

## ARTICLES OF INCORPORATION

## PRESTWICKE/CANTERBURY HOMEOWNERS ASSOCIATION, INC.

The undersigned, being over the age of twenty-one (21) years, do hereby voluntarily associate themselves for the purpose of forming a nonstock, nonprofit Kentucky corporation in accordance with the provisions of Kentucky Revised Statutes Chapter 273, and

1. Name. The Corporation's name shall be Prestwicke/Canterbury Homeowners Association, Inc.

2. Duration. The Corporation's duration shall be perpetual.

3. Definitions. As used in these Articles of Incorporation the following terms shall have the following meanings:

(a) "Declaration" shall mean any Declaration of Covenants, Conditions and Restrictions and Reservation of Easements as amended from time to time, affecting Prestwicke and Canterbury subdivisions in Kenton County, Kentucky.

(b) "Developer" shall mean The Drees Company, a Kentucky corporation, Arlinghaus Builders, Inc., a Kentucky corporation and Ashley/Canterbury Partnership, a Kentucky general partnership and shall include any person, corporation or association to which they may expressly assign their rights, or any of them, from time to time, under these Articles of Incorporation.

(c) "Tract" shall mean each subdivided lot or similar property, the owner of which is a member of the Corporation pursuant to the Declaration.

4. Purposes. The Corporation is organized under the Kentucky Nonprofit Corporation Act and the purposes and objects for which the Corporation is formed are as follows:

(a) To promote the social welfare and serve the common good and general welfare of the members of the Corporation and to construct, operate, maintain and repair any common area, whether owned by the Corporation or not, as contemplated by the Declaration.

(b) Notwithstanding the generality of the foregoing, the Corporation shall not (1) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, or (2) directly or indirectly participate in, intervene in (including the publishing or distributing of statements), any political campaign on behalf or in opposition to any candidate for public office.

5. Powers. In addition to all other powers the Corporation may have pursuant to the Kentucky Nonprofit Corporation Act, the Corporation shall have the powers to:

(a) Exercise and enforce any right or privilege assigned to it under the Declaration; and

(b) Assess, levy and collect assessments against each Tract and against members of the Corporation as provided in any Declaration.

6. Internal Affairs. Provisions for the regulation of the internal affairs of the Corporation, including provisions for the distribution of assets on dissolution or final liquidation, are:

(a) The membership of the Corporation shall consist of the members designated from time to time in the Declaration, and such members shall be classified as follows:

(1) Class A membership shall consist of all Tract owners, with the exception of the Developer.

(2) Class B membership shall consist of the Developer. The Class B membership shall cease and be converted to Class A membership on December 31, 2010, or at such earlier time as the Class B members voluntarily resigns in writing their Class B membership rights.

(b) Each Class A member shall have one vote in respect of each Tract owned by such member, and the Class B members shall have five (5) votes in respect of each Tract owned by such members.

(c) Nothing in these Articles of Incorporation shall limit the right of the Developer to alter in any way its plans for the development of the Tracts at any time and from time to time.

(d) No part of the Corporation's net earnings shall inure to the benefit of any individual or any shareholder of the Corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered.

(e) Upon the dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to one or more organizations designated by the Board of Directors at that time, to be used in such manner as in the judgment of the Board of Directors will best accomplish the general purposes of the Corporation. Any of such assets not so disposed of shall be disposed of by a court of competent jurisdiction in the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized

and operated exclusively for such purposes.

7. Office and Agent. The address of the Corporation shall be 211 Grandview Drive, Ft. Mitchell, Kentucky 41017. The name and address of the Corporation's initial Registered Agent shall be Thomas Miller, 211 Grandview Drive, Ft. Mitchell, Kentucky 41017.

8. Board of Directors. The number of directors constituting the Corporation's initial Board of Directors shall be three (3), and the names and addresses of the persons who are to serve as the initial directors are:

NAME	ADDRESS
Thomas Miller	211 Grandview Drive Ft. Mitchell, Kentucky 41017
Joseph Arlinghaus	749 Dudley Pike Edgewood, Kentucky 41017
Michael Link Robinson	3248 New Orleans Drive Edgewood, Kentucky 41017

9. Amendment. These Articles of Incorporation may be amended in the manner now or hereafter provided by Kentucky Statute for the amendment hereof, but only with the assent of seventy-five percent (75%) of the total number of votes held by the entire membership of the corporation.

10. Incorporators. The names and addresses of the incorporators are Thomas Miller, 211 Grandview Drive, Ft. Mitchell, Kentucky 41017, Joseph Arlinghaus, 749 Dudley Pike, Edgewood, Kentucky 41017 and Michael Link Robinson, 3248 New Orleans Drive, Edgewood, Kentucky 41017.

11. Elimination of Personal Liability of Directors. No director of the Corporation shall be personally liable for monetary damages for breach of his/her duties as a director, provided, however, that this provision shall not eliminate or limit the liability of any director for:

(a) Any transaction in which the director's personal financial interest is in conflict with the financial interests of the Corporation.

(b) Acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be in violation of law.

(c) Any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, the incorporators have signed triplicate originals of these Articles of Incorporation on July 27, 1992.

Thomas Miller  
Thomas Miller

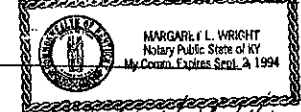
Joseph Arlinghaus  
Joseph Arlinghaus

Michael Link Robinson  
Michael Link Robinson

STATE OF KENTUCKY :  
COUNTY OF KENTON : SS:

The foregoing instrument was acknowledged before me by Thomas Miller, Joseph Arlinghaus and Michael Link Robinson, on July 27, 1992.

My commission expires:

  
Margaret L. Wright  
Notary Public, State at Large,  
Kentucky

This instrument prepared by:  
Stephen R. Hunt, Esq.  
Aronoff, Rosen & Stockdale  
1600 Star Bank Center  
425 Walnut Street  
Cincinnati, Ohio 45202

July 20, 1992/lob (drive\prestwic\articles.hc)

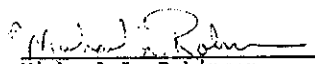
## EXHIBIT "E"

## BY-LAWS

## OF

PRESTWICKE/CANTERBURY HOMEOWNERS ASSOCIATION, INC.

I certify that the following By-Laws, consisting of thirteen pages, are the By-Laws adopted by the Board of Directors of Prestwicke/Canterbury Homeowners Association, Inc., by unanimous written action of Directors dated 24 Day of July, 1992.

  
 Michael L. Robinson,  
 Secretary

## BY-LAWS

## OF

PRESTWICKE/CANTERBURY HOMEOWNERS ASSOCIATION, INC.

Section 1. Meetings

1.1 Annual Meeting. The annual meeting of the members shall be held during the first quarter of the year at a time designated by the Board of Directors.

1.2 Special Meetings. Special meetings of the members may be called (a) at any time by the Board of Directors, or (b) by members holding in the aggregate twenty percent (20%) the voting power of all members. The secretary shall call a special meeting to be held at a time fixed by the secretary, but not less than ten (10) days nor more than thirty-five (35) days after the secretary shall have received (a) a written request from the Board of Directors, or (b) a petition signed by members holding in the aggregate twenty percent (20%) of the voting power of all members. If the secretary neglects or refuses to issue such call, then the call may be issued by (a) any Director, or (b) a member who signed the petition.

