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# PLANTATION POINTE

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RESERVATION OF EASEMENTS  
AND  
DECLARATION FOR HOMEOWNERS ASSOCIATION

The 2nd Amendment her name Bk C 50 Pg 211  
1st Supplement . . . . . Cat 1 . . . 134  
3rd Amendment . . . . . 714 = 311

5th	748 pg 234
6th	762 pg 311
7th	778 pg 242
8th	784 pg 234

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PLANTATION POINTE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RESERVATION OF EASEMENTS  
AND  
DECLARATION FOR HOMEOWNERS ASSOCIATION

TABLE OF CONTENTS

ARTICLE I . . . . .	2
DEFINITIONS . . . . .	2
Section 1.    Definitions . . . . .	2
ARTICLE II . . . . .	4
PROPERTY DEVELOPMENT - ANNEXATION . . . . .	4
Section 1.    Property Subject to Declaration . . . . .	4
Section 2.    Planned Unit Development . . . . .	4
Section 3.    Annexation of Additional Property . . . . .	4
Section 4.    Additional Common Areas and/or Recreational Facilities . . . . .	5
ARTICLE III . . . . .	5
PROPERTY RIGHTS . . . . .	5
Section 1.    Owner's Right of Enjoyment in the Common Areas . . . . .	5
Section 2.    Owner's Right of Enjoyment in Recreational Facilities . . . . .	5
Section 3.    Delegation of Use . . . . .	6
Section 4.    Title to Common Areas and/or Recreational Facilities . . . . .	6
ARTICLE IV . . . . .	6
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS . . . . .	6
Section 1.    Members . . . . .	6
Section 2.    Voting Members . . . . .	7
ARTICLE V . . . . .	7
ASSESSMENTS . . . . .	7
Section 1.    Covenant for Assessments . . . . .	7
Section 2.    Annual Common Area Assessments; Purposes . . . . .	8
Section 3.    Annual Recreational Facility Assessment; Purposes . . . . .	8
Section 4.    Annual Common Area Assessments; Initial Amount . . . . .	8
Section 5.    Annual Recreational Facility Assessments; Initial Amount . . . . .	9
Section 6.    Annual Assessment; Maximum Increase . . . . .	9
Section 7.    Special Assessments . . . . .	10
Section 8.    Commencement of Assessments . . . . .	11
Section 9.    Assessment of Developer . . . . .	11
Section 10.   Assessment Certificates . . . . .	11
Section 11.   Non-Payment of Assessment . . . . .	12
Section 12.   Subordination of Lien to Mortgage . . . . .	12

ARTICLE VI . . . . .	12
INSURANCE . . . . .	12
Section 1. Liability Insurance . . . . .	12
Section 2. Casualty Insurance . . . . .	13
Section 3. Other Insurance . . . . .	13
Section 4. Insufficient Insurance . . . . .	13
Section 5. Fidelity Bonds . . . . .	13
ARTICLE VII . . . . .	14
COMMITTEES . . . . .	14
Section 1. Finance and Maintenance Committee . . . . .	14
ARTICLE VIII . . . . .	14
MISCELLANEOUS . . . . .	14
Section 1. Duration . . . . .	14
Section 2. Assignment . . . . .	14
Section 3. Amendment . . . . .	15
Section 4. Personal Liability . . . . .	15
Section 5. Notices . . . . .	15
Section 6. Enforcement . . . . .	15
Section 7. Severability . . . . .	16
Section 8. Conflicts . . . . .	16
Section 9. Condemnation . . . . .	16
Section 10. Professional Management Contracts . . . . .	16
Section 11. Non-Liability of Declarant or Developer . . . . .	16
Section 12. Gender and Grammar . . . . .	17

EXHIBITS

- A - Legal Description - Initial Development
- B - Legal Description - Possible Future Development
- C - Articles of Incorporation
- D - By-Laws

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RESERVATION OF EASEMENTS,  
AND DECLARATION FOR HOMEOWNERS ASSOCIATION  
FOR  
PLANTATION POINTE**

THIS DECLARATION, made this 20<sup>th</sup> day of October, 1995, by A & K Enterprise, Inc., a Kentucky corporation, 1174 Mt. Zion Road, Union, Kentucky 41091, hereinafter sometimes referred to as the "Declarant".

**WITNESSETH:**

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" hereof and desires to create and/or provide for the creation of a residential community consisting of apartment units, condominium units, single family detached homes, single family attached townhomes and ancillary commercial properties with permanent common areas for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas; and to this end, desires to subject the real property described in Exhibit "A" hereof to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof, their successors and assigns; and

WHEREAS, there exists differences between the single family residential properties and the multi-family residential properties requiring differing restrictions and limitations, particularly in matters of maintenance, in order to preserve the values, and amenities of the entire community; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed the "Plantation Pointe Master Association, Inc.", as a non-profit Kentucky corporation under K.R.S. §273.161, et seq. for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in Exhibit "A" 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 Plantation Pointe Master Association, Inc., as a corporation not for profit under the provisions of Kentucky Revised Statutes, §273.161, et seq. as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "C" is attached hereto and made a part hereof.

