

COMMON AREA MAINTENANCE AGREEMENT
FOR
THE MEADOWS OF RIVEREDGE SUBDIVISION
PHASE ONE

HG 4895

14

THIS DECLARATION, is made, published and declared this 1st day of April, 1998, by and among BOYLE INVESTMENT COMPANY, (the "Declarant" or "Developer") and any and all persons, firms, or corporations hereinafter acquiring any of the within described property.

WHEREAS, the Declarant is the fee simple owner of a certain tract of real property in Shelby County, Tennessee, which property is more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Developer has caused to be prepared a plan for the subdivision of the Property, known as The Meadows of Riveredge Subdivision, Phase One, into 38 residential lots, together with common areas for the use, benefit and enjoyment of the owners of the lots in common with each other; and

WHEREAS, the Developer will cause a subdivision plat of the Property to be filed in the Register's Office of Shelby County, Tennessee, and

WHEREAS, it is to the benefit, interest and advantage of the Declarant, the Lot Owners, and of each and every person or other entity hereafter acquiring any interest in the Property that the Common Areas be developed and maintained.

NOW THEREFORE, in consideration of the premises, the Declarant does hereby publish and declare that all or any portion of the Property described in Exhibit "A" is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants (and to the conditions, restrictions, etc., set out on the recorded plat), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants shall run with the land and shall be a burden and a benefit to the Declarant, its successor and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I.
DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

Section 1. "Association" shall mean and refer to The Walnut Grove Forest Hill Association, Inc., a nonprofit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns, as shown by Charter of record at Instrument No. Z8 2593 in the Register's Office of Shelby County, Tennessee.

Section 2. "Common Area" shall mean all real property owned or maintained by the Association for the common use and enjoyment of all of the members of the Association (the Members herein as well as members from other subdivisions within the Riveredge community) as shown on the attached Exhibits "B-1" and "B-2" and as added to from time to time.

Section 3. "Declarant" shall mean Boyle Investment Company, with offices at 5900 Poplar Avenue, Memphis, Tennessee, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 4. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 5. "Development" shall mean The Meadows of Riveredge Subdivision, Phase One, as per plat to be recorded in the Register's Office of Shelby County, Tennessee.

Section 6. "Improvements" shall mean the grading, landscaping, plantings, structures, walls, pavement, equipment, fences, barriers and other additions built or placed on Lots.

Section 7. "Lot" shall mean and refer to the plots of land designated as lots 1-38 on the Final Plat for The Meadows of Riveredge Subdivision, Phase One, including all Improvements thereon. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which the Declarant conveys in fee simple title by recordable deed from and after the date hereof.

Section 8. "Member" shall mean and refer to every Owner within The Meadows of Riveredge Subdivision, Phase One, who holds membership in the Association.

Section 9. "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 10. "Person" means an individual, firm, Company, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 11. "Property" or "Properties" shall mean that real property described in Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of this Declaration.

Section 12. "Subdivision Plat" shall mean and refer to that plat subdividing the Property of record in the Register's Office of Shelby County, Tennessee. The subdivision established thereon shall be known and referred to as "The Meadows of Riveredge Subdivision, Phase One".

ARTICLE II.

GENERAL APPLICATION

Section 1. Property Subject to Declaration. That certain real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Tennessee, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. The Common Area is and shall remain private and the responsibility for payment of maintenance and repair expenses therefor shall remain the responsibility of all of the members of the Association (the Members herein and other members from other subdivision within the Riveredge community) and shall be paid for by assessments levied by the Association as provided herein.

ARTICLE III.

THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within the "The Meadows of Riveredge Subdivision". Ownership of such Lot shall be the sole qualification for membership.

Section 2. Control by Declarant. The Declarant shall be a Member for each Lot owned by it until the same is sold and title transferred. The Declarant shall retain total control of the Development and all Improvements thereon including, without limitation, architectural and plan approval, until the Development is complete and all of the Lots have been sold. However, Declarant may at any time, at its sole option, transfer the control and operation of the Development, Association, and plan approval, either or both, to the Owners at such times as it deems appropriate.

Section 3. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except that Declarant shall be entitled to five (5) votes for each Lot owned.

