

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Ryan Homes, Inc., incorporated under the laws of the Commonwealth of Pennsylvania, hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Germantown, County of Montgomery, State of Maryland, which property is more particularly described as shown on Exhibit “A” which is attached hereto and made part hereof.

WHEREAS, Declarant is the owner of the real property described herein and desires to create thereon a residential community to be named “FOX CHAPEL NORTH” with permanent parks playgrounds, common area, streets, roads, walkways, water detention structures and easements therefore, and other facilities for the benefit of the said city through the granting of specific rights, privileges and easements of enjoyment which may be shared and enjoyed by all residents of Fox Chapel North.

NOW THEREFORE, Declarant hereby declares that all of the properties described above 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, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. “Association” shall mean and refer to Fox Chapel North Homes Association, Inc., incorporated under the laws of the State of Maryland, as a nonprofit corporation, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as shown on Exhibit “B” attached hereto and made part hereof.

Section 5. “Lot” shall mean and refer to any plot of land shown upon any recorded Subdivision map of the Properties with the exception of the Common Area.

Section 6. “Declarant” shall mean and refer to Ryan Homes, Inc., incorporated under the laws of the Commonwealth of Pennsylvania, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of settlement.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Development, construction or other rights in the Common Area shall be reserved unto the ownership of the land for the indicated recreational, parking, walkways, drainage or scenic uses only;

(b) The right of the Association to restrict and limit the admission to all facilities operated by the Association to Association members and their guests, which facilities shall not be used by the general public;

(c) The right of the Association to charge reasonable admission and other fees only to Association members and their guests for the use of any recreational facility situated upon the Common Area;

(d) The right of the Association to dedicate or to grant such easements and rights of way or to transfer all or any part of the Common Area, provided it is accepted, to any public agency, authority, or utility companies as it shall deem necessary for the proper servicing and maintenance of the privately owned Common Area, and for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(e) The right of the Association, in accordance with the By-Laws, to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations by a member or their guest.

(f) The right of individual owners to the exclusive use of parking spaces as provided in this article.

(g) The right of the Declarant to impose reasonable covenants and restrictions in respect to such Common Area, in addition to those set forth herein, at the time of conveyance of such property to Fox Chapel North Homes Association. Inc., and such covenants and restrictions are hereby incorporated by reference and made a part of this Declaration.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, and to such other persons as may be permitted by the Association.

Section 3. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The association shall permanently assign two (2) vehicle parking spaces for each dwelling.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall automatically be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Declarant shall be the sole Class B member and shall be entitled to three (3) votes for each Lot owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (b) on September 28, 1974.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, if such fees are necessary to collect the assessments, 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 interest, costs and such reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the townhouses situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Five Dollars (\$5.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date

at the rate of 6 per cent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, who also shall be liable for reasonable attorney's fees, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties nor shall any exterior addition to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved to writing as to harmony of external design and location to relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at Owner's cost.

Section 2. The architectural committee shall make available to the members, without charge, published guidelines of approved designs and materials to be used for any additions, changes or alterations to any building, fence, wall or other structure.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy- five percent (75%) of the Lot Owners.

Section 4. Annexation. Additional land within the area described in Deed Book 3351, Page 565 of the Land Records of Montgomery County, State of Maryland, may be annexed by the Declarant without the consent of members within five (5) years of the date of this instrument. Such annexation shall bring the additional land within the scheme of this Declaration as it relates to membership in the Fox Chapel North Homes Association, Inc. and the rights and obligations of each Owner in and to the Common Area. The additions authorized under this section shall be made by filing of record Supplementary Declarations of Covenants and Restrictions with respect to the additional properties which shall extend the scheme of the covenants and restrictions of this Declaration to such properties and thereby subject such additions to assessment for their just share of the Fox Chapel North Homes Association. Inc. expenses.

ARTICLE VII

EXTERIOR MAINTENANCE

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner, satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Maryland regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Any Owner shall have the right to go on the land or property of an adjoining Owner for the purpose of the reasonable repair and maintenance of a party wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any such

Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, the Owners involved in such dispute shall submit the matter to the Board of Directors of Fox Chapel North Homes Association, Inc. for decision. A ruling by the majority of the Board of Directors of Fox Chapel North Homes Association, Inc. regarding any question involved under this Article shall be final and conclusive.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28th day of September 1972.