(b) "Association" shall mean and refer to the Plantation Pointe Master Association, Inc., and its successors and assigns.

(c) "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 "D" is attached hereto and made a part hereof.

(d) "Board" and "Board of Directors" shall mean the Board of Directors of the Association as provided in the Articles of Incorporation and By-Laws of the Association.

(e) "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, jogging trails, walking trails, parks, water retention ponds, surface water management systems, lakes, certain landscaping and greenbelt easement areas, entryways, fences, walls, arterial streets and the undedicated portion of any roadway or street conveyed to the Association. The "Common Areas" shall not include Recreational Facilities.

(f) "Declarant" shall mean and refer to A & K Enterprise, Inc., a Kentucky corporation, and its successors and assigns.

(g) "Developer" shall mean and refer to A & K Enterprise, Inc., a Kentucky corporation, and its successors and assigns if such successors or assigns should acquire one or more developed Lots from the Declarant 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.

(h) "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) Twenty (20) years from the date on which this Declaration is recorded, (b) the day next following the day on which the Developer owns no part of the Property.

(i) "Living Unit" shall mean and refer to any structure including a single-family attached townhome, condominium unit, single-family detached home, and apartment unit designated and intended for use and occupancy as a residence by a single family.

(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 or Recreational Facilities.

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

(l) "Multi-Family Structure" shall mean and refer to any building containing two or more single family attached Living Units, even though such Living Units may be located on more than one Lot.

(m) "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 expressly excluding those having such interest merely as security for the performance of an obligation.

(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) "Recreational Facilities" shall mean and refer to a bath house, swimming pool, tennis courts and related improvements owned by the Association for the benefit, use and enjoyment of certain designated Members of the Association. The "Recreational Facilities" shall also include any areas that have been specifically



designated by the Declarant on a recorded plat as "Recreational Facilities". The "Recreational Facilities" shall not include Common Areas.

(p) "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 Boone, State of Kentucky, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

Section 2. Planned Unit Development. Declarant reserves the right to subject all or any part of the real estate described in Exhibit "B" 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 and/or Recreational Facilities for the benefit of said development. Such additional property shall be annexed to the real estate 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 estate described in Exhibit "B" shall remain wholly free from any covenant or restriction herein contained until so annexed as hereinafter provided.

Section 3. Annexation of Additional Property. 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 "B", 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 Exhibit "A" as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a supplement to this Declaration with the Clerk of Boone 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 and/or Recreational Facilities.  
 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 Directors. Upon acceptance of the conveyance by the Board of Directors, the property conveyed shall constitute Common Areas or Recreational Facilities depending on their designation by the Declarant.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner's Right of Enjoyment in the Common Areas. Every Owner and, in the case of rented Living Units, 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 or roadway easements over the Common Areas.

Section 2. Owner's Right of Enjoyment in Recreational Facilities.  
 As hereinafter provided or as provided on any recorded plat of the Property, certain designated owners and, in the case of rented Living Units, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Recreational

Facilities, and such right and easement shall be appurtenant to and shall pass with title to such designated Lots, 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 Recreational Facilities.

(b) The right of the Association to dedicate or transfer all or any portion of the Recreational Facilities to a 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 or roadway easements over the Recreational Facilities.

Section 3. 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 and Recreational Facilities to the members of his family, guests, and his tenants or contract purchasers who reside on the Property.

Section 4. Title to Common Areas and/or Recreational Facilities. The title to any portion of the Common Areas or Recreational Facilities 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 or Recreational Facilities in connection with the development of the Property. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

#### 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 Developer) and a Class B Member (Developer). At such time as the Class B membership shall terminate as set forth in Article I, Section (h), the Developer, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

Section 2. Voting Members.

(a) With the exception of a Developer 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 Developer 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 Living Units located or proposed by the Declarant to be located on such Lot, provided, however, that each 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 VASSESSMENTS

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 by acceptance of a deed therefor, 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.

The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each designated person, group of persons, or entity who is entitled to use the Recreational Facilities as provided in this Declaration, 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 agreed to pay the Association: (1) Annual Recreational Facility Assessments and (2) Special Recreational Facility Assessments. The residents of apartment complexes shall not be entitled to use the Recreational Facilities.

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, but not limited to, the maintenance, repair and landscaping of streets and right of ways, and, in the discretion of the Association, including any entrance roads or adjoining roads or 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 the Recreational Facilities.

Section 3. Annual Recreational Facility Assessment; Purposes. The Annual Recreational Facility Assessments levied by the Association are for the purpose of promoting and maintaining the Recreational Facilities. To carry out these purposes, the Annual Recreational Facility 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 Recreational Facilities, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, materials, management and supervision of the Recreational Facilities. Such Assessment shall not be used for maintaining or improving the Common Areas.

Section 4. Annual Common Area Assessments, Initial Amount. Until December 31, 1996 the Maximum Annual Common Area Assessment for residential properties, other than apartment complexes, for each Class A membership for general purposes provided in Section 2 of this Article V shall not exceed \$ 184.00 per Living Unit.

The amount of the Maximum Annual Common Area Assessment for apartment complexes shall be determined at the time such property is annexed pursuant to Section 3 of Article II.

