

misc
BOOK NO. 7 PAGE 497

29^b 1^a

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS PERTAINING TO
CANEWOOD SUBDIVISION UNIT 1-A, SECTION 1**

THIS DECLARATION is made this 2nd day of MARCH, 1994, by CANEWOOD, INC., a Kentucky corporation ("Developer"), and DON K. POOLE ("Owner").

WITNESSETH:

WHEREAS, Don K. Poole is the Owner of record of the real property defined in Article I as the Submitted Property, and also of that property defined in Article I as the Annexation Property, and Owner and Developer desire to establish and create a residential subdivision with provisions for the common use, enjoyment and maintenance of the Golf Course, Common Areas and Landscape Areas (as defined in Article I) located on the Property; and,

WHEREAS, Owner and Developer desire to subject the Submitted Property, together with such additions as may hereafter be made thereto, to the covenants, charges and liens as contained in this Declaration, all of which are for the benefit of the Submitted Property, the Association (as defined in Article I), Owner and Developer;

NOW, THEREFORE, Owner and Developer declare that the Submitted Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, charges and liens hereinafter set forth which are hereby declared to be covenants running with the land.

ARTICLE I
Definitions

The following terms, when used herein, shall have the meanings set forth below:

1.01 "Annexation" shall mean the process by which portions of the "Annexation Property" are made subject to the "Declaration" pursuant to Article VII.

1.02 "Annexation Property" shall mean all that tract or parcel of land being in Scott County, Kentucky, being more particularly described on Exhibit "A" attached hereto and made a part hereof.

MAIL TO:
MCBRAYER MCGINNIS
LESLIE & KIRKLAND
163 WEST SHORT STREET
SUITE 300
LEXINGTON, KY 40507

1.03 "Association" shall mean Canewood Homeowners Association, Inc., a Kentucky non-profit corporation, or any successor thereof charged with the duties and obligations of the Association hereunder, its successors and/or assigns.

1.04 "Board" shall mean the Board of Directors of the Association, duly elected and acting pursuant to the "By-Laws."

1.05 "Buffer Area" shall mean that area designated as a "Buffer Easement" on the plat or Plats, and any area so designated through Annexation.

1.06 "By-Laws" shall mean and refer to the By-Laws of the Association which are and shall be adopted by the Board, as they may from time to time be amended.

1.07 "Common Areas" shall mean and refer to those areas designated as H.O.A. areas as shown on the Plat or Plats, including all improvements and facilities located thereon, to be devoted to the common use and benefit of the Owners of the Lots, and any areas so designated through Annexation or otherwise by Developer.

1.08 "Common Area Expenses" shall mean those expenses necessary to provide for the maintenance of the Common Areas.

1.09 "Declaration" shall mean this Declaration of the Developer, as amended from time to time.

1.10 "Developer" shall mean and refer to: (i) Canewood, Inc., or (ii) any successor-in-title to the said Developer of all or some portion of the then existing "Submitted Property" or the Annexation Property, provided such successor-in-title shall acquire such property for purposes of development or sale, and provided further, that in a written instrument, such successor-in-title is expressly designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the "Developer" hereunder at the time of such conveyance; or, (iii) should any of the "Submitted Property" or the "Annexation Property" become subject to a first "Mortgage" given by "Developer" as security for the repayment of a construction loan, then all rights, privileges and options herein reserved to "Developer" shall inure to the benefit of the holder of such first "Mortgage" upon its becoming the actual owner of all the "Submitted Property" and Annexation Property then subject to such first "Mortgage" through a judicial foreclosure or sale made pursuant to any power of sale contained in such first "Mortgage"; and further, all rights, privileges and options herein reserved to "Developer" may be transferred to the successor-in-title of any such acquirer of title to such property, provided such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property; and provided further, in a written instrument, such successor-in-title is designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the "Developer" hereunder at the time of such conveyance. In the event that persons specified in both (ii) and (iii) above become entitled to succeed to the interests of

472030 7 PAGE 499

"Developer" as therein provided, then, as between such persons, any person entitled to be "Developer" by virtue of (iii) above, shall be "Developer" instead of any person entitled to be "Developer" by virtue of (ii) above.

