

Cross Reference: Instrument No. 6410, Book 68, Pages 75-103
Instrument No. 9703, Book 117

AMENDED AND RESTATED DECLARATION UNDER
HORIZONTAL PROPERTY ACT AND CODE OF BY-LAWS OF
"PRESTWICK ONE" HORIZONTAL PROPERTY REGIME AND
PRESTWICK ONE HOMEOWNERS ASSOCIATION, INC.

This Amended and Restated Declaration Under Horizontal Property Act and Code of By-Laws of "Prestwick One" Horizontal Property Regime and Prestwick One Homeowners Association, Inc. is executed this 11 day of April, 2003, by the undersigned on behalf of said Association.

WITNESSETH:

WHEREAS, the Prestwick One Horizontal Property Regime located in Hendricks County, Indiana was established by and is subject to a certain "Declaration Under Horizontal Property Act--'Prestwick One'" (hereinafter "Declaration"), which was recorded on February 5, 1975, as **Instrument No. 6410** in Book 68, pages 75-103, in the Office of the Recorder of ~~Hamilton~~ ^{Hendrick} County, Indiana; and

WHEREAS, the original developer of Prestwick One, pursuant to the authority granted in the Declaration, caused to be incorporated under the laws of the State of Indiana a nonprofit corporation presently under the name "Prestwick One Homeowners Association, Inc." (hereafter, "Association"), whereby all Owners in Prestwick One are Members of the Association; and

WHEREAS, the By-Laws of the Association (hereafter "By-Laws") were attached and recorded as Exhibit B to the Declaration; and

WHEREAS, an Amendment to the By-Laws was recorded on June 14, 1989, as **Instrument No. 9703** in Book 117, in the Office of the Recorder of ~~Hamilton~~ ^{Hendricks} County, Indiana; and

WHEREAS, Article VII, Section 1 of the Declaration states that the Declaration's provisions may be amended by the affirmative vote of members representing at least two-thirds (2/3) of the total interest in the Common Areas in Prestwick One at a meeting of the members duly called for such purpose; and

WHEREAS, the Owners and Members within Prestwick One desire to amend and restated the provisions of the Declaration and By-Laws; and

WHEREAS, after written notice was duly given, a Special Meeting of the Association was held on November 18, 2002; and

WHEREAS, at said Special Meeting, not less than two-thirds (2/3) of the votes of the Members cast at said meeting were cast in favor of the following amendments to the Declaration and By-Laws; and

WHEREAS, prior to the recording hereof with the Office of the Recorder of ~~Hamilton~~ ^{Hendricks} County, Indiana, more than thirty (30) days will have lapsed since the Association sent written notice of this Amended and Restated Declaration and By-Laws to the institutional holders of all first mortgages of the Units in Prestwick One.

NOW THEREFORE, the Declaration and By-Laws are hereby amended and restated as follows:

ARTICLE I **DEFINITIONS**

Section 1.1. Definitions. Unless the context shall plainly require otherwise, the following words when used in this Declaration and/or any and all exhibits hereto shall have the following meanings:

(a) "Unit" or "Apartment" means an enclosed space consisting of one or more rooms occupying all or part of one or more floors in buildings of one or more floors or stories provided, always, that any such unit has direct exit to a thoroughfare or to a common area leading to a thoroughfare. The lower vertical boundary of any such Unit in the project is a horizontal plane or planes, the elevation of which coincides with the elevation of the upper surface of the unfinished subfloor thereof extended to intersect the lateral or perimetrical boundaries thereof. The upper vertical boundary of any such Unit is a horizontal plane or planes, the elevation of which coincides with the lower surface of the unfinished ceiling thereof, extended to intersect the lateral or perimetrical boundaries thereof. The lateral or perimetrical boundaries of any such Unit are vertical planes which coincide with the unexposed surfaces of the perimeter walls thereof, to include the perimeter drywall, windows and doors thereof, extended to intersect the upper and lower vertical boundaries thereof and to intersect the other lateral or perimetrical boundaries of the Unit. Mechanical equipment and appurtenances located within any unit and designated to serve only that unit, such as appliances, range hoods, outlets, electrical receptacles and outlets, fixtures, heating and air conditioning equipment, and the like, shall be considered a part of the Unit.

(b) "The Property" or "Prestwick One" means the property subject to the Declaration.

