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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR COONS PROPERTY (WATERFORD SUBDIVISION)

This Declaration of Covenants, Conditions and Restrictions for Coons Property (Waterford Subdivision) is made as of 9-24 1992 by Ball Homes, Inc., a Kentucky corporation ("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 residential subdivision and which is being marketed as the Waterford Subdivision; and

WHEREAS, the Developer has established the Waterford Homeowners Association; and

WHEREAS, Developer desires to subject the real property described in Exhibit A, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens as contained in this Declaration in addition to those imposed by the Declarations previously referred to and of record as referenced hereinabove, all of which are the benefit of the Property and each individual owner thereof;

WHEREAS, Developer has incorporated under the laws of Commonwealth of Kentucky a non—profit corporation known identified as Waterford II Homeowners Association, Inc. for purpose of maintaining and administering the common properties facilities and administering and enforcing the covenants restrictions and collecting and disbursing the assessments charges hereinafter created;

NOW, THEREFORE, Developer hereby declares that all of the Property, as hereinafter defined, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of the Property. The easements, restrictions, covenants and conditions shall run with the Property and be binding on all parties having any right, title or interest in the Property, their heirs, successors and assigns and shall inure to the benefit

of each owner.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the Waterford II Homeowners Association, Inc., a Kentucky non—profit corporation, its successors and assigns.

Section 2. "Board of Directors" means the board of directors of Waterford II Homeowners Association, Inc. "

Section 3. "By Laws" means the by laws of Waterford II 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 Area" shall meant (i) all real and personal property which the Association now or hereafter owns or holds for common use and enjoyment of the Owners; (ii) common areas and/or rights of way which are not dedicated to the public and which are shown and identified as Homeowners' Association or "HOA" areas on plats of the Property, including additional property subjected to this Declaration, recorded by Developer or its successors and assigns including, but not limited to, retention basins or ponds, retention easements, and private open spaces; and (m) _All other portions of the Property which now or maybe hereafter be designated on the plat or by Developer as common areas. The Common Area shall be conveyed to the Association or its successor at such time as Developer, in its sole discretion, determines.

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.

Section 7. "Lot" shall mean and refer to any numbered parcel of the Property as shown on the plats of the Coons Property (which is being marketed as Waterford Subdivision).

Section 8. "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 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "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 11. "Person" shall mean any individual, corporation, partnership, joint venture, trustee or other legal entity.

Section 12. "Plat" means the final record plats of survey of the Property of record in the Clerk's Office for Fayette County, Kentucky, showing the number of each Lot and expressing its area, location and other data necessary for identification as such plat or plats may be amended from time to time.

Section 13. "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Unit" shall mean and refer to any improved residential lot.

ARTICLE II

Waterford II Homeowners Association

Section 1. Members. Developer and every Owner of a Lot which is subject to an assessment shall be a member of the Association. 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 a 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.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. If more than one person holds an interest in such 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.

(b) Class B. The Class B member shall be Developer. Developer shall be entitled to one (1) vote for each Lot owned and it shall determine who shall cast the votes. In addition, the Class B member shall be entitled to appoint all the members of the Board of Directors, in accordance with the by—laws, until 100% of the Lots shown on Exhibit A and Exhibit B, as amended from time to time, including additions thereto, have certificates of occupancy issued thereon and have been conveyed to persons other than Developer or builders holding title for purposes of development and sale. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier: (i) when in its discretion Developer so determines; (ii) when Developer's right to appoint the Board terminates as set forth hereinabove.

Section 3. Rights and obligations of the Waterford II homeowners Association, Inc.

(a) The Association shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas, including any landscaping located therein. In addition, the Association shall have the right to construct and maintain ornamental structures, such as fountains, and landscaping in the Common Areas together with the right of ingress and egress for the purpose of carrying out that construction and maintenance. The Association shall also maintain any irrigation and sprinkler systems contained on the Common Areas and shall be responsible for

the payment of all water bills resulting from the use of such system.

(b) All rights reserved by the Developer in this Declaration shall automatically pass to the Association when Class B membership ceases pursuant to Article II, Section 2, except that the Developer may assign any and all rights reserved herein to Developer to said Association at any time prior to the sale by the Developer of 100% of the Lots shown on Exhibit A and Exhibit B as specifically provided for in Article II, Section 2(b) hereinabove, provided that no such transfer shall be effective until it is in a written instrument signed by Developer and duly recorded in the public records of Fayette County, Kentucky.