1.11 "Golf Course" shall mean that property designated as Canewood Golf course on the plat of the Submitted Property and on any plat meeting the requirements of Article VII hereof, which shall be recorded with respect to portions of the Annexation Property prior to their Annexation; the term "Golf Course" shall include any recreational facilities erected for the common use and enjoyment of the "Owners", including, without limitation, a clubhouse, pool, and any other ancillary facilities or structures provided for such purpose which are located on property designated as Canewood Golf Course. All of the rights and obligations of the Association concerning the Golf Course which are contained herein shall apply, and shall be of full force and effect, only upon the effective date of the "Lease Agreement" (hereinafter defined).

1.12 "Golf Course Expenses" shall mean those expenses necessary to provide for the maintenance and operation of the Golf Course.

1.13 "Landscape Areas" shall mean those areas located within the rights-of-way shown on the Plat or Plats, whether public or private, containing any form of landscaping, including but not limited to all grasses, plants, trees shrubs, bushes or other items of landscaping. Such Landscape Areas shall not include those areas located within a Buffer Area.

1.14 "Landscape Area Expense" shall mean those expenses necessary to maintain all grasses, plants, trees, shrubs, bushes and other items of landscaping within the Landscape Areas.

1.15 "Lease Agreement" shall mean that certain Lease Agreement of even date herewith by and between Developer, as Lessor, and the Association, as Lessee, in which Developer shall lease the Golf Course to the Association for purposes of operation, maintenance and repair, which purposes are more particularly set forth therein; said Lease Agreement is attached hereto and made a part hereof as Exhibit "B".

1.16 "Lot" shall mean any portion of the "Submitted Property" intended for any type of independent ownership and use, and such portions of the Annexation Property as may be designated as Lots pursuant to Annexation.

1.17 "Mortgage" shall mean any mortgage, deed to secure debt, security deed and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.18 "Mortgagee" shall mean the holder of record of any Mortgage.

1.19 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities of fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.20 "Plat" or "Plats" shall mean the plat of Unit 1-A, Section 1 of the Canewood Subdivision, which has been recorded in Plat Slide 1301 in the Office of the Scott County Clerk, and any plat meeting the requirements of Article VII hereof, which shall be recorded with respect to portions of the Annexation Property prior to their Annexation.

1.21 "Recreation Area" shall mean those facilities to be erected by Developer on such portion of the Annexation Property as Developer may designate for the common use and enjoyment of the Owners, and the expenses for maintenance of such area shall be a Common Area Expense. "Recreation Area" shall not include those facilities which are constructed on the Golf Course.

1.22 "Submitted Property" shall mean all of Unit 1-A, Section 1 of the Canewood Subdivision as shown on the plat described in Section 1.19 hereinabove, and such portions of the Annexation Property as may be later subjected to the provisions of this Declaration by Annexation.

ARTICLE II Easements and Property Rights

2.01 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, Golf Course, Landscape Areas and/or Recreation Areas, which shall be appurtenant to and shall pass with the title to every Lot subject to the right of Developer or Association to dedicate or transfer all or any part of the Common Areas, Golf Course, Landscape Areas or Recreational Areas not located within a Lot to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors of the Association.

2.02 Conveyance. Developer may at any time, and from time to time, convey such portions of Common Areas, Landscape Areas, or Recreation Areas not included in any Lot to the Association, which conveyances shall automatically be accepted by the Association. No further consent of the Association shall be required for such conveyance. Ownership of the Golf Course shall be retained by the Developer; at such time as seventy-five percent (75%) of all Lots in the Submitted Property and the Annexation Property are improved and occupied by Owners, Developer shall lease the Golf Course to the Association pursuant to the terms and conditions of that certain Lease Agreement of even date herewith, attached hereto and made a part hereof as Exhibit "B", between the Developer as Lessor and the Association as Lessee.

