

rescinded in whole or in part by resolution approved by sixty-six and two-thirds (66-2/3%) percent of the total voting power appurtenant to the lots eligible to vote. Notice of the meeting shall be given in the same manner as stated in subparagraph 3.1(e) of the Declaration.

7.2 Residential Use. All of the lots shall be used exclusively for residential use, except that the Developer may use units as models for marketing of units in the community or for a temporary sales office. Furthermore, an owner may utilize a portion of a unit as a home office or home occupation. The extent to which a unit may be used as a home office or home occupation is governed by the official zoning ordinance for the City of Fort Thomas, Kentucky.

7.3 Right of Association to Levy Fines and to Remove or Correct Violations of this Article. The Association may, in the interest of the general welfare of all of the owners, and interest of the general welfare of all of the owners, and after reasonable notice to the owner, enter upon any lot or the exterior of any unit at reasonable hours on any day except Sunday for the purpose of removing or correcting any violation or breach or any attempted violation of any of the covenants and restrictions contained in this Article or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken except by resolution of a majority of the Board of Directors. All charges incurred by the Association in enforcing this subparagraph and

all charges incurred by the Association in correcting the violations hereunder, including court costs and reasonable attorneys' fees, shall constitute a lien against the offending lot and a personal obligation of the owner thereof, the lien to be governed by the same rules as the assessment lien. Likewise the Association, after giving the owner a reasonable chance to correct any violation by the owner of this Declaration, may levy a fine or fines against the owner in a reasonable amount, and in addition may suspend for a reasonable time the owner's right to use any common facilities. Any unpaid fine shall be a lien against the owner's lot, and the lien may be enforced and foreclosed upon in the same fashion as an assessment lien in the Association may likewise recover its costs and its reasonable attorney's fee.

7.4 Developer's Reservation of Entry Rights. The Developer reserves the right for a period of seven (7) years after sale of a lot by the Developer to an owner to enter upon the lot for purposes of correcting grade and drainage patterns for the benefit of the entire properties, provided that the lot shall be restored with any pavement, grass or sod which shall have been removed.

7.5 Declarant's and Association's Right to Grant Easements. Notwithstanding the provisions of Article 3 or other provisions of this Declaration, the Developer, as long as the Developer owns

a lot or as long as the project has not been fully expanded, and thereafter the Association is authorized without consent of the members to grant above, through or under any lot or Common Area any utility easement, including television cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the community, provided that no easement shall be granted above, through or under any unit which materially restricts ingress and egress to such unit.

7.6 Quitclaim Deeds and Correction Deeds. The Association may execute and make in respect to the Common Areas (common property) quitclaim deeds and/or correction deeds in order to correct typing or surveying errors in legal descriptions or to reflect a lot as actually laid out or to correct any other error by which the Association was granted real estate or an interest in real estate by a mistake of any kind. Such conveyances by the Association shall also convey all right, title, and interest that each member of the Association has in the real estate conveyed, by reason of the Declaration and any amendment thereto. The Association may so act upon resolution of a majority of its Board of Directors, if any, and if the Board does not exist, then by agreement of the majority of the members of the Association. The executing and/or making of quitclaim deeds and/or correction deeds shall not constitute and shall not be deemed to be the abandoning, partitioning, subdividing, encumbering, selling or

transferring of common property within the meaning of this Declaration.

7.7 Expansion of Association. The Association upon the affirmative vote of 50% of its members or upon unanimous vote of its Board of Directors, may merge with any other Association of a reasonably compatible community. Short of merger, the Association may share expenses or otherwise cooperate with any other Association.

#### ARTICLE VIII

8.1 Party Walls. Each wall which is built as part of the original construction of the units upon the property and placed on the dividing line between lots or units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

8.2 Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

8.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it. If the other owners thereafter make use of the wall, they shall contribute to the costs of

restoration thereof in such proportion to such use; except that each owner is still fully liable for damages caused by that owner's negligent or intentional acts or omissions. Unless otherwise agreed by owners of all units in a multi-unit structure damaged or destroyed by fire or other casualty, such structure shall be rebuilt and all proceeds of insurance available therefor shall be used to restore the structure.

8.4 Weatherproofing. Notwithstanding any other provision of this Article, an owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repairing the damages and paying for the losses caused by the exposure.