(c) In addition to the powers and duties otherwise set forth in this Declaration, the Association is authorized and directed to make provision for the improvement and maintenance of the Common Areas and to adopt rules and regulations and to take such action as is necessary to accomplish the purpose of this Declaration. The Board of Directors of the Association shall propose rules and regulations for adoption by the members. Written notice of any meeting to consider said rules and regulations or any amendments thereto shall be given in writing at least 30 days in advance and shall set forth the time, place and purpose of the meeting.' The presence at the meeting of members in person or by proxy entitled to cast 30 percent of all the votes shall constitute a quorum for this purpose.

ARTICLE III PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment Exceptions. Every Owner shall have a right and easement of enjoyment including without limitation the right of vehicular and pedestrian ingress and egress in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall also be granted to the Association and the Owner's families, guests, invitees, servants, employees, tenants and contract purchasers. Developer shall have access to any and all Common Areas so long as is necessary for Developer to develop, construct or sell or otherwise dispose of any property subject to this Declaration.

Section 2. Title to Common Areas. The Developer may retain the legal title to the Common Areas (or, as to the Common Areas within dedicated right-of-way, the obligation to maintain and regulate) until such time as in the opinion of the Developer the Association is able to maintain and regulate the use of same; provided, however, the Developer hereby covenants that it shall

convey legal title to the Common Areas to the Association (or, as to Common Areas within dedicated right—of—way, shall transfer the obligation to maintain and regulate) no later than at such time as Class B membership is converted to Class A membership. Whenever the Developer conveys legal title or transfers the obligation to maintain and regulate all or part of the Common Areas to the Association, the Association shall accept such legal title and shall assume control and responsibility for the Common Areas so conveyed.

Section 3. Extent of Owners' Easements. The rights and easements of use and enjoyment hereby created shall be subject to the following:

(a) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas from foreclosure;

(b) The right of the Association 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; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by a majority of the Board of Directors of the Association provided the Owners' easements of ingress and egress and any public utility easements previously established shall not be affected. Developer may declare utility, service or drainage easements upon, through or under the Common Areas at its sole discretion so long as there is in existence the Class B membership in accordance with Article II, Section 2. when Class B membership ceases, this right of Developer shall automatically pass to the Board of Directors of the Association.

Section 4. No Partition. Except as is permitted in this Declaration or amendments thereof, there shall be no physical partition of the Common Areas or any part thereof, nor shall any person acquiring any interest in the Property have the right to judicial partition. This Section does not prohibit the Board of Directors of the Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may be or may not be subject to this Declaration.

Section 5. Sale of Common Areas. No Common areas shall be sold or otherwise disposed of without first offering to dedicate such area to the Lexington—Fayette Urban County Government. This limitation neither applies to a transfer of the Common Areas to an organization conceived and established to own and maintain the Common Areas as a successor to the "Association, nor to the dedication of streets or utility easements as provided in Section

3(c) of this Article. This restriction shall survive any amendment to or cancellation of this Declaration.

ARTICLE IV ASSESSMENTS

Section 1. Assessments, Creation of the Lien and Personal Obligation.

(a) Every lot owner, with the exception of Developer, shall be required to pay, on February 1, an annual maintenance fee in an initial amount of \$50.00 per lot to the Waterford II Maintenance Fund (hereinafter the "Fund") at the address provided by the Developer, which annual maintenance fee shall be used to defray the expense of maintenance of the Common Areas. The annual maintenance fee may be increased at the discretion of Developer to defray the cost of such maintenance. The Fund shall be managed by Developer. The Association shall have the right to alter the maintenance fee and to manage the Fund at such time as Class B membership ceases pursuant to Article II, Section 2, or at such time as the Developer assigns its rights and obligations as to such fee to said Association pursuant to Article II, Section 3.

(b) The Developer shall be responsible to contribute to the Fund the amount necessary to defray the expense of maintenance of the Common Areas in the event the balance of the Fund is insufficient to defray said expense. Developer's obligation to satisfy any deficit in said Fund shall terminate at such time as its rights and obligations are transferred to the Association.