ARTICLE III
Association Membership and Voting Rights

3.01 Membership. Every Owner shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one ownership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot; provided, however, that Members shall have the right to lease their membership, pursuant to the terms and provisions of the By-Laws of the Association. Ownership of a Lot shall be the sole qualification for membership.

3.02 Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds ownership interest in any Lot, all such persons shall be members, and the Vote for such Lot shall be exercised as they determined, but in no event shall more than one vote be cast with respect to any Lot. Any Class A member who leases his or her membership as provided in Section 3.01 hereinabove shall retain his or her voting rights in the Association and shall not convey same to the Lessee.

(b) Class B. Developer shall be the only Class B member and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and shall be converted to Class A membership upon the occasion of either of the following events, whichever occurs first:

(i) Upon the sale of seventy-five percent (75%) of the Lots which are planned for development in the Submitted Property.

(ii) Six (6) years from the date of sale of the first Lot planned for development in the Submitted Property.

Owners may not vote by written proxy, but an Owner's vote may be cast by the Owner's spouse in the Owner's absence.

3.03 Authority of Board. Except to the extent otherwise expressly required by the Kentucky Revised Statutes, this Declaration or the By-Laws of the Association, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or act on the part of the members.

ARTICLE IV
Rights and Obligations

4.01 Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Common Areas, Landscape Areas and Recreation Areas, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon such areas, exclusive of structures and improvements situated upon such areas, exclusive of structures and improvements owned by any Owner.

(b) At such time as the conditions set forth in Section 2.03 hereinabove have been achieved, and the Lease Agreement referred to therein becomes of full force and effect, the Association shall operate, maintain and keep in good repair the Golf Course, pursuant to the terms and conditions of said Lease Agreement; until such time, Developer shall retain the responsibility for such maintenance, repair and operation.

4.02 Owner's Responsibility. Each Owner shall maintain his or her Lot, including, but not limited to, any Buffer Area appurtenant thereto, and all structures and improvements thereon in a manner consistent with the community-wide standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any additional declaration of covenants applicable to such Lot. If any Owner fails to properly perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article VI, Section 6.01 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

ARTICLE V
Insurance and Casualty Losses

5.01 Hazard and Liability Insurance. The Association shall obtain and maintain insurance for all insurable improvements maintained pursuant to Article IV against loss or damage by fire or other hazards, including extended coverage and vandalism and malicious mischief, in an amount equal to one hundred percent (100%) of replacement cost of all insurable property. The Association shall also obtain a public liability policy covering all the Common Areas, Landscape Areas, Recreation Areas, and the Golf Course, once the conditions in Section 4.01 (b) have been met; prior to such time, Developer shall maintain such insurance on the Golf Course. Said Policy shall also cover all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall be in amounts

authorized from time to time by the Association, but in any event not less than \$500,000.00 for injury, including death, to one individual, \$1,000,000.00 for injury or injuries, including death, arising out of a single occurrence, and \$50,000.00 property damage, including, but not limited to, water damage liability, liability for non-owned and hired automobiles and liability for property of others. The public liability policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. Premiums for all such insurance shall be Common Expenses not specially assessed, except in the case of the Golf Course, which premium shall be a Golf Course Expense, not specially assessed. All such insurance coverage shall be written in the name of the Association as trustee for each of the Owners. Such insurance shall be governed by the provisions hereinafter set forth:

(a) The cost of said insurance shall be a Common Area Expense, with the exception of the Golf Course Insurance, which shall be a Golf Course Expense.

(b) The original of all policies and endorsements thereto shall be deposited with the Board, which shall hold them for safekeeping in the manner the Board maintains all other books, records or documents. Such policies shall be available for review by any Owner upon reasonable notice.

(c) Exclusive authority to adjust losses under policies hereafter in force on the Submitted Property shall be vested in the Board.