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. The assessment for residential properties, other than apartment complexes, shall be fixed at a uniform rate. The assessment for apartment complexes may or may not be fixed at a uniform rate.

Section 5. Annual Recreational Facility Assessments; Initial Amount. Until December 31, 1996 the Maximum Annual Recreational Facility Assessment for residential properties (which are subject to such assessment) for Class A Membership for general purposes provided in Section 3 of this Article V shall not exceed \$200.00 per Living Unit. In no event shall the residents of apartment complexes be authorized to use the Recreational Facilities or be subject to the Annual Recreational Facility 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 Recreational Facility 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 December 31, 1996, the amount of the Maximum Annual Assessments, set out in Article V, Sections 4 and 5 above for all applicable memberships 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 December 31, 1996, the Maximum Annual Assessments for all applicable memberships 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 Recreational Facility 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 authorized to use the Recreational Facilities and fifty-one percent (51%) of the total number of votes held by the Class B Member.

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 Recreational Facility 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 Recreational Facilities,, 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 Class B Member. Any Special Recreational Facility 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 authorized to use the Recreational Facilities and fifty-one percent (51%) of the total number of votes held by the Class B Member. Any Special Common Area Assessments levied by the Association pursuant to the provisions of this section for residential properties, other than apartment complexes, shall be fixed at a uniform rate based upon the number of applicable Living Units. Any Special Common Area Assessments levied by the Association pursuant to the provisions of this section for apartment complexes shall be equal to one-tenth (1/10) of the amount of the applicable Special Assessment for an individual residential Lot (as provided above) times the number of apartment units in such complex (e.g. the amount of the Special Common Area Assessment for a two hundred (200) unit apartment complex shall be equal to the amount of the Special Common Area Assessment for twenty (20) individual residential lots). Any Special Recreational Facility Assessment levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of Living Units for whose benefit such Recreational Facilities have been designated. 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 Special Recreational Facility Assessments shall be used solely for the benefit of the Recreational Facilities.

**Section 8. Commencement of Assessments.** The Annual Common Area Assessment and Annual Recreational Facility 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 Directors of the Association to periodically fix the amount of an assessment against each Lot for such assessment period and the Board of Directors 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 Directors. 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, the Developer, while there exists a Class B Member, shall be required to pay an assessment for any recorded, unsettled Lot in which it 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 Recreational Facility Assessment, Special Common Area Assessment and Special Recreational Facility 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 Living Unit held by a Developer for rental purposes that is or has been occupied as a Living Unit; 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 Recreational Facilities or abandonment of his Lot or Living Unit.

In addition to the ten percent (10%) per annum interest provided above, the Board of Directors 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.

## 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 Recreational Facilities insuring the Association, Directors, Officers, 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, officers, or other owners, tenants or occupants.

Section 2. Casualty Insurance. The Association shall obtain and maintain fire, lightening 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 Recreational 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 Recreational Facility damaged or destroyed by any peril covered by said insurance.

Section 3. Other Insurance; Allocation. In addition, the Association shall obtain and maintain Directors' 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 Recreational 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, Recreational 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. The Board of Directors 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 Directors. The Committee shall also make recommendations to the Board of Directors as to the amount of the Annual Assessments to be levied by the Board of Directors. Additionally, the Committee shall make recommendations to the Board of Directors as to the needs, repairs and monetary requirements for the Common Areas and Recreational Facilities.

ARTICLE VIII

MISCELLANEOUS

Section 1. Duration. 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. Assignment. Any or all of the rights, powers and obligations, easements and estates reserved by or granted to the Developer, or the Association may be assigned by the Developer or the Association, as the case may be. Any such assignment or transfer shall be made by an appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing as consent to such assignment and its acceptance of the rights and powers, duties and obligations therein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Developer and/or the Association. After such assignment, Developer or the Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements' or estates.

Section 3. Amendment. The Declaration may be amended, from time to time as follows:

A. By Declarant: 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.

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 4. Personal Liability. Nothing in this Declaration, the Articles or the By-Laws 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 Directors 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 Recreational 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 5. 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 6. Enforcement.** Enforcement of the covenants, restrictions, conditions, obligations, reservations, rights, powers, capital assessments, liens and other provisions contained herein shall be by a proceeding at law or in equity against any person or entity violating or attempting to violate same and/or against the property subject hereto to enforce any lien created by this declaration. In the event that Developer or the Association fail to enforce the terms of this declaration, then any member may do so. The failure or refusal of the Developer or the Association or any member to enforce any of the provisions of this declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter. The cost of any such litigation shall be borne by the owner in violation, provided that such proceeding results in a finding that such owner was in violation of the covenants and restrictions contained herein.

**Section 7. Severability.** Invalidation 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 8. Conflicts.** In the case of any conflict between this Declaration and either the Articles of Incorporation or the ByLaws of the Association, the Declaration shall control so long as said conflict is not in violation of Kentucky law.

**Section 9. Condemnation.** In the event any Common Area and/or Recreational 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 10. 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.