(c) The annual maintenance fee assessed hereunder shall be used only for the maintenance and upkeep of the Common Areas and shall constitute a lien upon each Lot and improvements thereon against which such assessment is made. This lien shall be subordinate to the lien of any first mortgage or vendor's lien on such Lot. Each such assessment shall also be the personal obligation of the party who was the owner of the lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title unless expressly assumed by them.

(d) The Developer's rights and obligations with respect to the Fund shall be transferred to the Association or its successor at such time as Developer in its sole discretion determines.

(e) The annual maintenance fee shall be assessed each January 1 and shall be due and payable on or before February 1 of each year. The annual maintenance fee will be prorated in the

event a lot is owned for a portion of the year, with the proration to be calculated by determining the number of days of ownership of the lot from the date of closing through December 31 of that year.

Section 2. Special Assessments for Capital Improvements. In addition to the annual maintenance fee authorized hereinabove, the Association may levy, in any assessment year, a special assessment applicable to that year only for the cost of defraying in whole or in part the cost of any construction, reconstruction or repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto.» Any such assessment shall require the assent of the members of the Association in accordance with the By Laws.

Section 3. Uniform Rate of Assessment. Both annual maintenance fees and special assessments 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.

ARTICLE V USE RESTRICTIONS

The use restrictions for the Property described in Exhibit A and additions thereto are as follows:

1. The Property shall be used for single family residential purposes only.
2. All driveways and approaches shall be constructed of Portland Cement Concrete or asphalt.
3. No commercial vehicle or truck over 3/4 ton shall be regularly parked on any Lot or street in the Property other than for delivery or construction purposes unless housed within a garage; and no person shall engage in major car repairs either for himself or others at any time.
4. Should the Owner of any lot fail to maintain the lawn, the Developer or its assigns may enter such lot to cut grass and/or weeds and remove any debris necessary, and collect its costs of labor and material plus twenty—five percent (25%) from the owner of said lot.
5. No recreational vehicle, trailer or boat shall be parked in any front yard or on any street in the Property for a period in excess of twenty—four (24) hours or in any manner that may be

construed as an intentional attempt to circumvent this restriction.

6. No noxious or offensive trade or activity shall be carried upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

7. Anyone cutting into or tunnelling under or damaging in any manner the street, sidewalk or road serving said Lots must repair and restore the street, sidewalk or road to its original condition, all at such person's own risk and expense. This shall not be construed as any permission or consent by the Developer and shall not create any liability on the developer of the Property, express or implied.

8. No building or structure of a temporary character including, but not limited to, trailers, basements, tents, shacks, garages, barns or other buildings other than residence buildings, shall be used upon any Lot subject to this Declaration at any time as a residence, either temporarily or permanently, nor shall any trailer, tent, shack, barn or unmovable vehicle be used and maintained upon any such lot at any time, whether temporarily permanently.

9. No animals, livestock and/or poultry of any kind shall be raised, bred or kept upon any Lot subject to this Declaration; provided, however, dogs, cats and/or other household pets may kept, bred or maintained for any commercial reason or purpose.
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10. No fence, wall or hedge of any nature may be extended toward the front or side of the property line beyond the building set—back line as shown on the Record Plat(s) of the Property in the Fayette County Court Clerk's Office and may not extend toward the front of the house past the rear corner. Any fence used must conform with the character of the Waterford Subdivision and shall be in accordance with appropriate governmental regulations, and shall be approved by the Developer prior to construction.

11. No signs shall be permitted on Property, house number and name plates excepted, except those which the Developer may deem fit.

12. No city or municipality shall be formed during the development and initial sale of the Waterford Subdivision unless approved by the Developer.

13. No television, radio or other similar receiving or transmitting dish (including those called "satellite dishes") shall

be permitted on any Lot.

14. No additional subdivision of a Lot shall be made to reduce the size of the Lot without permission of the Developer and appropriate governmental bodies.

15. Minimum size of living area for primary construction exclusive of porches, basements, attics, carports, and garages, shall be as follows, based on the house type:

(a) One—Floor Plan 1,400 S.F.