(d) In no event shall the insurance coverage obtained and maintained by the Board be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, title insurance on his individual Lot and such other insurance as is not provided by the Association pursuant to the provisions of this Article.

(f) The Board shall conduct an annual insurance review which shall include replacement cost appraisal, without respect to depreciation, of all insurable improvements by one or more qualified persons.

(g) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and

invitees, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured;

(ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) that the policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer, director, agent or employee of the Association without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or Mortgagee;

(iv) that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice as to non-payment and thirty (30) days' prior written notice as to any other reason for cancellation;

(v) that coverage will not be prejudiced by (a) act or neglect of the Owners when said act or neglect is not within the control of the Association, or (b) any failure of the association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

5.02 Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used in this paragraph means repairing or restoring the property to substantially the same condition as existed prior to the fire or other casualty.

(b) Any such damage or destruction shall be repaired or reconstructed within sixty (60) days after the date of damage or destruction. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Association within said period of sixty (60) days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said period of time shall in no event exceed ninety (90) days after the casualty.

4mwe 7 505

5.03 Repairs and Reconstruction. If the damage or destruction for which the insurance proceeds are paid to the Association is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Additional special assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Such assessments shall be apportioned in accordance with the provisions of this Declaration governing the collection of maintenance assessments.

ARTICLE VI
Covenants for Assessments

6.01 Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner of any Lot other than Developer, by acceptance of a Deed therefor, or by signature to this Declaration, is deemed to covenant and agree to pay to the Association:

- (i) annual assessments or charges;
- (ii) special assessments or charges, such assessment to be established and collected as herein provided; and,
- (iii) specific assessments or charges against any particular Lot which are established pursuant to the terms of this Declaration.

(b) All such assessments, together with interest, charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot.

(c) The grantee in a conveyance of a lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of such conveyance, without prejudice to such grantee's right to recover from such grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association as provided in Section 6.10 hereof, such grantee, his successors, successor-in-title and assigns, shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement, if any.

4mx
7 50k

6.02 Purpose of Assessments. The assessments and charges levied or imposed shall be used exclusively for Golf Course Expenses or Common Area Expenses or such other expenses as designated by the Board in the event of a special assessment or specific assessment against a particular Lot. The assessments shall include the amounts necessary to establish an adequate reserve fund for maintenance, repair and replacement of those Common Areas, Landscape Areas, Recreation Areas and Golf Course areas which must be replaced on a periodic basis. Such amount for the reserve fund shall be included in the annual assessment rather than calculated by special assessment.

6.03 Computation. It shall be the duty of the Board at least sixty (60) days prior to the Association's annual meeting to prepare a budget covering the estimated cost of operating the Association during the coming year, including an adequate reserve fund. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least twenty-one (21) days prior to the meeting. This budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of a majority of the total Association membership. Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. (Such budget shall include a breakdown of costs, allocating such costs to Common Area Expense or to Golf Course Expense, as appropriate.) The per Lot assessment shall be computed by dividing the total assessment for each category of assessment by the number of Lots affected by such assessment.

6.04 Special Assessments. In addition to the annual assessments authorized above, the Association may levy upon all Owners affected thereby, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Areas, Landscape Areas, Recreation Areas or Golf Course, provided that any such assessment shall have the assent of at least fifty-one (51%) of the votes of the Owners affected thereby who are voting in person. The Board may make such special assessments payable in installments over a period of not more than three (3) years. Each such assessment together with interest, costs and reasonable attorney's fees shall be accorded the same treatment as regular assessments.

6.05 Notice of Meeting. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members entitled to cast sixty-six (66%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called upon written notice of not less than three (3) nor more than five (5) days. Said meeting shall not be required to satisfy the quorum in order to do

business. No such subsequent meeting may be held more than sixty (60) days following the preceding meeting.

6.06 Date of Commencement of Annual Assessments.

(a) The annual assessments provided for herein shall commence on the first day of the month following the recording of this Declaration in an original amount to be determined by Developer and shall be due and payable in a manner and on a schedule which Developer shall provide. The first annual assessment shall be adjusted according to the number of months then remaining in that calendar year.