8.5 Right of Entry. For purposes of making inspections and repairs under this Article, an owner, his agents or contractors shall have the right to enter upon the premises of the other owners of a party wall upon the giving of reasonable notice and at a reasonable time.

8.6 Easements. In the event that a multi-unit structure is erected on more than one lot, each such lot shall have the benefit of mutual easements across the other lots upon which said structure is located and through the structure, and each such lot shall be subject to easements across it and through the structure erected thereon for the benefit of the other lots upon which said

structure is located, for the maintenance, continuation and upkeep of utility wires and lines serving the individual lots and units located thereon. The owner(s) of each lot shall maintain, repair and replace all wires and lines serving such lot and unit, and for such purpose may enter upon the other lots or units, but shall at all times be responsible for repairing and restoring to its former condition any lot or living unit which is damaged or disturbed by reason of the performance of any maintenance, repair or replacement of such wires and lines, or by reason of the exercise of any right of easement, ingress and egress herein provided. The cost of repair and maintenance of wires and lines used jointly for the benefit of two or more lots shall be shared by the owners thereof using same in a reasonable and proportionate manner, which, in the event of a dispute, may be determined by the Board. "Wires" and "lines" shall be construed broadly to include energy, communications, water and/or waste, wires and lines.

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

8.8 Control of Utility Lines. Notwithstanding provisions otherwise contained herein, all of the following utility lines designed to serve more than one unit shall be under the exclusive

control of and shall be maintained by the Association (subject to the rights and duties of the utility company providing the service):

- (a) electric supply lines extending from the service of supply delivered by the utility company to the meter base located for the unit;
- (b) sanitary sewer lines extending from the connector sewer line to the point at or near the unit where common usage by more than one unit stops; and
- (c) any other wire or line extending from the service of supply delivered by the supplier of the service to the point at or near the unit where common usage by more than one unit stops.

8.9 Rights Not Subject to Suspension. The rights and easements created in this Article shall not be suspended by the Association for any reason.

#### ARTICLE IX

9.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with the land perpetually, subject to amendment as hereafter set out.

This Declaration may be amended by an instrument signed by the holders of seventy-five (75%) percent of the total voting power appurtenant to the lots in the project. No such amendment shall be effective with respect to rights described in subparagraph 3(1)(f), or in Article VIII, unless approved by the holders of one hundred (100%) percent of the voting power of the lots. Notice of the meeting shall be given in the same manner as

stated in subparagraph 3.1(e) of the Declaration. See subparagraph 9.7 below for Developer's consent.

9.2 Enforcement. Any owner or the Association may enforce these covenants and restrictions. Enforcement shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation and/or to recover damages, and against the land to enforce any lien created by these covenants. The failure or forbearance by the Association or any owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so. There shall in no event be deemed a waiver of the right to do so. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. All charges incurred by the Association in enforcing these covenants and restrictions (including court costs and reasonable attorneys' fees) shall constitute a charge against the person or persons violating or attempting to violate the covenant or restriction, and a lien against the lot or lots of such person or persons, subject to subordination to first mortgage as provided in Article V.

9.3 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 ordinary 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, or to such person at the address of the lot owned by such person.

9.4 No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas by any public or municipal agency, authority or utility.

9.5 Association and Director Responsibility. In carrying out the provisions of this Declaration, and in the performance of all of the rights, duties and obligations, covenants and conditions, hereunder specifically including but not limited to the protection, maintenance and upkeep of Common Areas and common improvements of the Association, its officers, directors, servants and employees shall be required to exercise reasonable care only and shall in no way be deemed absolutely liable or be deemed insurers. The Board may take out fidelity insurance coverage against dishonest acts on the part of officers and employees, members of the Association, members of the Board, employees, agents and/or volunteers responsible for the handling of funds collected and held for the benefit of unit owners. The fidelity bond or insurance should name the Association as named insured

and should be written in a reasonable amount. The Association may also purchase insurance to protect itself and to indemnify any director or officer, past or present, against expenses actually and reasonably incurred by the director or officer in connection with the defense of any action, suit or proceeding, civil or criminal, in which the director or officer is made a party by reason of being or having been a director or officer, except in relation to matters as to which the director or officer shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duties to the Association. The policy or policies shall be in an amount to be reasonably determined by the Association.