The Association shall have the right to contract with other homeowner's associations in Plantation Pointe Development for the purpose of providing for the maintenance, repair and landscaping of streets, right-of-ways, adjoining areas, and other common areas in the Plantation Pointe Development.

**Section 11. 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



This instrument was prepared by:

  
Martin C. Butler, Esq.  
Strauss & Troy  
50 East Rivercenter Blvd.  
Suite 1400  
Covington, Kentucky 41011

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October 20, 1995

**LEGAL DESCRIPTION****Plantation Pointe****HOA****Exhibit "A"**

Being located in Boone County, Kentucky and lying on the north side of Mt. Zion Road and being more particularly described as follows:

Beginning at a corner post on the northeast corner of the remainder of Magee as recorded in D.B. 166, pg. 489;  
 thence with the north line of Magee N 85° 21' 55" W, 71.82 feet;  
 thence leaving said line N 49° 53' 08" E, 93.93 feet to the west right of way line of Wetherington Boulevard;  
 thence with said right of way N 40° 06' 53" W, 96.46 feet to the PC of a curve;  
 thence along said curve to the right 80.01 feet (R=175.00 feet, Chord N 27° 00' 58" W, 79.32 feet) to the PT of said curve;  
 thence N 13° 55' 04" W, 179.28 feet to the PC of a curve;  
 thence along said curve to the left 147.14 feet (R=475.00 feet, Chord N 22° 47' 31" W, 146.55 feet) to the PT of said curve;  
 thence N 31° 39' 58" W, 309.83 feet to the most easterly corner of lot 1, Section One, Lancashire at Plantation Pointe;  
 thence leaving said line and with the perimeter of Section One, Lancashire at Plantation Pointe, for twenty one calls, S 58° 20' 02" W, 167.33 feet;  
 thence N 84° 21' 27" W, 128.01 feet;  
 thence S 5° 38' 33" W, 190.00 feet;  
 thence N 84° 21' 27" W, 29.40 feet;  
 thence S 5° 38' 33" W, 140.00 feet;  
 thence N 84° 21' 27" W, 470.17 feet;  
 thence N 50° 38' 33" E, 28.63 feet;  
 thence N 39° 21' 27" W, 140.00 feet;  
 thence S 50° 38' 33" W, 33.94 feet;  
 thence N 39° 21' 27" W, 190.00 feet;



thence N 50° 38' 33" E, 142.00 feet;  
 thence N 75° 06' 14" E, 14.25 feet;  
 thence N 5° 38' 33" E, 185.00 feet;  
 thence S 84° 21' 27" E, 46.74 feet;  
 thence N 5° 38' 33" E, 140.00 feet;  
 thence S 84° 21' 27" E, 150.00 feet;  
 thence N 5° 38' 33" E, 88.14 feet;  
 thence N 16° 54' 01" W, 153.75 feet;  
 thence N 16° 54' 01" W, 12.60 feet;  
 thence N 45° 10' 58" E, 167.32 feet;  
 thence N 84° 15' 09" E, 166.05 feet to the west right of way line  
 of Wetherington Boulevard;  
 thence with said right of way line N 31° 39' 58" W, 52.79 feet to  
 the PC of a curve;  
 thence along said curve to the right 341.19 feet (R=525.00 feet,  
 Chord N 13° 02' 53" W, 335.22 feet) to the PT of said curve;  
 thence N 5° 34' 12" E, 6.19 feet to the original south line of a  
 tract conveyed to ERPS, Inc. (D.B. 432, pg. 210, Tract VI);  
 thence with said line, for two calls, N 74° 23' 14" E, 339.08  
 feet;  
 thence N 55° 27' 06" E, 63.46 feet;  
 thence leaving said line and with the projection of and the east  
 line of Section One, Antebellum at Plantation Pointe S 31° 39'  
 58" E, 1034.05 feet;  
 thence continuing with the perimeter of said subdivision, for  
 eleven calls, N 58° 05' 58" E, 33.91 feet;  
 thence S 52° 34' 46" E, 130.74 feet;  
 thence N 37° 25' 14" E, 15.03 feet to the PC of a curve;  
 thence along a curve to the left 12.32 feet (R=125.00 feet, Chord  
 N 34° 35' 51" E, 12.31 feet);  
 thence S 58° 13' 31" E, 50.00 feet;  
 thence S 58° 13' 31" E, 176.71 feet;  
 thence S 37° 25' 14" W, 197.04 feet;  
 thence S 22° 25' 14" W, 50.00 feet;  
 thence N 67° 34' 46" W, 63.84 feet;  
 thence S 22° 25' 14" W, 174.86 feet to the northeast line of