1.3 Place of Meetings. Meetings of the members shall be held at the registered office of the Corporation unless the Board of Directors by resolution designates a different place for the meeting, in which case the meeting shall be held at the place thus designated.

1.4 Notice of Meetings. The secretary shall cause written notice of the time and place of each annual meeting of the members to be delivered, either personally or by mail, to the members

entitled to vote not less than ten (10) nor more than thirty-five (35) days before the date of the meeting.

1.5 Waiver of Notice. The attendance of any member at any meeting of members without protesting the lack of proper notice shall constitute a waiver of such notice.

1.6 Quorum. Except as provided in the Declaration, members holding twenty percent (20%) of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum at a meeting of members.

1.7 Action without Meeting. Any action required or permitted to be taken at any meeting of the members entitled to vote may be taken without a meeting if a consent thereto in writing, setting forth the action so taken, is signed by all members entitled to vote and such written consent is filed with the minutes of proceedings of the members entitled to vote.

1.8 Suspension of Voting Privileges. No member shall be eligible to vote or to be elected to the Board of Directors who is shown on the books of the corporation to be more than sixty (60) days delinquent in the payment of any assessment due the corporation.

## Section 2. Board of Directors

2.1 Number and Term of Office. The affairs of the Corporation shall be managed by the Board of Directors. Until the first annual meeting, the initial Board shall consist of three (3) Directors appointed by the Class B Member who shall serve until their respective successors are appointed and qualified. Developer

appointed Directors need not be Members of the Association.

Except as otherwise hereafter provided and except for the period during which the Developer shall control the Board, Directors shall be elected for three (3) year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the initial or any subsequent Board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board by affirmative vote of a majority of the remaining Directors representing the same class of Members who elected or appointed the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

At the first annual meeting, the Board of Directors shall expand from three (3) to five (5). At such meeting, the Class B Members shall appoint three (3) Directors for a three (3) year term. Thereafter, at each tri-annual meeting the Class B Member, until such time as the Developer shall transfer control of the Board to the Class A Members, shall appoint three (3) Directors for a three (3) year term.

At the first annual meeting, the Class A Members shall elect two (2) Directors. One of the Directors shall be elected for a three (3) year term and one of the Directors shall be elected for a two (2) year term. At the expiration of the terms of such Directors, until such time as the Developer shall transfer control of the Board to the Class A Members, the Class A Members shall, at

the annual meeting, elect successor Directors for a three (3) year term. All elected Directors, and their successors, shall be Owners or residents.

The Developer shall transfer control of the Board to the Class A Members at the first annual meeting after the earlier of the following events: (i) Ninety percent (90%) of the total number of living units that may be constructed in all phases of the property have been sold and conveyed; or (ii) December 31, 2010, or (iii) abandonment of the Property by Developer. The Property shall be deemed abandoned by Developer if no construction of a Living Unit has been commenced by it on at least one previously unimproved Lot for a period of Seven Hundred Thirty (730) consecutive days. At this meeting, all Developer appointed Directors shall be deemed removed from office, and the Class A Members, including the Developer if it is then an Owner, shall elect a Director to fill each vacancy on the Board. The terms of said elected Directors shall be from one (1) to three (3) years, as determined by the Board, so that in any one (1) year thereafter, the terms of no more than two (2) nor less than one (1) Director shall expire. At all times after this meeting, all Directors, and their successors, shall be elected by Class A Members and shall be elected for a three (3) year term. Additionally, at all times after this meeting, the Board shall be structured to consist of at least two (2) Directors who shall be Owners or residents of Prestwicke Subdivision and at least one (1) Director who shall be an Owner or a resident of Canterbury Subdivision.

Notwithstanding anything above to the contrary, the Class B Member may, by written notice to the Board, at or before any annual meeting, relinquish to the Class A Members, the Class B Members right to elect one or more Directors at such annual meeting pursuant to this section.

2.2 Meetings. A regular meeting of the Board of Directors shall be held immediately after the annual meeting of the members or any special meeting of members at which a Board of Directors is elected. Special meetings of the Board of Directors may be called by the President or by any two Directors.

2.3 Notice-Waiver. Notice of the time and place of each meeting of Directors shall be served upon or telephoned to each Director at least twenty-four (24) hours, or mailed to each Director at his address as shown by the books of the Corporation at least forty-eight (48) hours, prior to the time of the meeting. Notice of any meeting of Directors may be waived either before or after the meeting by any Director. The attendance of any Director at any meeting of Directors without protesting the lack of proper notice shall be deemed to be a waiver of notice of that meeting.

2.4 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

2.5 Removal. Any Director may be removed from the Board of Directors, with or without cause, by a majority vote of the members

of the Corporation.

2.6 Compensation. No Director shall receive compensation for any service he may render to the Corporation. However, any Director may be reimbursed for his actual out-of-pocket expenses incurred in the performance of his duties.

2.7 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a consent thereto in writing, setting forth the action so taken, is signed by all members of the Board of Directors and such written consent is filed with the minutes of proceedings of the Board of Directors.

2.8 Duties. It shall be the duty of the Board of Directors to manage, operate and maintain certain real property owned or to be owned by the corporation, or constructed for the benefit of the corporation.

### Section 3. Nomination of Directors

3.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Corporation. The Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each annual meeting of the members, to serve from the time of appointment until the close of the next annual meeting, such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many

nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled by election.

### Section 4. Officers

4.1 Officers. The Corporation may have one or more Vice Presidents and shall have a President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Corporation may also have such assistant officers as the Board of Directors may deem necessary, all of whom shall be elected by the Board of Directors or chosen by an officer or officers designated by it. Any two or more offices may be held by the same person except the office of President and Secretary.

4.2 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation should not be necessary to make it effective. The vacancy of any office may be filled by appointment by the Board of Directors.

4.3 President. The President shall

(a) Have general charge and authority over the business and affairs of the Corporation subject to the direction of the Board of Directors,

(b) Have authority to preside at all meetings of the

members and of the Board of Directors,

(c) Have authority acting alone, except as otherwise directed by the Board of Directors, to sign and deliver any document on behalf of the Corporation, and

(d) Have such other powers and duties as the Board of Directors may assign to him.

4.4 Vice President. The Vice President, or if there is more than one Vice President, the Vice Presidents in the order of their seniority by designation (or if not designated in the order of their seniority of election), shall perform the duties of the President in his absence. The Vice President shall have such other powers and duties as the Board of Directors or the President may assign to him.

4.5 Secretary. The Secretary shall

(a) Issue notices of all meetings for which notice is required to be given,

(b) Keep the minutes of all meetings and have charge of the corporate record books, and

(c) Have such other duties and powers as the Board of Directors or the President may assign to him.

4.6 Treasurer. The Treasurer shall

(a) Have the custody of all funds and securities of the Corporation,

(b) Keep adequate and current accounts of the Corporation's affairs and transactions, and

(c) Have such other duties and powers as the Board of

Directors or the President may assign to him.

