgage debt any insurance proceeds nor to assert any right or claim to any portion of the insurance proceeds unless it be the excess of insurance payments over the replacement costs of the damaged unit and other portions of the Unit Owner's property, and then only after the same is fully repaired and restored. In the event that there are proceeds remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be reconstructed or repaired, such proceeds shall be distributed to the respective owners and their respective mortgagees as their interests may appear. For purposes of administering all provisions of the Declaration relating to insurance, the Association, acting by and through its Board of Directors, is irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each mortgagee, holder of deed of trust, or other lien upon a Unit. The Association, acting by its Board of Directors, or its duly authorized manager, if any, shall have the authority to, and shall adjust all claims arising under all insurance policies, and the authority to, and shall execute and deliver releases upon the payment of claims. Title to any Unit is declared, and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact as herein provided. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee, or its designated nominee, except as otherwise provided for herein, shall be disbursed only in payment of the costs of replacement, reconstruction or repair of the damaged improvements, unless all Unit Owners

and their respective first mortgagees agree in writing not to repair, reconstruct or rebuild. If the cost of replacement, reconstruction or repair of an individual Unit shall exceed the amount of insurance proceeds received by the insurance trustee, such excess shall be a special assessment against said lot and Unit to be paid by the Owner of said lot and Unit to the Association as insurance trustee, or its designated nominee, to be added to the funds received from said insurance proceeds, and the same shall be disbursed for replacement, reconstruction or repair of the Unit. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and restoration. The Board of Directors of the Association may employ an architectural control committee or other qualified person who shall be in charge of all replacement, reconstruction and repair of all improvements. Reconstruction of the building(s), as used in this paragraph, means restoring the building(s) substantially to the same condition in which it or they existed prior to the fire, casualty or other disaster, with each Unit having the same vertical and other boundaries as previously existed. Each request for disbursement of insurance proceeds held by the Association as insurance trustee, or its designated nominee, shall include a certificate of the architectural committee or other qualified person employed by the Association to the effect that all work then completed has been performed in accordance with plans and specifications approved by the Board of Directors of the Association and all applicable building codes. All insurance policies shall be subject to the extent available to the following provisions:

- a. All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of BBB+ or better in Best's Insurance Guide, or some other equivalent insurance guide reference directory;

- b. All policies shall provide that such policies may not be cancelled or substantially modified, including cancellation for nonpayment of premium, without at least thirty (30) days prior written notice to the Unit Owner, the Board of Directors, the Association, and the mortgagee, if any;
- c. All policies shall provide that the mortgagee, if any, will be notified by the insurance company of any claim for recovery of damages exceeding One Thousand Dollars (\$1,000.00); and
- d. All policies shall contain a waiver of subrogation by the insurer as to claims against the Association, the Board of Directors, the owner of any individual Unit and/or their respective agents, employees and tenants.

The Owner of any lot and Unit may obtain additional insurance at his expense, including liability insurance to cover accidents or damage to persons or property occurring within his own individual Unit. Each individual Unit Owner may purchase insurance upon his own personal property and any additional improvements located within his individual Unit. Such insurance shall contain the same waiver of subrogation provisions set forth above.

#### ARTICLE IX

##### RESTRICTIONS

1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties (excepting any original construction or development by the Declarant) nor shall any exterior additions to, or change or alteration therein be made including reconstruction after a casualty loss, (except by Declarant) 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 Declarant 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 the subdivision by the Declarant.

2. No Unit or part of any Unit shall be used for a purpose other than a 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 with the prior written consent of the Declarant.

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 Declarant.

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 Declarant. No lights or other illumination shall be higher than the house on any lot covered by these restrictions without the consent of Declarant.

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 Declarant.

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 Declarant must consent to any projection more than 4 feet beyond the building line.

7. No tank for the storage of fuel may be maintained on any of said lots without the consent in writing of Declarant.

8. No sign shall be hung or displayed either on the inside or the outside of any Unit 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 Declarant; provided, however, with the prior written consent of the Declarant, one "for sale" sign at any one time may be displayed by or on behalf of an 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.

9. No animals, livestock or poultry of any kind shall be raised, kept or maintained on any building site in the Project 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.

10. No noxious or offensive trade 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.

11. 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. No over-the-road vehicles shall be permitted at any time. Garage doors shall be kept closed at all times, except during actual ingress and egress.