(b) Anything contained herein to the contrary notwithstanding, Developer covenants and agrees to pay and shall be subject only to the following reduced annual and special assessments, which liability shall be calculated and commence in accordance with the following criteria:

(i) For each Lot owned by Developer which includes a substantially completed residence, one hundred percent (100%) of the assessment payable by the Owners;

(ii) Upon conveyance of each Lot by Developer to an Owner, the full assessments payable by Owners shall commence on the first day of the month following the date of such conveyance.

For purposes of this Section 6.06(b), a "substantially completed residence" shall mean a residence which is ready for occupancy.

6.07 Lien for Assessments. All sums assessed to any Lot pursuant to this Article, together with interest, costs, charges and reasonable attorneys' fees, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except for:

(a) Liens for ad valorem taxes; and,

(b) A lien for all sums unpaid which are secured by a first in priority Mortgage, or any Mortgage in favor of Developer, duly recorded in the public records of Scott County, Kentucky, and all amounts advanced pursuant to such Mortgage"s" and secured thereby in accordance with the terms of such instrument(s).

All other persons acquiring liens or encumbrances on any Lot which become liens after this Declaration is filed for record shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens or encumbrances.

Page 7

Page 508

6.08 Effect of Non-Payment of Assessments; Remedies of the Association.

Any assessments which are not paid when due shall be delinquent. Any assessment due for a period of fifteen (15) days shall incur a late charge of ten (10%) percent. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within fifteen (15) days following the due date. If the assessment is not paid within thirty (30) days of the due date, the lien provided for herein shall attach, and in addition, the lien shall include a late charge of ten (10%) percent, together with interest on the principal amount due and the late charge at the rate of eighteen percent (18.00%) per annum, or at whatever rate the Association shall establish at its annual meeting, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided for herein. In the event that the assessment remains unpaid after thirty (30) days, the Association, through the Board, may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring actions against him personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas, Landscape Areas, Recreation Areas or Golf Course, or by abandonment of his Lot.

6.09 Effect of Lien on Mortgages. In the event that the holder of a first priority Mortgage, or secondary purchase money Mortgage of record, or other person acquires title to any Lot as a result of foreclosure of a first or secondary purchase money Mortgage, such holder or other person, his successors, successors-in-title and assigns, shall not be liable for, nor shall such Lot be subject to a lien for, any assessment hereunder chargeable to such Lot for any period of time prior to such acquisition of title.

6.10 Certificate as to Assessments. Any Owner, Mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of the Assessments past due and unpaid (with late charges and interest applicable thereto) against that Lot.

ARTICLE VII
Annexation

7.01 Submission of Additional Property. Developer shall have the option and right from time to time, without the necessity of consent by the Association, the Board, or individual Owners, but subject to Section 7.02, to submit all or portions of

the Annexation Property to this Declaration and thereby to become a part of the Submitted Property. This option may be exercised by Developer in accordance with the conditions and limitations set out in Section 7.02, which are the only conditions and limitations on such right.

7.02 Conditions of Annexation. Any annexation as permitted in Section 7.02 shall be in accordance with the following terms and conditions:

(a) The option to subject portions of the Annexation Property may be exercised at any time and from time to time until twenty (20) years from the date the Declaration is recorded.

(b) The legal description of the Annexation Property is set forth in Exhibit "A". Portions of the Annexation Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become Submitted Property.

(c) All lots created on portions of the Annexation Property which become Submitted Property will be restricted exclusively to residential use, except as provided elsewhere in this Declaration.

(d) As to any portion of the Annexation Property for which the option contained in Section 7.01 is not exercised, Developer shall be under no obligation to impose any covenants, conditions, restrictions or easements, the same as or similar to those contained herein.