(b) One & One—Half Story 1,100 S.F. (Main Floor) (1,600 S.F. Total)

(c) Two—Story 900 S.F. (Lower Floor) (1,800 S.F. Total)

The Developer may approve other types of design (so long as such designs contain a minimum of 1,400 sq. ft. of living area) provided the living area as defined in this paragraph is substantially similar to the requirements herein specified, at the sole discretion of the Developer.

16. All plans for buildings to be erected, placed, altered or permitted to remain upon any Lot shall be subject to approval of the Developer and one complete set of the plans and specifications shall be provided and retained by the Developer. The detailed plans and specifications shall, without limitation, include the color of the brick or paint to be used on the exterior. It is one of the purposes of these restrictions to cause the construction of residences of external design which will be harmonious one with the other. Bedford Stone, Tennessee Stone or similar stone shall not be permitted on the exterior of any residence. Field stone shall be permitted, only after photo or sample of particular stone has been approved by Developer.

17. No roof shall be less than a 5/12 pitch unless approved by the Developer.

18. All houses must have a two car attached or basement garage.

19. As construction on each Lot is completed, sod shall be placed from the edge of the paved street to the building line of the main structure and across the entire width of the Lot, and six feet (6') around the side and back of the structure, with the exception of sidewalks and driveways. The remaining rear yard shall be graded and seeded or sodded.

20. As construction of the improvements is completed, each lot shall be landscaped with two (2) shade trees in the front yard.

21. At no time during or after construction shall any trash, dirt, clipped weeds, grass or debris of any type be placed, wasted or deposited on any Lot vacant or otherwise by the owner, Contractor or Sub—contractor.

22. All construction shall be finished to grade and there shall be no exposed concrete block foundation, concrete foundation or stucco foundation permitted.

23. All mailboxes shall satisfy applicable postal regulations and shall conform to specifications established by the Developer. Mailboxes may, at the sole discretion of the Developer, be supplied by the Developer, in which case the Developer will be reimbursed for the cost of such installation by the builder.

ARTICLE VI CONDEMNATION

Whenever all or any part of the Common Areas not located within the dedicated right-of—way shall be taken (or conveyed in lieu of and under threat of condemnation by the Board of Directors acting on the written direction of Voting Members representing at least two—thirds (2/3) of the total Association vote and the Developer, as long as the Developer owns any property described on Exhibit A and Exhibit B) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after each taking the Developer, so long as the Developer owns any property described in Exhibit A and Exhibit B of this Declaration, and Voting Members representing at least seventy—five (75%) percent of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the proceeds of the award shall be used to defray the cost of restoration or replacement. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration

or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VII
ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation of Additional Property and Common Areas.

(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, 2007, 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 Properties. 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, 2007, whichever is earlier. Such annexation shall require the affirmative vote of Members or alternates representing a majority of the Class "A" votes (other than those held by the Developer) 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.

(c) Additionally, as the owner thereof, or if not the owner, with the consent of the owner thereof, the Developer has 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, 2007, whichever is earlier, to designate additional property contained within Exhibit A and Exhibit B as Common Areas by filing of record a Subsequent Amendment designating such additional Common Areas. Such Subsequent Amendment to this Declaration shall not require the consent of Members. Any such amendment shall be effective upon the filing of record of such Subsequent Amendment unless otherwise provided therein. Said Common Areas shall, upon conveyance or declaration to the Association, be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all members. Said Common Areas shall also be governed by provisions of Article III of this Declaration.

Section 2. Amendment. This Article VII 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 VIII GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions shall be by proceeding of law or in equity, brought by any Owner of any Lots subject to this Declaration, by the Developer, or by the Association against any party attempting to violate any covenant or restriction, either to restrain violations, to direct restoration and/or to recover damages. Failure of any Owner, the Developer or the Association to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

Section 2. Severability. Invalidation of any one of these covenants by judgment or court shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 3. Restrictions Run With Land. Unless canceled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be automatically extended for successive periods of one (1) year unless an instrument signed by a majority of the then Owners of the Lots subject to this Declaration has been recorded, agreeing to change said covenants and restrictions in whole or in part. These covenants and restrictions may be canceled, altered or amended at any time by a written instrument signed by the owners of 75% of the Lots subject to the Declaration and recorded in the Fayette County Clerk's

Office. No amendment may remove, revoke or modify any right or privilege of Developer or remove, revoke or modify the annual maintenance fee provided for hereinafter without the written consent of the Developer so long as Developer owns any property described in Exhibits "A" or "B".