Webster;

thence with said line N 67° 30' 04" W, 105.19 feet;

thence continuing with the common line of Webster for two calls S 22° 29' 56" W, 218.40 feet;

thence S 31° 39' 58" E, 469.34 feet;

thence leaving said line S 72° 56' 10" W, 67.39 feet to the east right of way line of Wetherington Boulevard;

thence with said right of way, for six calls, along a curve to the right 159.24 feet (R=541.00 feet, Chord S 18° 29' 47" E, 158.66 feet) to the PT of said curve;

thence S 10° 03' 51" E, 96.56 feet to the PC of a curve;

thence along said curve the left 47.53 feet (R=109.00 feet, Chord S 22° 33' 19" E, 47.15 feet) to the PT of said curve;

thence S 35° 02' 46" E, 56.29 feet to the PC of a curve;

thence along said curve to the left 47.52 feet (R=30.00 feet, Chord S 80° 25' 33" E, 42.71 feet) to the north right of way line of Mt. Zion Road;

thence with said right of way, for two calls, S 54° 11' 41" W, 1.71 feet to the PC of a curve;

thence along said curve to the right 184.69 feet (R=5260.67 feet, Chord S 55° 12' 02" W, 184.68 feet) to the east line of the remainder of Magee;

thence with the east line of Magee N 15° 51' 55" W, 460.95 feet to the point of beginning.

October 20, 1995

**LEGAL DESCRIPTION****Plantation Pointe****NOA****Exhibit "B"**

Being located in Boone County, Kentucky and lying north of Mt. Zion Road and being more particularly described as follows:

Beginning at a corner post on the northeast corner of the remainder of Magee as recorded in D.B. 166, pg. 489;  
 thence with the north line of Magee, Gambill and Bowling for three calls N 85° 21' 55" W, 799.64 feet to a stone;  
 thence N 87° 41' 43" W, 51.77 feet to a stone;  
 thence N 84° 21' 27" W, 1528.03 feet to a post, said post being a common corner with Bowling and Kopser (D.B. 309, pg. 254);  
 thence with the east line of Kopser N 5° 01' 52" E, 966.05 feet to a corner with Seltman (D.B. 225, pg. 305);  
 thence with Seltman for three calls S 74° 32' 57" E, 70.07 feet to an iron pin;  
 thence N 66° 45' 06" E, 651.32 feet to and iron pin; thence N 46° 51' 24" E, 445.44 feet to a common corner of Seltman and ERPS, Inc. (D.B. 432, pg. 210; Tract VI);  
 thence with the south line of ERPS, Inc. for two calls N 74° 23' 14" E, 768.06 feet;  
 thence N 55° 27' 06" E, 945.84 feet to a common corner with Howard (D.B. 389, pg. 66); thence with the west line of Howard, Gunpowder Greens and Gunpowder Estates for nine calls S 40° 20' 03" E, 676.50 feet;  
 thence S 31° 57' 18" E, 726.22 feet;  
 thence S 29° 00' 26" E, 93.42 feet;  
 thence S 31° 09' 32" E, 158.19 feet;  
 thence S 30° 37' 18" E, 159.06 feet;  
 thence S 32° 40' 25" E, 121.59 feet;  
 thence S 32° 40' 25" E, 157.00 feet;

thence S 35° 03' 31" E, 117.18 feet;  
 thence S 32° 21' 53" E, 301.50 feet to the most northern corner  
 of Erpenbeck (D.B. 264, pg. 9);  
 thence with Erpenbeck for four calls S 46° 10' W, 193.00 feet;  
 thence S 44° 39' 20" E, 237.67 feet;  
 thence S 87° 50' E, 62.00 feet;  
 thence S 4° 00' W, 182.37 feet to a point on the north line of  
 Mt. Zion Road;  
 thence with said road N 87° 50' 15" W, 114.88 feet;  
 thence N 86° 17' 16" W, 351.40 feet to a point on the east line  
 of Spence;  
 thence with Spence N 5° 27' 51" E, 154.56 feet;  
 thence N 63° 33' 41" W, 342.60 feet;  
 thence N 67° 34' 46" W, 799.61 feet to a corner of Webster;  
 thence with Webster N 67° 30' 04" W, 210.00 feet to and iron pin;  
 thence with the west line of Webster's remainder S 22° 29' 56" W,  
 218.40 feet to an iron pin;  
 thence S 31° 39' 58" E, 469.34 feet to and iron pin;  
 thence N 72° 56' 10" E, 279.01 feet to and iron pin;  
 thence S 31° 39' 58" E, 275.08 feet to a point on the north line  
 of Mt. Zion Road;  
 thence with said line S 58° 03' 33" W, 102.98 feet;  
 thence S 56° 53' 17" W, 163.55 feet;  
 thence S 54° 11' 41" W, 114.48 feet to the PC of a curve;  
 thence along said curve to the right 184.69 feet (R=5260.67 feet,  
 Chord S 55° 12' 02" W, 184.68 feet) to an iron pin, said pin  
 being the corner of the remainder of Magee;  
 thence with the east line of Magee N 15° 51' 55" W, 460.95 feet  
 to the point of beginning and containing 139.93 acres.

Being the same property conveyed to Erpenbeck and recorded  
 in D.B. 393, pg. 147; D.B. 532, pg. 143 and D.B. 564, pg. 93 of  
 the Boone County Clerk's Office at Burlington, Kentucky.