Section 4. Secured Parties. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as Owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 5. Voting. At every meeting of the members of The Walnut Grove Forest Hill Association, Inc., a single representative of the Owners of Lots in The Meadows of Riveredge Subdivision, Phase One shall have the right to cast all the votes of the Members from The Meadows of Riveredge, Phase One, on each question. The representative shall be chosen by the Declarant until such time as Declarant transfers the control and operation of the Development and Association over to the Owners. After that point, the Owners, by majority vote, shall elect the representative to attend and vote at meetings of The Walnut Grove Forest Hill Association, Inc. No Owner shall be eligible to vote, either in person or by proxy, or to be elected as the representative from The Meadows of Riveredge, Phase One, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 6. Proxies. An Owner may appoint any other Owner or the Declarant or any other person permitted by law or the By-Laws of the Association as his proxy. In no case may any Owner (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's By-Laws.

Section 7. Quorum. The presence, either in person or by proxy, of Owners representing at least fifty-one (51%) percent of the total votes entitled to be cast with

respect to any question, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Owners. If the number of Owners at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

ARTICLE IV.

PROPERTY RIGHTS AND EASEMENTS.

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, and such easements shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association, as provided in its Articles and By-Laws, to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(b) The right of the Association to provide for and establish easements; and

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, which the Association is to maintain.

Section 2. Easement for Utilities. Declarant reserves the right to grant to Memphis Light, Gas and Water, or other utility, an easement over, across, and through the front, side, or rear yard of every Lot.

Section 3. General Easement. The Declarant, so long as he shall retain record title to any Lot or the Common Areas, and the Association, hereby reserve the right and easement to the use of the Common Areas and any Lot or portion thereof, as may be needed for repair, maintenance, or construction on such Lot or any other Lot or the Common Areas.

ARTICLE V.

MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Walnut Grove Forest Hill Association, Inc. shall provide and pay for all maintenance and expenses for the Common Areas, and any other item that the Association may deem in the best interest of the Lot Owners.

Section 2. Individual Lot Owners. Each Owner of a Lot shall be responsible for all maintenance, painting, repair and upkeep on his Lot and the Improvements thereon.

Each Owner shall also be responsible for the upkeep and maintenance of his individual yard and the landscaping thereof. In the event the Owner of any Lot shall fail to maintain his Lot and the Improvements situated thereon, in the aforesaid manner reasonably satisfactory to the Board of Directors of the Association, and in keeping with other Lots, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through agents and/or employees, to enter upon said Lot and to repair, maintain and restore the Lot and the Improvements thereon. The cost of said maintenance shall be a binding obligation of the Owner as well as a lien on the Lot in question upon recording of such notice with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall at all times be subordinate to the lien of any deed of trust recorded prior to such notice. In addition to the costs as set forth herein, the Owner shall be responsible for all court costs, reasonable attorneys' fees and interest from the date of any expenditure at the maximum legal rate allowed in the State of Tennessee.

ARTICLE VI.

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessment or charges; (2) special assessments for capital improvements; and (3) emergency assessments as provided in the By-Laws, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (herein sometimes referred to as "assessments" or "carrying charges") equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including management fees and charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacements of the Common Areas and any other item the Association may deem proper.

The Board of Directors of the Association shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws. 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 assessment on a specified Lot has been paid. The annual assessment shall commence upon an Owner receiving title to a Lot and be prorated for the year in which ownership is acquired, but may, at Declarant's discretion, begin at a later date.

Section 3. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary and in accordance with the Articles and By-Laws of the Association.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety, or welfare of members of the Association, the Board of Directors, acting pursuant to its Articles and By-Laws, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount of time of payment, shall be governed by all other provisions of this

Declaration. Such assessment shall be borne pro rata by all members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

Section 5. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon, any late charge determined by resolution of the Board of Directors, and the cost of collection thereof, including reasonable attorney's fees, become a continuing lien upon the Lot or Lots belonging to the Owner against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to the By-Laws or any installment thereof, may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Owner; in either of which events, the Association may collect from the said Owner interest, costs, and reasonable attorney's fees. 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.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot, including all Improvements thereon at public auction to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allow.

Any such sale shall be made after first advertising the sale of the said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale of the Owner's Lot. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption,

homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners, and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorney's fees, and sales commissions; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the terms of the Declaration and By-Laws; and the balance, if any, to the Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession of the Lot or by entry into possession in the same manner as the mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and By-Laws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and By-Laws or at law or in equity.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting

that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by a recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lot Owners, including the mortgaged units. Sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment, the lien of which, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in The Meadows of Riveredge Subdivision, Phase One shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused this instrument to be signed the day and year first above written.

BOYLE INVESTMENT COMPANY

By:

David R. Spivey

Title:

V.P.