The cost of any such insurance, which the board decides to take out under this Article or any other Article, shall be included as part of the annual general assessment.

9.6 Severability. Invalidation of any Article or Section or part of an Article or part of a Section or any subsection or part of a subsection or any sentence or part of a sentence, of this Declaration, by a judgment, decree or order, shall in no way affect any other provision of this Declaration, each of which other provision shall remain in full force and effect.

9.7 Developer's Consent. Notwithstanding any other Article or Section of this Declaration, no amendment may be made to the Declaration without the written, recorded consent of the

Developer or its designate, as long as the Developer or its successors and assigns owns any of the real estate described in Exhibit "A", even if the real estate owned has not been annexed into the project. The Developer or its designate may waive or modify this Section by a recorded instrument. In any event, the rights of the Developer or of any designate of the Developer under this subparagraph expire on the date 10 years from the date of this Declaration. The Developer may also amend this Declaration at any time to correct grammatical or mathematical errors made in the preparation or typing of this Declaration, or the plats.

#### ARTICLE X

10.1 Developer's Easements. Until such time, if ever, that all of the real estate described in Exhibit "A" has been annexed into the project and has been made subject to the Declaration, the Developer hereby retains and reserves easements and right-of-ways of every kind and variety, including for utilities and access, in, on, over the through the Common Areas. These easements are for the benefit of and run with such of the real estate described in Exhibit "A" that has not actually been annexed into the project and made subject to the Declaration. Specifically, these easements include the right of the Developer and the successors and assigns of the Developer to use the streets and right-of-ways on the Common Areas as access to the

real estate that has not been annexed into the project. All of these easements do run with the land and the owners of the lots benefited by these easements must pay a proportionate share of the cost of maintaining any improvements on the easements used by the owners of the benefited lots or real estate. The Developer may go upon common ground in a reasonable and safe fashion to develop this unannexed real estate but must repair promptly any damage done and must not interfere substantially with the use of any unit in the project.

#### ARTICLE XI

11.1 Federal Home Loan Mortgage Corporation Provisions. The following provisions are included herein for the benefit of the holders of first mortgages on any lot which is subject to the provisions of this Declaration (PUD), in order to permit compliance with the requirements of Federal Home Loan Mortgage Corporation (FHLMC) as a condition to the purchase of loans and units in the PUD. The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders; and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Board of Directors of the Association, without approval of the members of the Association, but only without such approval to the extent that such alteration, amendment, revisions or rescission is necessary to

comply with the requirements of FHLMC.

11.2 It is provided as follows:

- (a) Unless at least sixty-six and two-thirds (66-2/3%) percent of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Developer) of the individual units in the PUD have given their prior written approval, the Association shall not be entitled to:
- (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association for the benefit of the units in PUD (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer within the meaning of his clause);
  - (ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against a PUD unit owner;
  - (iii) by act or omission, change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the units, the exterior maintenance of units, the maintenance of the common property, party walls or common fences and driveways, or the upkeep of lawns and plantings in the PUD;
  - (iv) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost);
  - (v) use hazard insurance proceeds for losses to any PUD common property for other than the repair, replacement of reconstruction of such common property.
- (b) First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and

which may or have become a charge against any PUD common property and may pay overdue premiums or hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the PUD Association. All first mortgagees of units in the PUD shall be entitled to such reimbursement.

- (c) A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual PUD unit borrower of any obligation under the PUD constituent documents which is not cured within sixty (60) days.
- (d) Any agreement for a professional management of this project, or any other contract providing for services of the Declarant (or sponsor or builder), may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on 90 days or less written notice.