TABLE OF CONTENTS

ARTICLE I ..... 2

DEFINITIONS ..... 2

    Section 1.    Definitions..... 2

ARTICLE II ..... 4

PROPERTY DEVELOPMENT - ANNEXATION ..... 4

    Section 1.    Property Subject to Declaration..... 4

    Section 2.    Planned Unit Development..... 4

    Section 3.    Annexation of Additional Property..... 4

    Section 4.    Additional Common Areas and/or  
                  Recreational Facilities . . . . . 5

ARTICLE III ..... 5

PROPERTY RIGHTS ..... 5

    Section 1. Owner's Right of Enjoyment in the  
                  Common Areas..... 5

    Section 2.    Owner's Right of Enjoyment in  
                  Recreational Facilities . . . . . 5

    Section 3.    Delegation of Use..... 6

    Section 4. Title to Common Areas and/or Recreational  
                  Facilities..... 6

ARTICLE IV ..... 6

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS ..... 6

    Section 1.    Members..... 6

    Section 2.    Voting Members..... 7

ARTICLE V ..... 7

ASSESSMENTS ..... 7

    Section 1.    Covenant for Assessments..... 7

    Section 2.    Annual Common Area Assessments; Purposes.... 8

    Section 3. Annual Recreational Facility Assessment;  
                  Purposes . . . . . 8

    Section 4.    Annual Common Area Assessments; Initial  
                  Amount..... 8

    Section 5. Annual Recreational Facility Assessments;  
                  Initial Amount . . . . . 9

    Section 6.    Annual Assessment; Maximum Increase..... 9

    Section 7.    Special Assessments..... 10

    Section 8.    Commencement of Assessments..... 11

    Section 9.    Assessment of Developer..... 11

    Section 10.   Assessment Certificates..... 11

Section 11.	Non-Payment of Assessment.....	12
Section 12.	Subordination of Lien to Mortgage.....	12
ARTICLE VI .....		12
INSURANCE .....		12
Section 1.	Liability Insurance.....	12
Section 2.	Casualty Insurance . . . . .	13
Section 3.	Other Insurance.....	13
Section 4.	Insufficient Insurance.....	13
Section 5.	Fidelity Bonds.....	13
ARTICLE VII .....		14
COMMITTEES .....		14
Section 1.	Finance and Maintenance Committee.....	14
ARTICLE VIII .....		14
MISCELLANEOUS .....		14
Section 1.	Duration.....	14
Section 2.	Assignment . . . . .	14
Section 3.	Amendment.....	15
Section 4.	Personal Liability.....	15
Section 5.	Notices.....	15
Section 6.	Enforcement.....	15
Section 7.	Severability.....	16
Section 8.	Conflicts.....	16
Section 9.	Condemnation.....	16
Section 10.	Professional Management Contracts.....	16
Section 11.	Non-Liability of Declarant or Developer....	16
Section 12.	Gender and Grammar.....	17

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EXHIBITS

- A - Legal Description - Initial Development
- B - Legal Description - Possible Future Development
- C - Articles of Incorporation
- D - By-Laws

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RESERVATION OF EASEMENTS,  
AND DECLARATION FOR HOMEOWNERS ASSOCIATION  
FOR  
PLANTATION POINTE

THIS DECLARATION, made this \_\_\_\_\_ day of October, 1995, by A & K Enterprise, Inc., a Kentucky corporation, 1174 Mt. Zion Road, Union, Kentucky 41091, hereinafter sometimes referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" hereof and desires to create and/or provide for the creation of a residential community consisting of apartment units, condominium units, single family detached homes, single family attached townhomes and ancillary commercial properties with permanent common areas for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas; and to this end, desires to subject the real property described in Exhibit "A" hereof to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof, their successors and assigns; and

WHEREAS, there exists differences between the single family residential properties and the multi-family residential properties requiring differing restrictions and limitations, particularly in matters of maintenance, in order to preserve the values, and amenities of the entire community; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed the "Plantation Pointe Master Association, Inc.", as a non-profit Kentucky corporation under K.R.S. §273.161, et seq. for the purpose of carrying out the



powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in Exhibit "A" 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 Plantation Pointe Master Association, Inc., as a corporation not for profit under the provisions of Kentucky Revised Statutes, §273.161, et seq. as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "C" is attached hereto and made a part hereof.

(b) "Association" shall mean and refer to the Plantation Pointe Master Association, Inc., and its successors and assigns.

(c) "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 "D" is attached hereto and made a part hereof.

(d) "Board" and "Board of Directors" shall mean the Board of Directors of the Association as provided in the Articles of Incorporation and By-Laws of the Association.

(e) "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, jogging trails, walking trails, parks, water retention ponds, surface water management systems, lakes, certain landscaping and greenbelt easement areas, entryways, fences, walls, arterial streets and the undedicated portion of any roadway or street conveyed to the Association. The "Common Areas" shall not include Recreational Facilities.

(f) "Declarant" shall mean and refer to A & K Enterprise, Inc., a Kentucky corporation, and its successors and assigns.

(g) "Developer" shall mean and refer to A & K Enterprise, Inc., a Kentucky corporation, and its successors and assigns if such successors or assigns should acquire one or more developed Lots from the Declarant 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.

(h) "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) Twenty (20) years from the date on which this Declaration is recorded, (b) the day next following the day on which the Developer owns no part of the Property.