4.7 Other Officers. Other officers and agents of the Corporation shall have such authority and perform such duties in the management of the Corporation as the Board of Directors or the President may assign to them.

#### Section 5. Committees

5.1 Committees. The Board of Directors may appoint a Finance and Maintenance Committee as provided in the Declaration. The Board of Directors shall also appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

#### Section 6. Assessments

6.1 Assessments. The Board of Directors shall annually assess each owner of a Tract (as defined in the corporation's Articles of Incorporation) in accordance with the provisions of the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements recorded in the office of the Kenton County, Kentucky, Clerk, that affect any portion of Prestwicke or Canterbury subdivisions.

#### Section 7. Indemnification and Insurance Provisions

7.1 Indemnification. To the extent permitted by law, the Corporation shall indemnify any Director, officer, former Director and/or former officer against all expenses, including attorney fees, actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or

criminal, in which he/she is made a party by reason of being or having been such Director or officer, except in relation to matters as to which he/she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his/her duties to the Corporation. The Corporation shall make said indemnification, so long as the Director or officer or former Director or former officer acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to a criminal action, suit or proceeding, so long as he/she had no reasonable cause to believe that his/her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, in itself, create a presumption that the person did not act in good faith and/or in a manner which he/she reasonably believed to be in or not opposed to the best interests of the Corporation and with respect to any criminal action, suit or proceeding, that he/she had reasonable cause to believe that his/her conduct was unlawful.

Any indemnification under this section, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer or former Director or former officer is proper in the circumstances because he/she has met the applicable standards of conduct set forth in this Section. Such determination shall be made by (a) a majority vote of a quorum of the Directors who were

not and are not parties to or threatened with any such action, suit or proceeding, or (b) if such quorum is not attainable or if a majority vote of a quorum of disinterested Directors so directs, in a written opinion by independent legal counsel who has been retained by the Corporation, or (c) by a court of competent jurisdiction, or (d) by the court in which such action, suit or proceeding was brought.

Expenses, including attorney fees, incurred in defending any action, suit or proceeding referred to in this section, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon the receipt of an undertaking by or on behalf of the Director, officer or former Director or former officer, to repay such amount, unless it shall ultimately be determined that he/she is entitled to be indemnified by the Corporation as authorized in this Section.

The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law, under any insurance policy purchased by the Corporation or under any other agreement.

**7.2 Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, protecting said persons against any liability asserted against him/her and/or incurred by him/her in any such capacity or arising out of his/her



status as such, whether or not the Corporation would have indemnified him/her against such liability under Section 7.1 of these By-laws.

#### Section 8. Miscellaneous

8.1 Books and Records. The books, records and papers of the corporation shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the corporation shall be available for inspection by any member at the principal office of the corporation, where copies may be purchased at a reasonable cost.

8.2 Conflict. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of conflict between the Declaration and these By-Laws, the Declaration shall control.

8.3 Amendments The By-Laws of the Corporation may be amended from time to time by a two-thirds (2/3) vote of the Board of Directors.

July 23, 1992/lob (edrive)prestwic(by-laws.ho)

NOW, THEREFORE, the Declarant hereby declares that all of the real property described in Exhibits "A" and "B" and such other property as may be subjected to the provisions hereof pursuant to Article II, shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, 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. Definitions. The following words when used in this Declaration shall have the following meanings:

(a) "Articles" and "Articles of Incorporation" shall mean those Articles, filed with the Secretary of Kentucky, incorporating Prestwicke/Canterbury Homeowners Association, Inc., as a corporation not for profit under the provisions of Kentucky Revised Statutes, as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "D" is attached hereto and made a part hereof.

(b) "Association" shall mean and refer to the Prestwicke/Canterbury Homeowners Association, Inc., and its successors and assigns.

(c) "Board" and "Board of Trustees" shall mean the Board of Trustees of the Association as provided in the Articles of Incorporation and By-Laws of the Association. The Board of Trustees shall also be known as the "Board of Directors".

(d) "By-Laws" shall mean the By-Laws of the Association, as the same may be amended from time to time. A true copy of the By-Laws as shown in Exhibit "E" is attached hereto and made a part hereof.

(e) "Canterbury Woods Subdivision" shall mean and refer to a single-family subdivision situated on the real property described in Exhibit "B" together with such portions of any real property as may hereafter be annexed pursuant to Article II.

(f) "Common Areas" shall mean and refer to all real property, or any interest therein, including greenbelt or landscape easements, together with improvements located thereon, for the benefit, use and enjoyment of all of the Members of the Association. The "Common Areas" shall also include any areas that

have been specifically designated by the Declarant on a recorded plat as "Common Areas". The "Common Areas" could include, but shall not be limited to, greenbelt easement areas, entryways, landscape mounds, roadway islands and the undedicated portion of any roadway or street conveyed to the Association.

(g) "Declarant" shall mean and refer to The Drees Company, a Kentucky corporation, Arlinghaus Builders, Inc., a Kentucky corporation and Ashley/Canterbury Partnership, a Kentucky general partnership and their successors and assigns.

(h) "Developer" shall mean and refer to The Drees Company, a Kentucky corporation, Arlinghaus Builders, Inc., a Kentucky corporation, or Ashley/Canterbury Partnership, a Kentucky general partnership or their successors and assigns if such successors or assigns should acquire one or more developed Lots from a Developer for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner. Any assignee described herein shall be a "Developer" for purposes of this Declaration only as to the Lot or Lots which such assignee has acquired for the purpose of resale or for the purpose of constructing improvements thereon for resale to an Owner.

(i) "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) December 31, 2010, or (b) the day next following the day on which all of the Developers own no part of the Property.

(j) "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision plat of the Property or recorded re-subdivision thereof with the exception of the Common Areas.

(k) "Member" shall mean any one of those Owners who are members of the Association as provided in Article IV.

(l) "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.

(m) "Prestwicke Subdivision" shall mean and refer to a single-family subdivision situated on the real property described in Exhibit "A", together with such portions of the real property described in Exhibit "C" as may hereafter be annexed pursuant to Article II.

(n) "Property" and "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be annexed pursuant to Article II.

(o) "Trustee" and "Trustees" shall mean that person or those persons serving, at the time pertinent, as a Trustee or Trustees of the Association, and mean that same person or those persons serving in the capacity of a member of the Board of Trustees of the Association. Such individuals shall also be known as "Directors".

## ARTICLE II

### PROPERTY DEVELOPMENT - ANNEXATION

Section 1. Property Subject to Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the County of Kenton, State of Kentucky, and is more particularly described in Exhibits "A" and "B" attached hereto and by this reference made a part hereof. The real estate described in Exhibit "A" shall be developed as a single family subdivision to be known as Prestwicke Subdivision and the real estate described in Exhibit "B" shall be developed as a single family subdivision to be known as Canterbury Woods Subdivision.