STATE OF TENNESSEE:
COUNTY OF SHELBY:

Personally appeared before me, the undersigned, a Notary Public, in and for the State and County aforesaid, David K. Drabble, with whom I am personally acquainted, and who acknowledged that he is the Vice Pres of BOYLE INVESTMENT COMPANY, the within named bargainor, a corporation, and that he as such Vice Pres, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such Vice Pres.

WITNESS my hand at office, this the 31st day of March, 1998.

James C. Kauf
Notary Public

My Commission Expires July 20, 1999

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EXHIBIT A

Legal description of THE MEADOWS OF RIVEREDGE SUBDIVISION, PHASE ONE

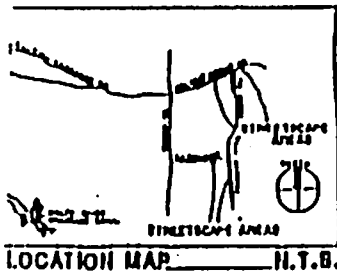
Beginning at a point in the westerly line of Forest Hill Irene Road (57' to centerline), said point being 765' south of Riveredge Drive, also being the southeasterly corner of Gardens Of Riveredge Subdivision, Phase 5 (P.B. 130, Pg. 15); thence S 88 degrees, 50 minutes 31 seconds E a distance of 57.00' to a point in the centerline of said road; thence S 01 degrees, 09 minutes, 29 seconds W along said centerline a distance of 362.55' to a point; thence N 88 degrees, 50 minutes, 31 seconds W a distance of 234.07' to a point; thence along the said southerly line the following courses: S 01 degrees, 09 minutes, 29 seconds W 125.00'; N 88 degrees, 50 minutes, 31 seconds 63.31'; S 85 degrees, 52 minutes, 21 seconds W 102.38'; S 76 degrees, 33 minutes, 12 seconds W 339.56'; S 84 degrees, 36 minutes, 59 seconds W 395.38'; N 87 degrees, 35 minutes, 33 seconds W 330.00'; S 20 degrees, 10 minutes, 20 seconds W 22.79'; along a curve to the left (r=184.50') 57.21'; S 02 degrees, 24 minutes, 27 seconds W 2.10'; N 87 degrees, 35 minutes, 33 seconds W 181.00'; N 02 degrees, 24 minutes, 27 seconds E 59.22'; N 20 degrees, 10 minutes, 20 seconds E 155.06' to a point, being the southeasterly corner of Sanga Trails Subdivision, 1st Addition (P.B. 143, Pg. 14); thence N 20 degrees, 10 minutes, 20 seconds E along the easterly line of said 1st Addition, a distance of 474.97' to a point, being the easterly corner of said 1st Addition, and the southwesterly corner of Gardens of Riveredge Subdivision, Phase 2-A (P.B. 122, Pg. 62); thence N 89 degrees, 26 minutes, 38 seconds E along the southerly line of said Phase 2-A, 2-B, and Phase 5, a distance of 1386.17' to the point of beginning, containing 18.932 Ac.

PLANTATION OAKS

WALNUT RIDGE SUB'D.