(i) "Living Unit" shall mean and refer to any structure including a single-family attached townhome, condominium unit, single-family detached home, and apartment unit designated and intended for use and occupancy as a residence by a single family.

(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 or Recreational Facilities.

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

(l) "Multi-Family Structure" shall mean and refer to any building containing two or more single family attached Living Units, even though such Living Units may be located on more than one Lot.

(m) "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 expressly excluding those having such interest merely as security for the performance of an obligation.

(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) "Recreational Facilities" shall mean and refer to a bathhouse, swimming pool, tennis courts and related improvements owned by the Association for the benefit, use and enjoyment of certain designated Members of the Association. The "Recreational Facilities" shall also include any areas that have been specifically designated by the Declarant on a recorded plat as "Recreational Facilities". The "Recreational Facilities" shall not include Common Areas.

(p) "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 Boone, State of Kentucky, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

Section 2. Planned Unit Development. Declarant reserves the right to subject all or any part of the real estate described in Exhibit "B" 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 and/or Recreational Facilities for the benefit of said development. Such additional property shall be annexed to the real estate 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 estate

described in Exhibit "B" shall remain wholly free from any covenant or restriction herein contained until so annexed as hereinafter provided.

Section 3. Annexation of Additional Property. 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 "B", 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 Exhibit "A" as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a supplement to this Declaration with the Clerk of Boone 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 and/or Recreational Facilities. 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 Directors. Upon acceptance of the conveyance by the Board of Directors, the property conveyed shall constitute Common Areas or Recreational Facilities depending on their designation by the Declarant.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Owner's Right of Enjoyment in the Common Areas. Every

Owner and, in the case of rented Living Units, 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 or roadway easements over the Common Areas.

Section 2. Owner's Right of Enjoyment in Recreational Facilities.

As hereinafter provided or as provided on any recorded plat of the Property, certain designated owners and, in the case of rented Living Units, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Recreational Facilities, and such right and easement shall be appurtenant to and shall pass with title to such designated Lots, 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 Recreational Facilities.

(b) The right of the Association to dedicate or transfer all or any portion of the Recreational Facilities to a 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 or roadway easements over the Recreational Facilities.

Section 3. 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 and Recreational Facilities to the members of his family, guests, and his tenants or contract purchasers who reside on the Property.

Section 4. Title to Common Areas and/or Recreational Facilities.

The title to any portion of the Common Areas or Recreational Facilities 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 or Recreational Facilities in connection with the development of the Property. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

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 Developer) and a Class B Member (Developer). At such time as the Class B membership shall terminate as set forth in Article I, Section (h), the Developer, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

Section 2. Voting Members.

(a) With the exception of a Developer 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 Developer 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 Living Units located or proposed by the Declarant to be located on such Lot, provided, however, that each 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 by acceptance of a deed therefor, 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.

The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each designated person, group of persons, or entity who is entitled to use the Recreational Facilities as provided in this Declaration, 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 agreed to pay the Association: (1) Annual Recreational Facility Assessments and (2) Special Recreational Facility Assessments. The residents of apartment complexes shall not be entitled to use the Recreational Facilities.

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, but not limited to, the maintenance, repair and landscaping of streets and right of ways, and, in the discretion of the Association, including any entrance roads or adjoining roads or 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 the Recreational Facilities.

Section 3. Annual Recreational Facility Assessment; Purposes. The Annual Recreational Facility Assessments levied by the Association are for the purpose of promoting and maintaining the Recreational Facilities. To carry out these purposes, the Annual Recreational Facility 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 Recreational Facilities, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, materials, management and supervision of the Recreational Facilities. Such Assessment shall not be used for maintaining or improving the Common Areas.

Section 4. Annual Common Area Assessments, Initial Amount. Until December 31, 1996 the Maximum Annual Common Area Assessment for residential properties, other than apartment complexes, for each Class A membership for general purposes provided in Section 2 of this Article V shall not exceed \$\_\_\_\_\_ per Living Unit. The amount of the Maximum Annual Common Area Assessment for apartment complexes shall be determined at the time such property is annexed pursuant to Section 3 of Article II.

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. The assessment for residential properties, other than apartment complexes, shall be fixed at a uniform rate. The assessment for apartment complexes may or may not be fixed at a uniform rate.

Section 5. Annual Recreational Facility Assessments; Initial Amount. Until December 31, 1996 the Maximum Annual Recreational Facility Assessment for residential properties (which are subject to such assessment) for Class A Membership for general purposes provided in Section 3 of this Article V shall not exceed \$\_\_\_\_\_ per Living Unit. In no event shall the residents of apartment complexes be authorized to use the Recreational Facilities or be subject to the Annual Recreational Facility 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 Recreational Facility 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 December 31, 1996, the amount of the Maximum Annual Assessments, set out in Article V, Sections 4 and 5 above for all applicable memberships 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 December 31, 1996, the Maximum Annual Assessments for all applicable memberships 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 Recreational Facility 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 authorized to use the Recreational Facilities and fifty-one percent (51%) of the total number of votes held by the Class B Member.