Section 2. Planned Unit Development. Declarant reserves the right to subject all or any part of the real property described in Exhibit "C" to the provisions of this Declaration, so as to create a residential planned unit development (PUD) consisting of various residential properties with permanent Common Areas for the benefit of said development. The real property described in Exhibit "C" if annexed, shall become a part of Prestwicke Subdivision. Such additional property shall be annexed to the real property described in Exhibit "A" as provided in Section 3 hereof. Notwithstanding the above, nothing contained in this Declaration or in the By-Laws shall obligate the Declarant to annex any additional property to the property described in Exhibit "A" and the real property described in Exhibit "C" shall remain wholly free from any covenant or restriction herein contained until so annexed as hereinafter provided.

Section 3. Annexation of Additional Property. Except as hereafter provided, for a period of twenty (20) years from and after the date this Declaration is filed for record, additional property, not limited to the property described in Exhibit "C", may be annexed to the above-described Property by the Declarant without the assent of the Members of the Association, if any. Thereafter, such additional property may be annexed only with the consent of fifty-one (51%) percent of each class of Members of the Association. Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the above-described Property. The scheme of the within Covenants and Restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on Exhibits "A" and "B" as hereinafter provided.

Notwithstanding the above, for a period of ten (10) years from and after the date this Declaration is filed for record, The Drees Company shall have the right to annex to the above-described Property, the real property described in Exhibit "C" without the assent of the Members of the Association or any other party. The real property described in Exhibit "C", if annexed, shall become a part of Prestwicke Subdivision.

Any annexations made pursuant to this Article, or otherwise shall be made by recording a supplement to this Declaration with the Clerk of Kenton County, Kentucky, which supplementary declaration shall extend the scheme of the within covenants and restrictions to such annexed property. Such supplementary Declaration may contain such additional covenants, conditions, restrictions, easements, charges and liens as the Declarant shall deem appropriate for the purpose of completing the development of the property.

Section 4. Additional Common Areas. Declarant shall have the right, from time to time, during the Development Period, to convey to the Association for nominal or other appropriate consideration, and the Association may accept conveyance of any property or interest in property owned by Declarant along with any structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon. The Association shall not accept any such conveyance until the conveyance shall have been approved by the Board of Trustees. Upon acceptance of the conveyance by the Board of Trustees, the property conveyed shall constitute Common Areas.

Section 5. Facilities for Canterbury Woods Subdivision. Ashley/Canterbury Partnership shall have the right, from time to time, during the Development Period, to convey to the Association for nominal or other appropriate consideration community facilities which shall be constructed solely for the benefit of the residents of Canterbury Woods Subdivision. The Association shall not accept any such conveyance until the conveyance shall have been approved by the Board of Trustees. Upon acceptance of the conveyance by the Board of Trustees, the property conveyed shall be held for the benefit of the Owners of Lots in Canterbury Woods Subdivision and shall not be considered Common Areas. All costs associated with the maintenance, use and operation of such facilities shall be funded by the Annual Maintenance Assessment set forth in Article V, Section 3. THE OWNERS AND RESIDENTS OF PRESTWICKE SUBDIVISION SHALL HAVE NO RIGHT TO USE SUCH COMMUNITY FACILITIES.

Notwithstanding any other provision of this Declaration, Ashley/Canterbury Partnership does not warrant or represent that any community facilities will be constructed by or on behalf of such Developer. In determining whether to construct any community facilities for Canterbury Woods Subdivision, such Developer may consider whether the construction at the time of making the

decision would be economically feasible in light of the then existing economic conditions, whether such Developer has sufficient funds available for the construction, whether the operation, maintenance and repair of the community facilities as constructed will be adequately funded by the Annual Maintenance Assessments.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Owner's Right of Enjoyment in the Common Areas. Every Owner and, in the case of rented residences, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas.

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration.

(c) The right of the Association or the Declarant to grant utility easements (including cable television), greenbelt easements, sign easements or roadway easements over the Common Areas.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the applicable By-Laws of the Association, his right of enjoyment in and use of the Common Areas to the members of his family, guests, and his tenants or contract purchasers who reside on the Property.

Section 3. Title to Common Areas. The title to any portion of the Common Areas that is to be owned by the Association in fee simple shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that the Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any portion of the Property for various easements and rights of way, together with the right to dedicate or grant the same where necessary and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

BOOK 0350 PAGE 346

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every Lot Owner shall be a Member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of any Lot. During the Development Period, the Association shall have Class A Members (being all Owners except Developers) and a Class B Member (Developers). At such time as the Class B membership shall terminate, the Developers, if they are then an Owner, shall become a Class A Member and continue as such so long as they shall remain an Owner.

Section 2. Voting Members.

(a) With the exception of a Developers until Class B membership has terminated as provided in the Articles, every person, group of persons or entity who is an Owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A Member of the Association. Class A Members shall be entitled to one vote per each Lot in which they hold the interest required for membership.

(b) Class B Members shall be the Developers which shall be entitled to five (5) votes for each Lot in which any Developer holds the interest otherwise required for Class A membership multiplied by the number of residences located or proposed by the Declarant to be located on such Lot, provided, however, that such Class B membership shall terminate at such time as provided in the Articles.

(c) At such time as Class B membership shall terminate, any Developer which, for any Lot, holds an interest therein otherwise required for Class A membership, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member. If more than one person, group of persons, or entity is the record Owner of a fee interest in any Lot, then 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.

ARTICLE V

ASSESSMENTS

Section 1. Covenant for Assessments. The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons, or entity who becomes an Owner of a Lot in Prestwicke Subdivision or Canterbury Woods Subdivision, by virtue of the acceptance of a deed for such Lot, 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 Common Area Assessments, and (2) Special Common Area Assessments.

BOOK 0350 PAGE 347

The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons, or entity who becomes an Owner of a Lot in Canterbury Woods Subdivision, by virtue of the acceptance of a deed for such Lot, 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 Maintenance Assessments, and (2) Special Maintenance Assessments.

All assessments referred to above shall be fixed, established and collected from time to time as hereinafter provided. All assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorney's fees) as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property and Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons, or entity who was the owner of such property and Lot at the time when the assessment fell due.

Section 2. Annual Common Area Assessments; Purposes. The Annual Common Area Assessments levied by the Association are for the purpose of promoting the scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic and scenic qualities of the development.

To carry out these purposes, an Annual Common Area Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including the maintenance, repair and landscaping of entrance ways to the community or adjoining roads, lakes or other areas, whether public or private, which may affect the recreation, scenic enjoyment, health, welfare and safety of the residents even though not owned by the Association. Such Assessment shall not be used for maintaining or improving any entranceways or community facilities situated in Canterbury Woods Subdivision.

Section 3. Annual Maintenance Assessment; Purposes. The Annual Maintenance Assessments levied by the Association are for the purpose of promoting and maintaining any entranceways or community facilities situated in Canterbury Woods Subdivision. To carry out

these purposes, the Annual Maintenance Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of any entranceways or community facilities situated in Canterbury Woods Subdivision, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision of such facilities. Such Assessment shall not be used for maintaining or improving the Common Areas.

Section 4. Annual Common Area Assessments, Initial Amount. Until January 1, 1993, the Maximum Annual Common Area Assessment for Lots in Prestwicke Subdivision and Canterbury Woods Subdivision for the general purposes provided in Section 2 of this Article V shall not exceed \$150.00 per Lot.