Section 4. Amendment. The Developer may amend this Declaration so long as it still owns property described in Exhibit A and Exhibit B for development as part of the Property and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy—five (75%) percent of the total votes of the Association, including seventy—five (75%) percent of the votes held by Members other than the Developer. 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 public records of Fayette County, 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 5. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between such Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part_of an Owner, tenant or the Association.

Section 6. Easements for Utilities, Etc. There is hereby reserved unto Developer and its designees, so long as any of the

foregoing own any property described on Exhibit A and Exhibit B, and to the Association and its designees, (which may include, without limitation, Fayette County, Kentucky, and any utility) blanket easements upon, across, over and under all of the Common Area and, to the extent shown on any Plat, over the Lots for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water liens, or other utilities may be installed or relocated on said Common Area, except as may be approved by the Association's Board of Directors or as provided by Developer. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Common Areas without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Common Areas.

Section 7. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in any emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8. 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 9. Amendments to Articles and By Laws. Nothing in this Declaration shall limit the right of the Association to amend from time to time its Articles and By Laws.

Section 10. 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 shall not affect any rights or obligations then existing. If any indemnification payment required by this Article 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, 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 bylaw, agreement, statute, vote of members or board of directors, or otherwise. If this Article 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 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 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 shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

Section 11. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property or any questions of interpretation or application of the provisions of this Declaration or the By Laws, the determination thereof by the Board of Directors of the Association shall be final and binding on each and all of such Owners.

ARTICLE IX 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 nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the public records of Fayette County, Kentucky.

Notwithstanding any provisions contained in this Declaration, the By Laws, Articles of Incorporation, use restrictions, rules and regulations, and any amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Developer and any builder or developer approved by Developer to maintain and carry on upon such portion of the Property as Developer may deem necessary, such facilities and activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to _Developer's, and such builder's or developer's development, construction, and sales activities related to the Property and any builder or developer approved by Developer. Developer and any such builder or developer shall have an easement for access to such facilities.

This reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to: (a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, in or on the Property; (b) the right to tie into any portion of the Property with driveways, parking areas and walkways; (c) the right to tie into and/or

otherwise connect and use (without a tap—on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, in—ground sprinklers, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; (d) the right to carry on sales and promotion activities on the Property; and (e) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices on the Property. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned or leased by the Developer or any such builder or developer, as model residences and sales offices, respectively. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

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 quit—claim deed from Developer releasing such right, privilege, or easement by express reference thereto.

So long as Developer continues to have rights under this paragraph, 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 review and written consent thereto by the Developer, 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) thirty (30) years from the date this Declaration is recorded, or (b) upon recording by Developer of a_ written statement that all sales activity has ceased.

WITNESS the signature of Developer by its duly authorized President as of 9-24, 1992.

BALL HOMES, INC.,
a Kentucky corporation

By:

Its:

STATE OF KENTUCKY
COUNTY OF FAYETTE

The foregoing Declaration was on this 24th day of
September , 1992, acknowledged before me by
as President of Ball Homes, Inc., a Kentucky corporation, referred
to as Developer, for and on behalf of said corporation.

My Commission Expires: April 1, 1995

NOTARY PUBLIC

THIS DOCUMENT PREPARED BY:

Rena G. Wiseman

STOLL, KEENON & PARK

1000 First Security Plaza

Lexington, Kentucky 40507

BY=

Rena G. Wiseman

EXHIBIT A

Being the property shown on the final record plats of the
Coons Property (also known as Waterford Subdivision), all
of which are of record in the Office of the Fayette
County Clerk as follows:

Unit 3D and Unit 4A of record at Plat Cabinet I,
Slide 679; Unit 4B of record at Plat Cabinet I,
Slide 680; Unit 4C of record at Plat Cabinet I,
Slide 681; Unit 4D of record at Plat Cabinet I,
Slide 683; Unit 4E of record at Plat Cabinet I,
Slide 682 .