#### ARTICLE XII

12.1 Insurance of Private Improvements. The Association shall obtain and, at all times, maintain insurance coverage on all units upon the property (exclusive of land, foundations, excavations, ditches, changes in grade of six inches or more and other items normally excluded from insurance coverage). Such insurance coverage shall insure against loss or damage by fire, lightning and such other perils as are at this time comprehended within the term "extended coverage", and including vandalism and malicious mischief, sprinkler leakage, debris removal and windstorm and water damage and shall be obtained from an insurance company authorized to do business in the State of

Kentucky in an amount not less than 100% of the current replacement costs thereof without deduction for depreciation. Such insurance shall cover the fixtures originally installed in the units, and their replacements up to their comparable value. "Fixtures" include, but are not limited to, carpeting, air conditioners and furnaces, but shall not include, among other things, furniture, furnishings and any other personal property. Such insurance may have a reasonable deductible (to be set by the Board), in all cases to be paid by the Owner not by the Association. Such insurance shall be obtained and maintained for the benefit of the Association, the owner, and the lender, as each's respective interest may appear. The Association may also maintain such additional insurance coverage as may, from time to time, be required by holders of first mortgages. It is not the responsibility of the Association to maintain contents insurance, personal liability insurance, living expenses insurance and/or any other type of insurance which protects the Owner or the Owner's property, other than the real property insurance referred to above.

12.2 Provisions in Fire and Extended Coverage Insurance Policies. Every fire and extended coverage insurance policy shall provide:

- (a) for the issuing to owners, lenders and the Association, as their interests appear, of certificates of coverage and the issuing by the insurer of written notice not less than ten (10) days prior to any expiration or

cancellation of such coverage to any owner, lender and the Association;

- (b) for the release by the issuer thereof of any and all rights of subrogation or assignment in all causes and rights of recovery against the Association, any owner, employee or agent of the owner, owner's tenant or other occupant of a structure for a recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy;
- (c) for full coverage for damage to adjoining real estate; and
- (d) that the insurer shall have no right to contribution, set off, counterclaim, apportionment or proration from any insurance which may be purchased by any Owner.

12.3 Remedy for Lack of Insurance. If the insurance coverage required by subparagraphs 12.1 and 12.2 ceases to exist for any reason whatsoever, the Owner or mortgagee of a unit may remedy the lack of insurance by purchasing policies to supply that insurance lost. The funds for premiums shall be deemed to have been loaned to the Association and shall be due and payable to the mortgagee or Owner by the Association immediately and without notice.

12.4 Insurance of Common Improvements and Property. The Association shall obtain and at all times maintain insurance coverage on any structures or other improvements on the Common Areas or Community Facilities. Such insurance coverage shall insure against loss or damage by fire, lightning, and such other perils as are at this time comprehended within the term "extended coverage", and including vandalism and malicious mischief,



sprinkler leakage, debris removal and windstorm and water damage and shall be obtained from an insurance company authorized to do business in the State of Kentucky in an amount not less than 100% of the current replacement costs thereof without deduction for depreciation. Such insurance shall be obtained and maintained for the benefit of the Association. The Association may also maintain such additional insurance coverage as may from time to time be necessary or desirable.

12.5 Liability Insurance for Common Areas. The Association shall insure itself, all owners, employees or agents of owners, owners' tenants and all persons lawfully in possession of or in control of any part of the Common Areas against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the use of Common Areas. Such insurance shall afford protection to a limit of not less than \$1,000,000.00 with regard to bodily injury, disease, illness or death suffered by one person, and to the limit of not less than \$1,000,000.00 with regard to any one occurrence, and to the limit of not less than \$1,000,000.00 with regard to damage to, or destruction of, property arising out of any one accident.

12.6 Liability Insurance and Personal Property Insurance for Lots. The Board may require the owner of each lot to obtain insurance coverage at his own expense for his personal liability

for occurrences within and about or upon his property and also for protection of his personal property from perils insured against in standard fire and extended coverage insurance policies.

12.7 Insurance Premiums. Insurance premiums for policies purchased by the Association shall be collected from the owners as assessments under Article 5, except that each initial owner, other than the Developer, shall simultaneously with the purchase of a lot pay to the Association the cost of insurance for the lot for a 12 month period. If improvements installed by an owner increase the cost of insuring that owner's unit, that owner shall immediately pay to the Association the increased cost, and shall continue to do so for each following year. The Association is not obligated to insure any lot which has a delinquent assessment, but before the Association may discontinue insurance coverage on any such lot, it must mail to the last known address of the first mortgage holder and of the owner, 10 days advance notice of its intent to discontinue the insurance coverage unless the assessments are immediately brought current. Any amount advanced by the Association may be recovered as an assessment lien.