Attest:

RYAN HOMES, INC., Declarant

By: _____

Secretary James A. Shuster

Vice-President Charles W. Prine, Jr.

STATE OF MARYLAND)

COUNTY OF MONTGOMERY) to wit:

On this 28th day of September 1972, before me, Juanita E. Monaghan, the undersigned officer, personally appeared Charles W. Prine, Jr., who acknowledged himself to be the Vice President of Ryan Homes, Inc., a corporation, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Juanita E. Monaghan, Notary Public

My commission expires: June 22, 1976.

EXHIBIT A TO ARTICLES OF INCORPORATION

AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- A. Lots numbered 70 through 93, Block 3, and Parcel G, FENCHURCH COURT, containing 24,428 square feet as shown on Plat Nine, FOX CHAPEL NORTH, Gaithersburg, recorded 7/29/71, in Plat Book 92, Plat 9972, among the Land Records of Montgomery County, Maryland

- B. Lots numbered 106 through 127, Block 3, and Parcel H, DEEP RUN COURT, containing 22,864 square feet as shown on Plat Ten, FOX CHAPEL NORTH, recorded on 7/29/71, in Plat Book 92, Plat 9973, among the Land Records of Montgomery County, Maryland

- C. Lots numbered 133 through 152, Block 3, and Parcel J, BEDFORD COURT, containing 18,452 square feet as shown on Plat Eleven, FOX CHAPEL NORTH, Gaithersburg District, recorded 7/29/71, in Plat Book 92, Plat 9974, among the Land Records of Montgomery County, Maryland

- D. Lots numbered 170 through 191, Block 3, and Parcel K, ALDENHAM COURT, containing 22,763 square feet as shown on Plat Twelve. FOX CHAPEL NORTH, Gaithersburg District, recorded on 7/29/71, in Plat Book 92, Plat 9975, among the Land Records of Montgomery County, Maryland

- E. Lots numbered 198 through 219, Block 3, and Parcel L, ASHWORTH COURT, containing 22,864 square feet as shown on Plat Thirteen, FOX CHAPEL NORTH, Gaithersburg District, recorded on 7/29/71, in Plat Book 92, Plat 9976, among the Land Records of Montgomery County, Maryland

- F. Lots numbered 38 through 58, Block 3, and Parcel N, RUNNING CEDAR COURT, containing 21,860 square feet as shown on Plat Fifteen, FOX CHAPEL NORTH, Gaithersburg District, recorded on 7/29/71, in Plat Book 92, Plat 9978 among the Land Records of Montgomery County, Maryland

- G. Parcel S, containing 101,852 square feet as shown on Plat Seventeen, FOX CHAPEL NORTH, recorded 7/29/71, in Plat Book 92, Plat 9980, among the Land Records of Montgomery County, Maryland

AND, WHEREAS, the owner, its licensees, successors and assigns, is the grantee of an easement from the Board of Education of Montgomery County, Maryland, for the purpose of maintaining a water management facility of water retention structure which has been placed partly on Parcel S described above and partly on property conveyed to the Board of Education for Montgomery County for which the easement was granted, the following described property which is the subject of said easement shall be maintained by the association and shall be considered part of the "common area" defined in the Declaration of Covenants:

All that piece of parcel of land situate, lying and being in the Gaithersburg District, Montgomery County, Maryland; the same being a part of Parcel R, Block 3, as shown on a plat of subdivision, entitled "Plat Seventeen, Fox Chapel North", recorded in Plat Book 92 at Plat 9980, among the Land Records of Montgomery County, Maryland; the same being more particularly described as follows:

BEGINNING FOR THE SAME at the northerly corner of Parcel R and Parcel S, as shown on aforementioned plat; thence with the common line of said parcels

1. S 13° 13' 58" E 224.58 feet to the southerly corner of said parcels; thence with the boundary of Parcel R
2. S 56° 00' 44" W 54.00 feet to a point on said boundary; thence crossing said parcel R
3. N 29° 30' 24" W 210.20 feet to a point thence;
4. N 00° 30' 33" W 65.00 feet to a point on the boundary of said Parcel R; thence with said boundary
5. N 89° 29' 27" E 97.48 feet to the point of beginning containing 21,110 square feet of land