(e) The option reserved in Section 7.01 may be exercised by Developer alone (without the consent of the Association or any Owner) by the execution by Developer of any amendment to this Declaration, which shall be filed for record in the Office of the Clerk of the Scott County Court, together with a Plat of that portion of the Annexation Property which is to become Submitted Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Each Plat shall be in recordable form. Any such amendment shall expressly submit that portion of the Annexation Property which is to become Submitted Property to all of the provisions of this Declaration, as it may be amended from time to time, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Submitted Property, including such portions of the Annexation Property as have become Submitted Property by Annexation. Following recording of the Plat, Developer shall convey any Common Area, Landscape Area or Recreation Area shown thereon, which is not included in any Lot, to the Association by general warranty deed, subject to matters of record. From and after the Annexation of any portion of the Annexation property by such amendment:

(i) the number of votes in the Association shall be increased by the number of Lots added to the Submitted Property by Annexation and each Lot in the Submitted Property shall have voting rights as set forth in Section 3.02(b) of this Declaration; and,

(ii) the liability of each Owner for both the annual and special assessments, including the Owners of Lots in such portions of the Annexation property as have become Submitted Property, shall, subject to the rights of Developer under Section 6.06 (b), be in accordance with Article IV.

(f) Each Owner, by acceptance of a deed to a Lot in the Annexation property, and the Association, shall be deemed to have approved Annexation in the manner provided in this Section 7.02. Each Owner and the Association also agree that in any dispute with Developer regarding Annexation or Developer's right to convey real or personal property to the Association, the Association and the Owners have an adequate remedy at law in connection with such dispute. Therefore, each Owner and the Association hereby agree, jointly and severally, that they have no right to seek a temporary restraining order, temporary or permanent injunction, or other form of equitable relief in connection with such dispute, and hereby waive and renounce any right to seek equitable relief of any type in connection with such dispute.

ARTICLE VIII
General Provisions

8.01 Rights of First Mortgagees. In addition to the rights of Mortgagees elsewhere provided, each first Mortgagee of a Lot shall (a) be entitled to written notice from the Association of any default by an Owner in the performance of his obligations under this Declaration which is not cured within thirty (30) days; (b) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (c) be furnished copies of annual financial reports made to Owners; and (d) be entitled to inspect the financial books and records of the Association during reasonable business hours; provided, however, that such Mortgagee shall first file with the Association a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of this Mortgagee at an address stated in such notice.

8.02 Consent of First Mortgagees. Unless at least seventy five percent (75%) of the Mortgagees holding Mortgages constituting first liens on Lots subject to such Mortgages (based on one (1) vote for each Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, Landscape Areas or Recreation Areas

owned directly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Areas, Landscape Areas, or Recreation Areas by the Owners shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the assessments or other charges which may be levied against an Owner;

(c) fail to maintain fire and extended coverage on the items required to be insured under Article V in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(d) use hazard insurance proceeds for losses to the Common Areas, Landscape Areas, Recreation Areas or Golf Course for other than the repair, replacement or reconstruction of such Areas or improvements.

8.03 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, all of which shall remain in full force and effect.

8.04 Declaration Runs With Land. Unless cancelled, altered or amended under the provisions of this paragraph and as otherwise set forth in this Declaration, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by seventy-five percent (75%) of the then owners of all lots in the subdivision has been recorded, agreeing to change these restrictions and covenants in whole or in part. Failure of any Owner to demand or insist upon observance of any terms and provisions of this Declaration, or to proceed for restraint of violations, shall not be deemed a waiver of the violation or the right to seek enforcement of this Declaration.

8.05 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases or mortgages his Lot, such Owner will give the Association notice prior to closing, in writing, setting forth the name of the purchaser, lessee or Mortgagee of the Lot. Any such lease shall be in writing and may not be for a period of less than thirty (30) days.

8.06 Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Developer (i) if such amendment is necessary to bring any provisions hereto into compliance with any applicable governmental statute, rule or regulation; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or

- Misc 7 pg 512

purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or, (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to this Declaration; provided that any such amendment shall not adversely affect the title to any Owner's lot or materially alter or change any Owner's right to the use and enjoyment of the Common Areas, Landscape Areas, Recreation Areas or Golf Course as set forth herein, unless any such Owner so affected thereby shall consent thereto in writing.