The assessment may be billed in advance on a monthly, quarterly, semi-annual or annual basis. The Board of Trustees may fix the Annual Common Area Assessment for any amount not in excess of the maximum hereinabove provided for.

Section 5. Annual Maintenance Assessments; Initial Amount. Until January 1, 1993, the Maximum Annual Maintenance Assessment for Lots in Canterbury Woods Subdivision for the general purposes provided in Section 3 of this Article V shall not exceed \$150.00 per Lot. IN NO EVENT SHALL THE RESIDENTS OF PRESTWICKE SUBDIVISION BE AUTHORIZED TO USE THE FACILITIES TO BE SITUATED IN CANTERBURY WOODS SUBDIVISION OR BE SUBJECT TO THE ANNUAL MAINTENANCE ASSESSMENT.

The Assessment may be billed in advance on a monthly, quarterly, semi-annual or annual basis. The Board of Trustees may fix the Annual Maintenance Assessment for any amount not in excess of the maximum hereinabove provided for. The Assessment, for Lots subject to such assessment, shall be fixed at a uniform rate.

Section 6. Annual Assessment; Maximum Increase.

(a) From and after January 1, 1993, the amount of the Maximum Annual Assessments, set out in Article V, Sections 4 and 5 above for all applicable Lots will increase automatically ten (10%) percent per year in addition to the maximum sum allowed for the previous year (whether changed or not), unless prior to the levying of such new assessment year, the Board of Trustees vote to reduce any such assessment below that allowed to be changed in such year. As used herein, the term "allowed to be changed" shall mean the sum set out in Article V, Sections 4 and 5, above, increased and compounded ten (10%) percent per year beginning with the year immediately following the conveyance of the first Lot to an Owner.

(b) From and after January 1, 1993, the Maximum Annual Assessments for all applicable Lots may be increased above that established by the preceding paragraph, by a vote of Members as

hereinafter provided for the next succeeding year and at the end of such year for each succeeding year. Any change in the Annual Common Area Assessment made pursuant to this paragraph shall have the assent of a fifty-one (51%) percent of the total number of votes held by Class A Members and fifty-one (51%) percent of the total number of votes held by the Class B Member. Any change in the Annual Maintenance Assessment made pursuant to this paragraph shall have the assent of fifty-one percent (51%) of the total number of votes held by Class A Members that are owners of Lots in Canterbury Woods Subdivision and fifty-one percent (51%) of the total number of votes held by the Developer of Canterbury Woods Subdivision.

Section 7. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year a Special Common Area Assessment and/or Special Maintenance Assessment, 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 located upon the Common Areas or the facilities situated in Canterbury Woods Subdivision, which cost has not otherwise been provided for in full as part of the applicable Annual Assessment, including the necessary fixtures and personal property related thereto. Any Special Common Area Assessment enacted pursuant to this paragraph shall have the approval of fifty-one (51%) percent of the total number of votes held by Class A Members and fifty-one (51%) percent of the total number of votes held by the Developer of Canterbury Woods Subdivision. Any Special Maintenance Assessment enacted pursuant to this paragraph shall have the approval of fifty-one percent (51%) of the total number of votes held by the Class A Members who are owners of Lots in Canterbury Woods Subdivision and fifty-one percent (51%) of the total number of votes held by the Developer of Canterbury Woods Subdivision. Any Special Common Area Assessments levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of applicable Lots. Any Special Maintenance Assessment levied by the Association pursuant to the provisions of this Section shall be fixed at a uniform rate based upon the number of Lots in Canterbury Woods Subdivision. All monies received by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of such Special Assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly, semi-annual or annual basis. Special Common Area Assessments shall be used solely for the benefit of the Common Areas and related expenses and Special Maintenance Assessments shall be used solely for the benefit of the facilities situated in Canterbury Woods Subdivision.

Section 8. Commencement of Assessments. The Annual Common Area Assessment and Annual Maintenance Assessment shall commence on the first day of the month following the recording of the plat for the Property or at such other time as determined by the Board. The first assessment for any such membership may be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments.

It shall be the duty of the Board of Trustees of the Association to periodically fix the amount of an assessment against each Lot for such assessment period and the Board of Trustees shall make reasonable efforts to fix the amount of an assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at the time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be opened to inspection by any Owner upon reasonable notice to the Board. Written notice of an assessment shall thereupon be sent to the Owner of any Lot subject thereto. Any Annual Assessment subsequent to the first Annual Assessment shall become a lien on January 1 of each year; and any Special Assessments shall become a lien at the time designated by the Board of Trustees. No notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof.

Section 9. Assessment of Developer. Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, a Developer, while there exists a Class B Member, shall be required to pay an assessment for any recorded, unsettled Lot in which such Developer has the interest otherwise required for Class A membership only in any amount equal to ten percent (10%) of the Annual Common Area Assessment, Annual Maintenance Assessment, Special Common Area Assessment and Special Maintenance Assessment which the Association levies for purposes set forth in Article V, Sections 2, 3 and 7. The provisions of this Section 9 shall not apply to the assessment of any Lot held by a Developer for rental purposes that is or has been occupied as a residence; in which event the Developer shall be required to pay the full amount of the assessments levied thereon.

Section 10. Assessment Certificates. The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of an assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

Section 11. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the property which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay any assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.

If any assessment is not paid within fifteen (15) days after the due date, such assessment shall bear interest at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of such assessment. No Owner shall waive or otherwise escape liability for the assessments herein provided for by non-use of the Common Areas or community facilities or abandonment of his Lot.

In addition to the ten percent (10%) per annum interest provided above, the Board of Trustees in its discretion, may establish a reasonable late charge to be paid in the event of any assessment that is not paid within fifteen (15) days after due date, provided that such late charge shall not exceed a sum equal to ten (10%) percent of the amount of the assessment which is delinquent by fifteen (15) days.

Section 12. Subordination of Lien to Mortgage. 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, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or through foreclosure shall not be liable for more than six (6) months of the Lot's unpaid assessments and/or charges accrued before the acquisition of title to the Lot by the mortgagee.

Section 13. Capital Contribution; Common Area Assessment at Closing. Within sixty (60) days after the date of the closing on the purchase of a Lot, the purchaser shall be required to pay a sum equal to one (1) year of the current Annual Common Area Assessment for a Lot as such purchaser's initial capital contribution to the working capital of the Association. This assessment shall be used by the Association for its operating expenses. Such assessment is not an advance payment of assessments, and it will not be held in any sort of trust or reserve account. Additionally, within sixty (60) days after the date of such closing, each purchaser of a Lot shall be required to pay a pro rata share of the Annual Common Area Assessment for the balance of the current year to the extent that

such assessment is not otherwise being collected by the Association. A Developer shall be exempt from the assessments collected pursuant to this section.