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 Recreational Facility 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 Recreational Facilities,, 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 Class B Member. Any Special Recreational Facility 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 authorized to use the Recreational Facilities and fifty-one percent (51%) of the total number of votes held by the Class B Member. Any Special Common Area Assessments levied by the Association pursuant to the provisions of this section for residential properties, other than apartment complexes, shall be fixed at a uniform rate based upon the number of applicable Living Units. Any Special Common Area Assessments levied by the Association pursuant to the provisions of this section for apartment complexes shall be equal to one-tenth (1/10) of the amount of the applicable Special Assessment for an individual residential Lot (as provided above) times the number of apartment units in such complex (e.g. the amount of the Special Common Area Assessment for a two hundred (200) unit apartment complex shall be equal to the amount of the Special Common Area Assessment for twenty (20) individual residential lots). Any Special Recreational Facility Assessment levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of Living Units for whose benefit such Recreational Facilities have been designated. 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 Special Recreational Facility Assessments shall be used solely for the benefit of the Recreational Facilities.

Section 8. Commencement of Assessments. The Annual Common Area Assessment and Annual Recreational Facility 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 Directors of the Association to periodically fix the amount of an assessment against each Lot for such assessment period and the Board of Directors 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 Directors. 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, the Developer, while there exists a Class B Member, shall be required to pay an assessment for any recorded, unsettled Lot in which it 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 Recreational Facility Assessment, Special Common Area Assessment and Special Recreational Facility 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 Living Unit held by a Developer for rental purposes that is or has been occupied as a Living Unit; 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 Recreational Facilities or abandonment of his Lot or Living Unit.

In addition to the ten percent (10%) per annum interest provided above, the Board of Directors 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.

## 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 Recreational Facilities insuring the Association, Directors, Officers, 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, officers, or other owners, tenants or occupants.

Section 2. Casualty Insurance. The Association shall obtain and maintain fire, lightening 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 Recreational 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 Recreational Facility damaged or destroyed by any peril covered by said insurance.

Section 3. Other Insurance; Allocation. In addition, the Association shall obtain and maintain Directors' 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 Recreational 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, Recreational 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. The Board of Directors 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 Directors. The Committee shall also make recommendations to the Board of Directors as to the amount of the Annual Assessments to be levied by the Board of Directors. Additionally, the Committee shall make recommendations to the Board of Directors as to the needs, repairs and monetary requirements for the Common Areas and Recreational Facilities.

#### ARTICLE VIII

#### MISCELLANEOUS

Section 1. Duration. 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. Assignment. Any or all of the rights, powers and obligations, easements and estates reserved by or granted to the Developer, or the Association may be assigned by the Developer or the Association, as the case may be. Any such assignment or transfer shall be made by an appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing as consent to such assignment and its acceptance of the rights and powers, duties and obligations therein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Developer and/or the Association. After such assignment, Developer or the Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

Section 3. Amendment. The Declaration may be amended, from time to time as follows:

A. By Declarant: 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.

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 4. Personal Liability. Nothing in this Declaration, the Articles or the By-Laws 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 Directors 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 Recreational 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 5. 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 6. Enforcement. Enforcement of the covenants, restrictions, conditions, obligations, reservations, rights, powers, capital assessments, liens and other provisions contained herein shall be by a proceeding at law or in equity against any person or entity violating or attempting to violate same and/or against the property subject hereto to enforce any lien created by this declaration. In the event that Developer or the Association fail to enforce the terms of this declaration, then any member may do so. The failure or refusal of the Developer or the Association or any member to enforce any of the provisions of this declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter. The cost of any such litigation shall be borne by the owner in violation, provided that such proceeding results in a finding that such owner was in violation of the covenants and restrictions contained herein.

Section 7. Severability. Invalidation 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 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the Declaration shall control so long as said



conflict is not in violation of Kentucky law.

Section 9. Condemnation. In the event any Common Area and/or Recreational 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 10. 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.

The Association shall have the right to contract with other homeowner's associations in Plantation Pointe Development for the purpose of providing for the maintenance, repair and landscaping of streets, right-of-ways, adjoining areas, and other common areas in the Plantation Pointe Development.

Section 11. 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 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.

IN WITNESS WHEREOF, the said A & K Enterprise, Inc., a Kentucky corporation, has hereunto set its signature on the day and year first written above, by and through W. Thomas Erpenbeck, its President, pursuant to a duly passed resolution of its Board of Directors.

A & K Enterprise, Inc.

By: \_\_\_\_\_  
W. Thomas Erpenbeck  
its President

STATE OF KENTUCKY        )  
                                  ) SS:  
COUNTY OF KENTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 1995 by W. Thomas Erpenbeck, President of A & K Enterprise, Inc., a Kentucky corporation.

\_\_\_\_\_  
Notary Public

This instrument was prepared by: \_\_\_\_\_  
Martin C. Butler, Esq.  
Strauss & Troy  
50 East Rivercenter Blvd.  
Suite 1400  
Covington, Kentucky 41011

EXHIBIT "A"

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[Insert Legal of First Stage of Development]

EXHIBIT "B"

[Insert Legal of Remainder of Development Property]