12. All garages shall be attached to the residence.

13. No swimming pools and appurtenances to same may be built, constructed or erected without the prior written consent of Declarant. 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 Declarant or the homes association deems unsightly or objectionable to other lot owners in the subdivision. Any pool permitted and allowed shall be properly maintained at all times.

#### ARTICLE X

#### EASEMENTS

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

Declarant 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 easements therefor, over, under, through, and upon any part of the land subject to this Declaration, except the portions thereof upon which Units have been erected and title

transferred to parties other than the undersigned, including, but not limited to easements, services and/or connections to or from adjacent premises not now a part of the aforesaid FOXBOROUGH.

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 XI

##### RELEASE OR MODIFICATION

The covenants, restrictions and provisions of this instrument shall be deemed covenants running with and binding the land subject to this Declaration, and shall remain in full force and effect for a term of not less than twenty-five (25) years from the date this Declaration is recorded or December 31, 2009, whichever is the later, at which time said covenants, restrictions and provisions shall automatically be extended for successive periods of five (5) years each, 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 sixty percent (60%) of the Owners then 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, and shall not be applicable to existing buildings, in the Project except as herein set forth and so authorized.

ARTICLE XII

AMENDMENTS

1. By Declarant. Notwithstanding the provisions of ARTICLE XI hereinbefore, until such time as the first unit is conveyed, Declarant in its sole discretion may abolish said covenants, conditions, provisions and restrictions or change them, in whole or in part.

2. Minor Variances. Any of the provisions of these restrictions pertaining to construction of a dwelling upon any lot may be waived or a variance permitted provided such variance shall not exceed ten percent (10%) of the area requirement or ten (10) feet of the setback requirement and such variance shall be by written modification applicable only to the particular lot and executed by the Declarant. This waiver of variance shall not exclude any requirement of the City of Leawood.

ARTICLE XIII

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 or under it shall be taken to, and do by these presents, 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 seisin of, or title to said land; and Declarant, its successors and assigns, 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

Declarant, 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. Declarant may, by appropriate agreement made expressly for that purpose, assign or convey to any person or corporation all of the rights, reservations and privileges herein reserved by it, and upon such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign those rights, or any one or more of them at any time or times, in the same way and manner as though directly reserved by them or it in this instrument.

#### ARTICLE XIV

##### GENERAL PROVISIONS

1. Successors of Declarant. Any and all rights, reservations, interests, privileges and/or powers of the Declarant hereunder may be assigned and transferred by the Declarant, with or without notice to the Owners.

2. Swimming Pool Area. The Declarant who is the developer of FOXBOROUGH anticipates constructing a swimming pool for the use of FOXBOROUGH owners and the owners within HUNTER'S RIDGE. The Declarant reserves the right with respect to the swimming pool:

1. To adopt and publish rules of membership including fees for use;

2. To transfer and convey by deed the pool area including the land and all improvements to the Foxborough Homes Association and impose thereon the right of owners within HUNTER'S RIDGE to continue to use the swimming pool by complying with rules and regulations the same as are imposed upon users within FOXBOROUGH. Such conveyance may be made at any time as determined by the Declarant and the conveyance shall be free and clear of liens

and encumbrances except usual restrictions of record; the Declarant shall not be required to furnish an abstract or title policy and any taxes or insurance premium or any other proration shall be as of the date of recording of the deed.

3. 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.

4. 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 or addressed to Declarant at Suite 201, 9401 Nall Avenue, Prairie Village, Kansas, 66207, provided, however, said notice may be delivered by other means.

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 a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written.

SAUL ELLIS AND COMPANY, INC.

BY *Saul Ellis*  
Saul Ellis, President

ATTEST:

*Irene Ellis*  
Irene Ellis, Secretary

STATE OF KANSAS )  
                  ) SS:  
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this 24th day of February, 1984, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Saul Ellis, President of SAUL ELLIS AND COMPANY, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, and Irene Ellis, Secretary of said corporation, who are personally known to me to be such officers and personally known to me to be the same persons who executed as such officers the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above mentioned.

RAMONA L. McCONNELL  
STATE NOTARY PUBLIC  
JOHNSON COUNTY, KANSAS  
My Appointment Expires Oct. 16, 1984

*Ramona L. McConnell*  
Notary Public Ramona L. McConnell

My Appointment Expires:

October 16, 1984