#### ARTICLE VI

##### INSURANCE

Section 1. Liability Insurance. The Association shall obtain and maintain a Comprehensive policy of public liability insurance covering the Common Areas and any other facilities insuring the Association, Trustees, and Owners and members of their respective families, tenants and occupants in an amount of not less than One Million Dollars (\$1,000,000.00), per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a residential Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

Section 2. Casualty Insurance. The Association shall obtain and maintain fire, lightning and extended coverage or similar insurance in an amount of not less than one hundred percent (100%) of the replacement cost thereof on all Common Areas and any community facilities. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. Said insurance shall be payable to the Association and the proceeds from which shall be used to restore or replace any Common Area or community facility damaged or destroyed by any peril covered by said insurance.

Section 3. Other Insurance; Allocation. In addition, the Association shall obtain and maintain Trustees' and Officers' liability insurance and such other insurance as the Board may deem desirable from time to time. The cost of any insurance purchased pursuant to this Article VI shall be allocated to the Common Areas and community facilities in such percentage as determined by the Board from time to time.

Section 4. Insufficient Insurance. In the event the improvements forming a part of the Common Areas, any community facilities or any portion thereof shall suffer damage or destruction from any cause or peril which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots for which whose benefit the amount was so advanced, and such assessment shall have the same force and effect,

and if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

Section 5. Fidelity Bonds. The Board shall obtain fidelity bond coverage, naming the Association as an insured, with respect to any person or agent handling Association funds in an amount of not less than Five Thousand Dollars (\$5,000.00) as determined by the Board.

#### ARTICLE VII

##### COMMITTEES

Section 1. Finance and Maintenance Committee; Other Committee. The Board of Trustees may appoint a Finance and Maintenance Committee consisting of not more than five (5) Members of the Association. This Committee shall prepare the annual budget of the Association for submission to the Board of Trustees. The Committee shall also make recommendations to the Board of Trustees as to the amount of the Annual Assessments to be levied by the Board of Trustees. Additionally, the Committee shall make recommendations to the Board of Trustees as to the needs, repairs and monetary requirements for the Common Areas and any community facilities.

The Board, at its discretion, shall have the right to appoint other Committees, including Architectural Control Committees as provided in Article VIII.

#### ARTICLE VIII

##### ARCHITECTURAL CONTROL

Section 1. Approval Required. Except for the original construction of residences, Common Areas, community facilities or other structures by a Developer or builder, 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 specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by an Architectural Control Committee appointed by the Board of Trustees of the Association. The Board shall appoint one Architectural Control Committee for Prestwicke Subdivision and another such Committee for Canterbury Woods Subdivision. Each such Committee shall consist of at least three (3) individuals. Such plans and specifications shall be reviewed by the appropriate Committee as to harmony of external design and location in relation to surrounding structures and topography in accordance with the requirements hereinafter set forth. Except as otherwise provided in the Declaration, in the event that such Committee fails to approve or

disapprove said plans and specifications (associated with the remodeling of a dwelling and related improvements) within thirty (30) days after submission, approval will not be required and this Article shall be deemed fully complied with.

**Section 2. General Requirements.** Except as otherwise provided, the following requirements shall be applicable to all Lots in Prestwicke Subdivision or Canterbury Woods Subdivision:

(a) **General Conditions.** No building shall be erected, altered, placed or be permitted to remain on any Lot other than one detached single-family dwelling with a private garage suitable for parking not more than four (4) cars which is to be attached to the principal dwelling. The restrictions set forth in the above sentence shall not apply to Lots in Canterbury Woods Subdivision.

Except for improvements constructed by a Developer in connection with the development of the Property, no improvement of any kind shall be erected, altered, placed or permitted to remain on the Common Areas (including areas designated as "open-space easements"). Additionally, no improvement constructed by a Developer in connection with the development of the Property shall be removed from the Common Areas (including areas designated as "open-space easements") without the prior written consent of each Developer or the Association.

(b) **House Placement and Yard Grading.** Residences shall conform to grade and drainage patterns existing at the time of the recording of the record plat for the subject Lot. Existing grades at Lot lines shall not be unreasonably altered without the written consent of the Developer of such Lot. Each Lot Owner and/or builder shall endeavor to retain as much of the natural woods as is practical.

(c) **Underground Houses and Log Houses.** Underground and log structures are prohibited.

(d) **Driveways.** All driveways shall be surfaced with concrete, asphalt or similar substance. No private driveway access shall be permitted from Lots 1 through 6 of Prestwicke Subdivision, Phase A, Section 1 onto Dudley Road or from Lots 1 and 10A of Prestwicke Subdivision, Phase A, Section 1 onto Prestwicke Drive.

(e) **Water Discharge.** Storm water must be disposed of in accordance with drainage plans established by the Developer or the Association.

(f) **Radio and Television Antennas.** All television and radio antennas, including CB radio antennas, must be enclosed within the residence located on the Lot. Satellite dishes are prohibited on Lots in Prestwicke Subdivision. Satellite dishes may be permitted on Lots in Canterbury Woods Subdivision upon obtaining a variance

in accordance with the provisions of Article VIII, Section 3.

(g) **Air Conditioning and Heat Pump Equipment.** Such equipment shall be located only in side or rear yards.

(h) **Awnings.** No metal or plastic awnings for windows or doors may be erected or used. Canvas awnings may be used on any Lot subject to prior written approval of the original Developer or the Association.

(i) **Fences.** No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, excepting a retaining wall, shall be erected, placed or suffered to remain upon any open-space easement or upon any Lot nearer to any street than the rear building line of the residence located on the Lot. Unless otherwise approved by the Board, fences shall be limited to a three-rail, split rail fencing with or without wire mesh, chain link or a hedge or other growing plants used as a fence, and shall not exceed four feet (4') in height.

On a corner Lot, in addition to the restrictions set forth above, no fence or portion thereof shall be erected or placed or suffered to remain upon said corner Lot, closer to the side street than the shortest distance between the residence erected on said corner Lot and the side street. Fence as used herein shall be liberally construed as to accomplish the purpose of these restrictions, and shall specifically include, but not be limited to, contrived barriers of any type including those of shrubs, hedges or walls. Side street as used herein, shall refer to any street contiguous to any Lot but not referred to in the mailing address of said Lot. Additionally, no fence shall be permitted to be constructed or extended into a landscape and signage easement as set forth on a record plat for the Property. This paragraph shall not apply to fences enclosing tennis courts or decorative fences installed by a Developer in connection with the development of the Property.

(j) **Brick Veneer and Siding.** All brick veneer and exterior sidings on residences shall be constructed within twelve (12) inches of grade on the front, sides and rear of residences so that no more than twelve (12) inches of foundation is exposed on the front, sides and rear of residences. This paragraph shall not apply to Lots in Prestwicke Subdivision.

(k) **Exterior Carpeting.** No exterior carpeting shall be allowed if it is visible from the street.

(l) **Lighting Exterior.** Mercury vapor yard lights in excess of 50 watts are prohibited, except for street lights installed in a right-of-way by a Developer or a utility company.



(m) Completion. Construction of a residential building on any tract shall be completed within eighteen (18) months from the date construction is started and any disturbed areas of the yard of the residence must be sodded or seeded.

(n) Mailboxes. Mailboxes shall be constructed of a material and design approved by a Developer or the Association.

(o) Subdivision and Consolidation of Lots. No Lots shall be subdivided or consolidated with other Lots without obtaining a variance in accordance with the provisions of Article VIII, Section 3.