12.8 Assignment of Insurance Proceeds. Each owner hereby assigns to the Association and authorizes the insurance company to pay directly to the Association the proceeds of any insurance

claim which is for damage which the Association is to repair. The Association is not obliged to repair any damage for any loss for which the owner is obliged by this Declaration to carry insurance, unless the Association has been paid the insurance proceeds for the loss and unless the proceeds are in a reasonable amount and unless the damage is of the type that the Association is otherwise obligated to repair under this Declaration. If the Association makes the repairs, and administrative and collections costs and interest and the lien may be enforced by foreclosure and the Association is entitled to collect reasonable attorney's fees and court costs.

12.9 Payment by First Mortgagees of Obligations and Reimbursement for Same.

- (a) default with regard to payment of taxes or other obligations which may become a charge against the Common Areas, or
- (b) fail to pay premiums for insurance in accordance with this Article, and shall not in good faith contest liability for payment of same, first mortgagees of parcels shall, upon prior written notice of intent to do so to the Association, jointly or severally have the right to pay such amounts; whereupon such participating first mortgagees shall be entitled to reimbursement for the Association for payment of such amounts.

12.10 Approximate Coverage. If any of the required insurance coverage under this Article becomes, or is impossible to obtain, or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates

the required coverage.

12.11 Certificate of Insurance. Upon request by the Association, each owner must provide the Association with a certificate of insurance or other reasonable evidence of compliance by the owner with this Article XII.

12.12 Sufficient Insurance. If a structure for which insurance has been obtained by the Association, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies carried by the Association insured against such loss or damage and payable by reason thereof shall be sufficient as determined by the Association to pay the cost of repair and restoration or reconstruction then such repair, restoration or reconstruction may, with concurrence of the mortgagee of such structure if any, be undertaken by the Association and the insurance proceeds may be applied by the Association in payment therefor.

12.13 Insufficient Insurance or Uninsured Casualty. If a structure shall suffer damage or destruction from any cause which is not insured against or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction shall be considered a capital improvement and shall be subject to the provisions of Article V.

All plans and specifications for reconstruction, repair, and

restoration of the structure shall be subject to approval as provided in Article VI.

Specific procedures for reconstruction, restoration, and repair not provided for in this Article, elsewhere in this Declaration, or any amendments thereto, shall be determined by the Board from time to time.

12.14 Insurance Company. Insurance should be placed with reputable companies which have a general policy holder rating of no less than A, as determined by the latest edition of the Best's Insurance Reports or its successor or equivalent guide or rating service. The Board should take particular care to avoid any conflict of interest in the placing of the insurance, between the Association and the members of the Board or any employee of any management company managing the project.

IN WITNESS WHEREOF, R.C. Lands, Inc., a Kentucky corporation, by resolution of its Board of Directors and by its duly authorized officer, has hereunto set its signature on the date first written above.

R.C. LANDS, INC., A Kentucky Corporation

By: 

DOUGLAS E. CULL SECRETARY

SEC.

COMMONWEALTH OF KENTUCKY  
COUNTY OF Campbell

The foregoing instrument was acknowledged before me on this  
28th day of October, 1988, by Douglas A. Cull,  
Secretary, R.C. Lands, Inc., a Kentucky corporation, on behalf of  
the corporation.

  
\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 7-22-91

Jurisdiction-State at Large

EXHIBIT "A"

All future expansions of the project must come out of the tract lying to the North East of Wessex Glen Condominiums Phase I depicted on the recorded plat designated as "future development". None of said real estate described below shall be a part of the project or considered a part of the project until it has been specifically brought into the project either by this declaration or by an amended or supplemental declaration.

Common areas will be subject to various easements including for utilities and access in favor of the developer.

Except for phase 1 none of the above property lying to the North East designated as "future development" is subject to the Declaration and may never be subjected to the Declaration unless the developer has annexed it into the project by written and recorded instrument by the procedure described in the Declaration.

The property designated for possible future expansion is also more particularly described on the following exhibit A-1.