HG 4895

EXHIBIT B-1

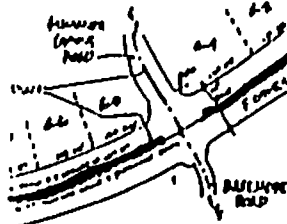


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COMMERCIAL

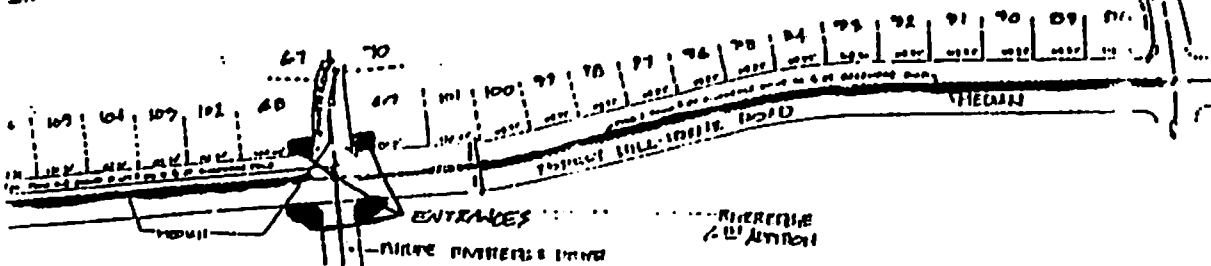
THE GROVE OF RIVEREDGE

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THE GARDENS OF RIVEREDGE

PAGE 4

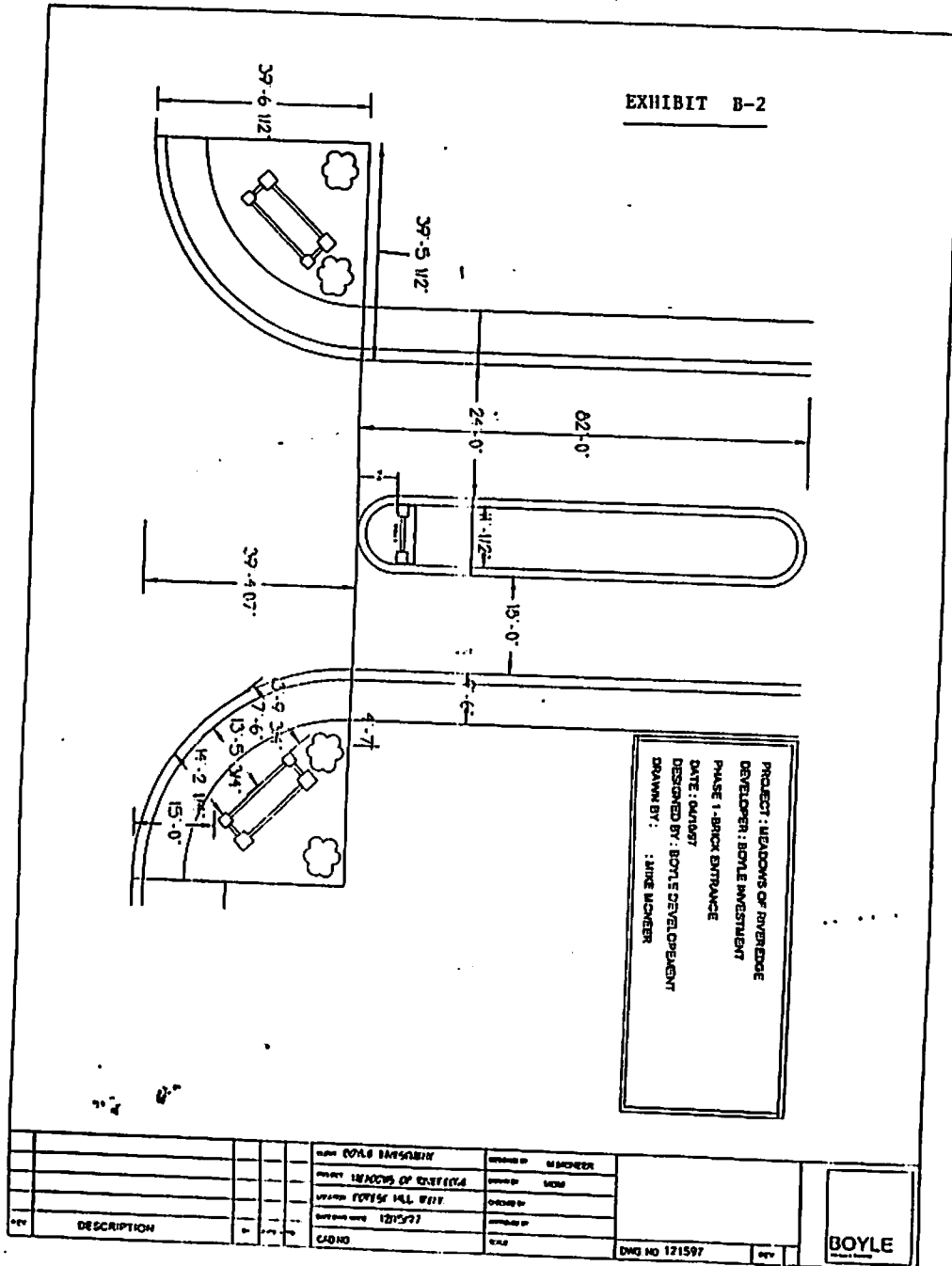


Legend
Streetscape area to be
maintained by Walnut
Grove - Forest Hill
Association, Inc.

Grace & Associates

DATE: APR 20, 1967

HG 4895



SHELBY COUNTY
REGISTER OF DEEDS

98 APR -1 AM 11:26

HG4895

No. **HG 4895**

D/C **DR. I**

Pgs. **14** ltr.

Val **5600**

STATE TAX

REGISTER'S FEE **5600**

RECORDING FEE

WT ☐ MISC FEE

TOTAL

STATE OF TENNESSEE
SHELBY COUNTY
GUY R. BATES
REGISTER

14