(p) Zoning. All improvements shall be constructed in accordance with and subject to all applicable zoning regulations and building codes.

Section 3. Variances. In order to avoid unnecessary hardship and/or to overcome practical difficulties in the application of certain provisions of the Declaration, the Board shall have the authority to grant reasonable variances from the provisions of Article VIII, Section 2. Additionally, so long as a Developer owns one or more Lots on the Property, such Developer may grant reasonable variances from the provisions of Article VIII, Section 2 with respect to Lots owned or sold by such Developer. No variance shall materially injure or materially adversely affect any other part of the Property or any other Owner or occupant. No variance granted pursuant to the authority of this Section 3 shall constitute a waiver of any provision of the Declaration as applied to any other party or other part of the Property, and no variance may be granted to permit anything that is prohibited by applicable law. All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the Property.

Section 4. Special Requirements for Canterbury Woods Subdivision. The following requirements shall be applicable to only those Lots in Canterbury Woods Subdivision:

(a) Size of Residence. Two-story residences to be located in Canterbury Woods Subdivision shall be priced at a minimum of Four Hundred Thousand Dollars (\$400,000.00) or contain at least thirty-five hundred square feet (3,500 sq. ft.) of living space (on the first and second floors, excluding basement area) and ranch-style residences shall be priced at a minimum of Three Hundred Seventy-five Thousand Dollars (\$375,000.00) or contain at least twenty-seven hundred square feet (2,700 sq. ft.) of living space (on the first floor, excluding basement area).

The restrictions set forth in this Section 4 are for the sole benefit of The Drees Company. No other party shall have the right

to claim the benefit of these restrictions or to enforce these restrictions. The Drees Company shall also have the right to waive such restrictions in whole or in part.

## ARTICLE IX

### USE RESTRICTIONS AND MAINTENANCE

Section 1. Restrictions - Prestwicke Subdivision. All Lots in Prestwicke Subdivision shall be subject to the following restrictions:

(a) Purpose of Property. All Lots shall be used only for residential purposes and common recreational purposes auxiliary thereto. A Developer shall have the right to use unsold residences as model homes or sales offices. Additionally, builders shall have the right to use unsold residences as model homes or sales offices.

(b) Nuisance. No obnoxious or offensive activity of any kind shall be engaged in on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(c) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

(d) Signage. No sign of any kind shall be displayed to the public view on any Lot except (a) one professional sign of not more than two (2) square feet; (b) one sign of not more than four (4) square feet advertising the property for sale; (c) and signs used by a Developer to advertise the property during the construction or sale period.

(e) Trash. No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot. Trash and garbage shall be placed in sanitary containers and shall not be permitted to remain in the public view except on days of trash collection. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(f) Prohibited Accessory Structures. No permanent or temporary building, tent, storage shed, free standing greenhouse, or above ground pool or pool designed for above ground use shall be erected or permitted to remain upon a Lot. Other accessory structures may be permitted when approved by the Board in accordance with Article VIII, Section 1. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(g) Maintenance. Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All landscaping on the Lots shall be maintained in good condition. Any trees installed by a Developer that are removed or die shall be replaced by the Owner of the Lot with a tree of similar type and size to the extent practical. All Lots, including any areas designated as "open-space easements" or "landscape and signage easements" on such Lots, shall be kept free of debris and clutter and shall be kept mowed. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(h) Automobiles, Recreational Vehicles, Boats, Travel Trailers. No recreational vehicle, mobile home, boat, or travel trailer shall be parked or stored on any Lot, for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in an enclosure or garage and completely out of view. Trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such trucks are kept in an enclosure or garage and completely out of view.

No vehicle in inoperable condition shall be stored on any Lot for a period in excess of five (5) days unless the same is in an enclosure or garage and completely out of view. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(i) Parking - Prestwicke Drive. There shall be no parking on Prestwicke Drive between the hours of 3:00 a.m. and 7:00 a.m.

(j) Garage and Yard Sales and Christmas Lights. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period.

Christmas lights may be erected no sooner than four (4) weeks prior to and removed not later than four (4) weeks after Christmas.

(k) Obstruction of Easements and Drainage. No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. Unless otherwise designated on the record plat, a ten (10) foot wide private drainage easement shall exist along all common lot lines, the common lot line being the center line of said easement.

Section 2. Restrictions - Canterbury Woods Subdivision. All Lots in Canterbury Woods Subdivision shall be subject to the following

restrictions:

(a) Purpose of Property. All Lots shall be used only for residential purposes and common recreational purposes auxiliary thereto. A Developer shall have the right to use unsold residences as model homes or sales offices. Additionally, builders shall have the right to use unsold residences as model homes or sales offices.

(b) Nuisance. No obnoxious or offensive activity of any kind shall be engaged in on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(c) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that horses, dogs, cats and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Barns, stables or other suitable structures shall be provided for horses as approved by the Developer of Canterbury Woods Subdivision.

(d) Signage. No sign of any kind shall be displayed to the public view on any Lot except (a) one professional sign of not more than two (2) square feet; (b) one sign of not more than four (4) square feet advertising the property for sale; (c) and signs used by a Developer to advertise the property during the construction or sale period.

(e) Trash. No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot. Trash and garbage shall be placed in sanitary containers and shall not be permitted to remain in the public view except on days of trash collection. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(f) Prohibited Accessory Structures. No permanent or temporary building, tent, storage shed, or above ground pool or pool designed for above ground use shall be erected or permitted to remain upon a Lot. Other accessory structures, including gazebos, cabanas and pool and tennis dressing areas, may be permitted when approved by the Architectural Control Committee for Canterbury Woods Subdivision in accordance with Article VIII, Section 1. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(g) Maintenance. Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All landscaping on the Lots shall be

maintained in good condition. Any trees installed by a Developer that are removed or die shall be replaced by the Owner of the Lot with a tree of similar type and size to the extent practical. All Lots, including any areas designated as "open-space easements" or "landscape and signage easements" on such Lots, shall be kept free of debris and clutter and shall be kept mowed. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(h) Automobiles, Recreational Vehicles, Boats, Travel Trailers. No recreational vehicle, mobile home, boat, or travel trailer shall be parked or stored on any Lot, for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in an enclosure or garage and completely out of view. Trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such trucks are kept in an enclosure or garage and completely out of view.

No vehicle in inoperable condition shall be stored on any Lot for a period in excess of five (5) days unless the same is in an enclosure or garage and completely out of view. This paragraph shall not apply to any Lots owned by a Developer and held for sale.

(i) Overnight Parking. There shall be no parking on Prestwicke Drive or any other street in Canterbury Woods Subdivision between the hours of 3:00 a.m. and 7:00 a.m.

(j) Garage and Yard Sales and Christmas Lights. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period.

Christmas lights may be erected no sooner than four (4) weeks prior to and removed not later than four (4) weeks after Christmas.

(k) Obstruction of Easements and Drainage. No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. Unless otherwise designated on the record plat, a ten (10) foot wide private drainage easement shall exist along all common lot lines, the common lot line being the center line of said easement.