Being a portion of the same property conveyed to Ball
Homes, Inc. by deed dated September 28, 1990 and of
record at Deed Book 1561, Page 726, in the aforesaid
Clerk's Office. '

EXHIBIT B (1 of 4)

PARCEL "A"

Description of a Portion of
Coons (Waterford); Unit 6

Lexington; Kentucky

BEGINNING at a point being the northwestern corner of lot 6 (known as 505 Woodstream Court) in Coons, (Waterford Subdivision), Unit 1A as recorded in Plat Cabinet I, Slide 269 in the office of the County Clerk of Fayette County, Kentucky} thence with the common line to Mahan for the following three calls --- N 23° 31' 39" E, 125.00 feet to a point; thence N 34° 44' 55" E; 481.94 feet to a point} thence N 34° 00' 32" E; 337:98 feet to a point in the right-of-way line of Man O' War Boulevard; thence with said right-of-way for the following two calls --- s 61° 11' 20" E, --34-.07 feet to a point} thence S 51° 35' 17" E; 291.16 feet to a point; thence S 41° 15' 11" E, 297.83 feet to a point; thence 39.17 feet along a curve to the right; having a radius of 25.00 feet and a chord which bears S 03° 38' 05" W, 35:29 feet to a point in the right-of-way line of Clearwater Way (right-of-way varies) as recorded in the aforementioned Plat Cabinet I; Slide 269; thence with said right-of-way for the following six calls --- S 48° 31' 20" W; 15.24 feet to a point; thence 33.51 feet along a curve to a right, having a radius of 90.50 feet and a chord which bears S 59° 07' 43" W; 33.31 feet to a point; thence 329.21 feet along a curve to the left; having a radius of 522.00 feet and a chord which bears S 51° 40' 03" W; 323.78 feet, to a point; thence 91.76 feet along a curve to the right; having a radius of 478.00 feet and a chord which bears S 39° 05' 58" W, 91.62 feet, to a point; thence 144.52 feet along a curve to the left, having a radius of 897.52 feet and a chord which bears S 39° 59' 10" W, 144.36 feet, to a point; thence S 29° 10' 38" W, 76.39 feet to a point; thence N 54° 52' 18" W; 109.20 feet to a point; thence N 23° 55' 39" E, 51.74 feet to a point; thence N 75° 12' 26" W, 182.16 feet to a point; thence S 86° 30' 10" W; 239.84 feet CO the POINT OF BEGINNING and containing 9.74 acres.

The herein described parcel is a portion of Tract 3—A, as recorded in the 2nd Amended Non—Building Minor Subdivision Plat and Consolidation Plat, Tract 3, Coons Property as recorded in Plat Cabinet I, slide 603.

PARCEL "B"

Description of Coons (Waterford);
Units 5 and 7 with Associated Area

BEGINNING at a point being on the northerly right-of-way line of Clearwater Way, said point being also the northeasternmost point on the Clearwater Way right-of-way as recorded in Coons (Waterford) Subdivision, Unit 1B E 3A, Section 2 in the Plat Cabinet I, Slide 419 in fine Office Of the County Clerk of Fayette County, Kentucky;

thence N 65° 03' 29" W, 172.10 feet to a point; thence 20.00 feet

EXHIBIT B (2 of 4)