(b) This Declaration may be amended at any time and from time to time by an agreement of at least seventy-five percent (75%) of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer if Developer is the owner of any real property then subject to this Declaration, or retains the option to submit portions of the Annexation Property to this Declaration.

(c) No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any first Mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto.

(d) Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Scott County Clerk's Office, Georgetown, Scott County, Kentucky. The written consent thereto of any first Mortgagee affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

8.07 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 individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

8.08 Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Scott County Clerk, Georgetown, Scott County, Kentucky, and shall inure to the benefit of Developer, the Association, the Owners and the holders of the Mortgages affecting any of the Submitted Property, their respective heirs, legal representatives, successors-in-title, successors and assigns; and by such recording, no owner of property not located within the Submitted Property shall have any right, title or interest whatsoever in the Submitted Property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Developer and mortgagees as herein provided, the Owners

misc 7 513

shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such other person.

8.09 Reservations of Easements. Developer hereby reserves for itself, its successors and assigns, forever, across the Submitted Property, and across each portion of the Annexation Property subsequently submitted to this Declaration by Annexation as provided in Article VII hereof, permanent easements appurtenant to all or any portion of the Annexation Property not subject to this Declaration for the following uses and purposes:

(a) An easement for ingress and egress by and vehicular and pedestrian traffic over (i) such drives, roadways, walkways and paths as are shown on the Plat or Plats recorded in connection with the Submitted Property, and such portions of the Annexation Property as have been submitted to this Declaration, and (ii) such drives, roadways, walkways and paths as may be constructed in the future;

(b) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, telephone and other utilities and services, including the right to use in common with the Owners in the Submitted Property and portions of the Annexation Property previously submitted to this Declaration, the wires, pipes, conduits and other structures and facilities furnishing such utilities and services to such Owners.

The only limitation on the right of the Owner or Owners of those portions of the Annexation Property not submitted to this Declaration to make use of the permanent easements granted in this Section 8.09 shall be that use of the easements of ingress and egress granted in Section 8.09 (a) shall be limited to access to a residential development only. The easements reserved in this Section 8.09 are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Section 8.09 may not be amended without the written consent of the Developer.

8.10 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, Developer has executed this Declaration through its duly authorized officer on the day and year first above written.

DEVELOPER:

CANEWOOD, INC.

By: James L. Barlow
JAMES L. BARLOW, President

OWNER:

Don K. Poole
DON K. POOLE

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing Declaration was signed, sworn to and acknowledged before me on this the 2nd day of March, 1994, by James L. Barlow in his capacity as President of Canewood, Inc., a Kentucky corporation, for and on behalf of the corporation.

Rose Dillingham
NOTARY PUBLIC, STATE AT LARGE, KY

My Commission Expires: 3-11-97

STATE OF Kentucky

COUNTY OF Fayette

The Foregoing Declaration was signed, sworn to and acknowledged before me on this the 2nd day of March, 1994, by Don K. Poole.

Charles Greene
NOTARY PUBLIC

My Commission Expires: 6-10-95

NOTARY: IF SIGNED OUTSIDE KENTUCKY, PLEASE AFFIX SEAL

THIS INSTRUMENT PREPARED BY:

McBRAYER, MCGINNIS, LESLIE & KIRKLAND

By: Megan Lake Thornton
MEGAN LAKE THORNTON
163 W. Short Street, Suite 300
Lexington, KY 40507
(606) 231-8780

State of Kentucky
County of Scott, Set.

I Donna B. Perry, Clerk in, and, for the County and State aforesaid,
certify that the foregoing Restrictions
was this day lodged for record at 10:00 AM
Whereupon the same with the foregoing and this certificate have
been duly recorded in my office.

Witness by hand this 5 day of April, 1994
DONNA B. PERRY
BY Shirley B.C.