## ARTICLE X

### ACCESS EASEMENTS AND MAINTENANCE

Section 1. Access Easements. As set forth on the record plat or plats for the Property, certain Lots in Prestwicke Subdivision are subject to "Access Easements." Such Access Easements are in favor of the Declarant and the Association and are for the purpose of providing access to the lakes and ponds situated in Prestwicke Subdivision and for allowing the Declarant and the Association to perform algae control and related maintenance on such lakes and ponds. No one other than the Declarant, the Association or the Owner on whose Lot is situated an Access Easement, shall be permitted to have access to, or enter onto, an Access Easement area.

Section 2. Maintenance of Lakes. The Association shall be responsible for performing algae control and related maintenance of the lakes and ponds situated in Prestwicke Subdivision. The Owner of a Lot on which is situated a lake or pond shall be responsible for the care and maintenance of all areas immediately adjacent to such lake or pond. Additionally, such Owner shall be prohibited from installing any dock or other structure on or immediately adjacent to such lake or pond. Should an Owner fail to maintain the area immediately adjacent to such lake or pond, to the extent provided in the Declaration, the Association may do so, after notice, and assess such Owner for the cost. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.

Section 3. Landscape and Signage Easements. As set forth on the record plat or plats for the Property, certain Lots in Prestwicke Subdivision are subject to "Landscape and/or Signage Easements." Such Landscape and/or Signage Easements are in favor of the Declarant and the Association and are for the purpose of providing access in order to maintain landscaping and signage installed by the Declarant in connection with the development of Prestwicke Subdivision. No one other than the Declarant, the Association or the Owner on whose Lot is situated a Landscape and/or Signage Easement, shall be permitted to have access to, or enter onto, a Landscape and/or Signage Easement area.

## ARTICLE XI

### MISCELLANEOUS

Section 1. Duration. Except as otherwise provided and except where permanent or perpetual easements or other permanent rights or interest are herein created, the terms and provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs,

successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots have been recorded, agreeing to terminate the Declaration.

**Section 2. Amendment.** The Declaration may be amended, from time to time as follows:

(a) **By Declarant and Developer.** The Declarant reserves the right and power, and each Lot Owner by acceptance of a deed to a Lot is deemed to consent to and does with an interest, which shall run with the title to the Lot, and is irrevocable except by Declarant for a period of five (5) years from the date hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lots Owners, or to the extent necessary to enable Declarant or any other Developer to meet any other reasonable need or requirement in order to complete the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall take effect only upon recording.

The Declarant and/or a Developer shall have the right to amend the Declaration as provided in Article II, Section 3 in order to annex additional property to the terms of this Declaration.

(b) **By lot Owners.** Except as otherwise provided in this Declaration, this Declaration may be amended at any time by an instrument executed by persons or entities enabled to exercise seventy-five percent (75%) of the voting power of both classes of the Association; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be recorded and shall take effect only upon recording.

**Section 3. Personal Liability.** Nothing in this Declaration, the Articles or the regulations of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any Member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of any part of the Common Areas and/or any community facilities or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all liability for injury or damages to such Member or Owner or to such Member's or

Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited in the amount of insurance.

**Section 4. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by first class mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restrictions, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or 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 6. Severability.** Invalidity of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.

**Section 7. Conflicts.** In the case of any conflict between this Declaration and either the Articles of Incorporation or the By-Laws of the Association, the Declaration shall control.

**Section 8. Condemnation.** In the event any Common Area and/or any community facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the appropriate Members.

**Section 9. Professional Management Contracts and Other Contracts.** The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause or without payment of a termination fee on ninety (90) days or less written notice.

**Section 10. Non-Liability of Declarant or Developer.** Neither Declarant nor Developer or their representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to them by or pursuant to this Declaration or the By-Laws, whether or not such claims shall be asserted by an

Owner, Occupant, the Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, Occupant, the Association and their representative agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.), except as provided by any written warranty provided by the Developer to an Owner or the Association.

**Section 11. Action by Declarant.** Any provision in the Declaration or the By-Laws which requires or permits any action to be taken by the Declarant shall only be effective in the event such action is evidenced in writing and signed by The Drees Company, Arlinghaus Builders, Inc. and Ashley/Canterbury Partnership or their respective successors or assigns.

Notwithstanding the above, any of such parties shall have the right to release any rights granted to it as the Declarant under this Declaration by recording an amendment to this Declaration which shall specifically state that such party is releasing any and all of its rights as a Declarant under the Declaration. Upon the recording of such amendment to this Declaration, the party or parties not so releasing its rights hereunder shall be entitled to exercise all rights and perform all duties of the Declarant.

**Section 12. Gender and Grammar.** The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other forms of business organizations, or individuals, men or women, shall in all cases be assumed as though in such case fully expressed.

**Section 13. Articles of Incorporation and By-Laws.** Copies of the Articles of Incorporation and By-Laws for the Association are attached hereto as Exhibits "D" and "E".

IN WITNESS WHEREOF, the said The Drees Company, a Kentucky corporation, Arlinghaus Builders, Inc., a Kentucky corporation and Ashley/Canterbury Partnership, a Kentucky general partnership has hereunto set their signatures on the day and year first written above.

THE DREES COMPANY

By: David G. Drees  
David G. Drees, Vice President

ARLINGHAUS BUILDERS, INC.

By: Joseph Arlinghaus  
Joseph Arlinghaus, President

ASHLEY/CANTERBURY PARTNERSHIP

By: Ashley Properties, Inc.,  
general partner

By: John A. Yeager  
John A. Yeager, President

STATE OF KENTUCKY :  
COUNTY OF Kenton : SS:

The foregoing instrument was acknowledged before me this 31st day of July, 1992 by David G. Drees, Vice President of The Drees Company, a Kentucky corporation, on behalf of said corporation.

My Commission Expires 8-12-92

Cathy A. Miller  
Notary Public

STATE OF KENTUCKY :  
COUNTY OF Kenton : SS:

The foregoing instrument was acknowledged before me this 5th day of August, 1992 by Joseph Arlinghaus, President of Arlinghaus Builders, Inc., a Kentucky corporation, on behalf of said corporation.

Margaret L. Wright  
Notary Public  
MARGARET L. WRIGHT  
Notary Public State of KY  
My Comm. Expires Sept. 2, 1994

BOOK 0350 PAGE 366

STATE OF KENTUCKY :  
: SS:  
COUNTY OF Jefferson :

The foregoing instrument was acknowledged before me this 29th day of July, 1992 by John A. Yeager, President of Ashley Properties, Inc., a Kentucky corporation, general partner of Ashley/Canterbury Partnership, a Kentucky general partnership, on behalf of said general partnership.

Kathleen Forrester  
Notary Public

NOTARY PUBLIC  
STATE AT LARGE  
MY COMMISSION EXPIRES  
11-18-92

This instrument was prepared by Stephen R. Hunt  
Stephen R. Hunt, Esq.  
Aronoff, Rosen & Stockdale  
1600 Star Bank Center  
425 Walnut Street  
Cincinnati, Ohio 45202  
(513) 241-0400

July 24, 1992/lob (edrive\prestwic\declare.ho)