along a curve to the right, having radius of 821.02 feet and a chord which bears N 64° 21' 37" W, 20.00 feet, to a point; thence S 24° 56' 31" W, 0.00 feet to a point; thence N 38° 57' 06" E, 350.00 feet to a point; thence N 45° 21' 26" W, 121.85 feet to a point; thence N 12° 45' 39" E, 70.00 feet to a point; thence N 77° 14' 21" W, 105.00 feet to a point; thence S 59° 07' 00" W, 234.76 feet to a point; thence S 82° 44' 16" W, 59.05 feet to a point; thence N 56° 04' 57" W, 151.53 feet to a point; thence N 9° 17' 28" W, 149.03 feet to a point; thence N 38° 30' 35" E, 71.75 feet to a point; thence S 79° 29' 27" W, 126.31 feet to a point in the right-of-way line of Clearwater Way; thence with said right-of-way for the following eight calls — 418.69 feet along a curve to the right, having a radius of 821.02 feet and a chord which bears N 04° 06' 01" E, 414.17 feet, to a point; thence N 31° 00' 23" E, 236.11 feet to a point; thence 37.96 feet along a curve to the right, having a radius of 804.52 feet and a chord which bears N 36° 43' 29" E, 37.95 feet, to a point; thence 194.44 feet along a curve to the right, having a radius of 478.00 feet and a chord which bears N 49° 43' 48" E, 193.11 feet, to a point; thence 310.43 feet along a curve to the left, having a radius of 522.00 feet and a chord which bears N 44° 20' 48" E, 305.88 feet, to a point; thence 33.51 feet along a curve to the right, having a radius of 90.50 feet and a chord which bears N 37° 54' 58" E, 33.31 feet, to a point; thence N 48° 31' 20" E, 14.76 feet to a point; thence 39.37 feet along a curve to the right, having a radius of 25.00 feet and a chord which bears S 86° 21' 55" E, 35.42 feet, to a point in the right-of-way line of Man O' War Boulevard; thence with said right-of-way line for the following four calls — S 41° 15' 11" E, 545.73 feet to a point; thence S 42° 22' 33" E, 203.65 feet to a point; thence S 46° 32' 23" E, 104.15 feet to a point; thence 745.66 feet along a curve to the left, having a radius of 1205.92 feet and a chord which bears S 66° 28' 01" E, 733.84 feet, to a point; thence leaving said right-of-way S 05° 49' 08" W, 449.97 feet to a point; thence S 66° 45' 01" W, 536.91 feet to a point; thence N 87° 51' 01" W, 339.04 feet to a point; thence S 63° 56' 31" W, 175.00 feet to a point; thence S 65° 03' 29" E, 25.00 feet to a point; thence S 24° 56' 31" W, 120.00 feet to a point; thence N 65° 03' 29" W, 184.77 feet to the POINT OF BEGINNING and containing 40.50 acres.

PARCEL "C"

Description of Coons (Waterford),
Unit 3 (Remaining)

BEGINNING at a point being the southeastern corner of lot 45 (known as 4273 Watertrace Drive) located in the Coons (Waterford) Subdivision, Unit 3C as recorded in Plat Cabinet I, Slide 412 in the office of the County Clerk of Fayette County, Kentucky; thence with said unit line N 08° 49' 23" W, 255.87 feet to a point; thence leaving said unit line N 45° 24' 07" E, 150.57 feet to a

EXHIBIT B (3 of 4)

point; thence N 37° 00' 14" E, 180.00 feet to a point; thence 48.82 feet along a curve to the left, having a radius of 1030.00 feet and a chord which bears N 54° 21' 14" W, 48.81 feet, to a point; thence N 34° 17' 18" E, 122.51 feet to a point; thence N 84° 24' 07" E, 66.00 feet to a point; thence S 34° 35' 14" E, 188.25 feet to a point; thence S 42° 51' 49" E, 75.91 feet to a point; thence S 50° 19' 24" E, 235.15 feet to a point; thence S 27° 45' 24" W, 225.00 feet to a point; thence S 81° 10' 37" W, 512.10 feet to the POINT OF BEGINNING and containing 5.61 acres.

PARCEL "D"

Description of Coons (Waterford),
Unit 4 (Remaining)

BEGINNING at a point being the northeasternmost corner of lot 18 in the Coons Property (Waterford), Unit 4D Subdivision as recorded in Plat Cabinet I, Slide 683, in the office of the County Clerk of Fayette County, Kentucky; thence S 50° 22' 35" E, 294.58 feet to a point; thence S 43° 35' 24" W, 113.61 feet to a point in the right-of-way line of Rainwater Drive; thence with said right-of-way line for the following two calls -- N 46° 24' 36" W, 16.41 feet to a point; thence 233.59 feet along a curve to the left having a radius of 715.62 feet and a chord which bears N 55° 45' 39" W, 232.55 feet to a point being the southernmost corner of the aforementioned lot 18; thence with said lot line N 23° 28' 01" E, 139.54 feet to the POINT OF BEGINNING and containing 0.73 acres.

Parcels A, B, C and D are a portion of the same property conveyed to Ball Homes, Inc. by deed dated September 28, 1990 and of record at Deed Book 1561, Page 726, in the aforesaid Clerk's Office.