EXHIBIT A-1

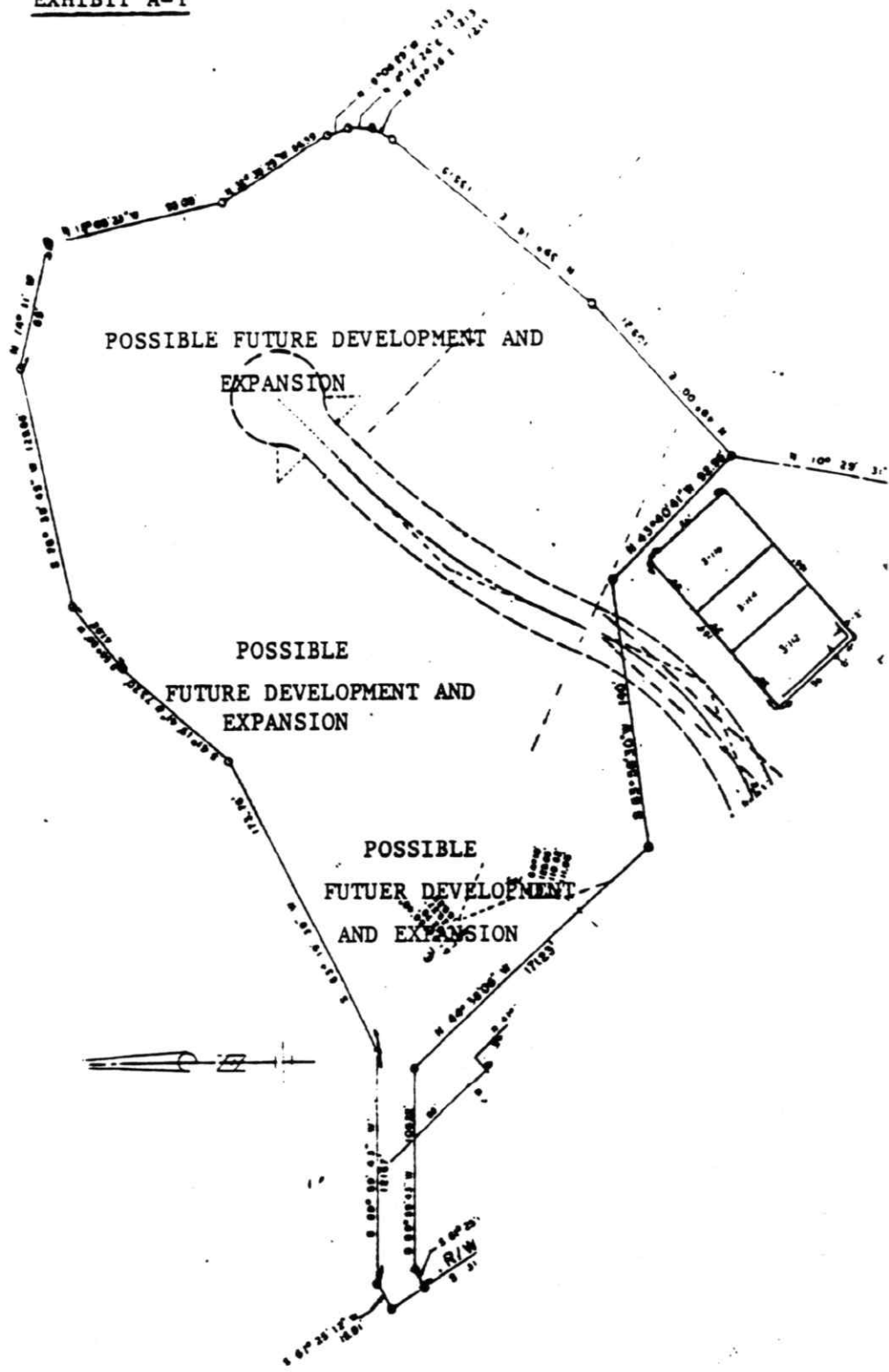




EXHIBIT "B"

The initial real estate subject to the Declaration is all of the real estate known as Phase 1, Wessex Glen Condominiums, as shown at Plat 45-A, of the Campbell County Clerk's records at Newport, Kentucky, including specifically the common areas and specifically excluding Units 1-101, 1-103, 2-102, 2-104, 2-106, 2-108 and 2-110 and also excluding that property designated for future development on said plat as Units 3-112, 3-114 and 3-116.

This Instrument Prepared By:



DANA E. DEERING, ESQ  
ROBINSON, ARNZEN, PARRY & WENTZ  
600 Greenup Street  
P.O. Box 472  
Covington, Kentucky 41012-0472  
(606) 431-6100