(c) "Owner" or "co-owner" means any person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a Unit within the Property; provided, however, that any person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be an Owner, by reason of such interest.

(d) "Association" means the Prestwick One Homeowners Association, Inc., an Indiana nonprofit corporation, being the association of all of the Owners.

(e) "Common Area and Facilities" or "Common Areas" means both General Common Areas and Facilities and Limited Common Areas, as hereinafter defined.

(f) "By-Laws" means the By-Laws for the administration and management of the Association which consist of Articles VIII through XX of this Declaration.

ARTICLE II **CONDOMINIUM PROPERTY**

Section 2.1. Property Subject to Declaration. The real property which is, and shall be, held, conveyed, divided or subdivided, hypothecated or encumbered, sold, leased, rented, used, occupied, and improved subject to this Declaration (the Property) is located in the County of Hendricks, State of Indiana,

and is more particularly described on "Exhibit A" which was attached to the original Declaration for Prestwick One as filed with the Hendricks County Recorder on February 5, 1975, as Instrument No. 6411 at Book 68, Page 75, and by this reference made a part hereof.

Section 2.2. The Units. The general description and number of each Unit, including its area, location and such other data as may be necessary or appropriate for its identification, is set forth on the Record Plat, which Record Plat is incorporated herein and by this reference made a part hereof.

ARTICLE III COMMON AREAS

Section 3.1. General Common Areas and Facilities. Except as otherwise set forth on the Record Plat, the General Common Areas and Facilities shall mean and include at least the following:

- (a) the Property, except for the Units; and
- (b) the foundations, bearing walls, perimeter walls, main walls, roofs, columns, girders, beams, supports, and parking structures not designated as Limited Common Areas or Facilities; and
- (c) the roofs, yards, streets, parking areas not designated as Limited Common Areas or Facilities, and gardens, except as otherwise provided; and
- (d) all pipes, conduits, cables, wires and other utility lines which provide services to the Units such as water, sewer, power, etc., up to the point where they pass through the exterior perimeter surfaces of the buildings in which the Units are located; and
- (e) the premises designated on the Record Plat for the lodging of custodial or managerial personnel, if any; and
- (f) all other elements of the property rationally of common use or necessary to its existence, upkeep and safety.

Section 3.2. Limited Common Areas and Facilities. The Limited Common Areas and Facilities include those designated as such on the Record Plat and such other as are agreed upon by a majority of the co-owners to be reserved for the exclusive use of a certain Unit or Units. All areas designated on the Record Plat as a balcony, deck, terrace, patio, fenced area, garages or the like, and designated thereon as Limited Common Area, are reserved for the exclusive use of the Owners of the Units to which they are adjacent or to which they are declared to be appurtenant by appropriate designation on the Record Plat. The designation of areas as Limited Common Areas, when such areas are not so designated on the Record Plat, shall be accomplished by the recording of an amendment to the Declaration and anything herein contained to the contrary notwithstanding, as respects the percentage of vote required for the amendment of the Declaration, the designation of such additional Limited Common Areas may be accomplished by the vote of those Owners owning a majority of the "adjusted square footage", as hereinafter defined.

ARTICLE IV
PERCENTAGE INTERESTS

Section 4.1. Undivided Interest in Common Area and Facilities, etc. Each Unit shall have the same incidents as real property and the Owner of any Unit shall hold the same in fee simple and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the Common Areas and Facilities equivalent to the percentage interest representing the "adjusted square footage" of his or her Unit to the total "adjusted square footage" of the Property. The total "adjusted square footage" of the Property and of each Unit, and according to those basic "adjusted square footages", the percentage appertaining to each Unit of the Common Expenses of and rights in the Common Areas and Facilities is set forth on "EXHIBIT C" which was attached to the original Declaration for Prestwick One as filed with the Hendricks County Recorder on February 5, 1975, as Instrument No. 6411 at Book 68, Page 75 and which is being re-attached hereto and by this reference is made a part hereof. The percentage of the undivided interest in the Common Areas and Facilities herein established shall not be changed without the unanimous consent of the Co-Owners evidenced by an appropriate amendment to this Declaration recorded among the Land Records for Hendricks County, Indiana. The undivided interest in the Common Areas and Facilities shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such percentage interest is not expressly mentioned or described in the conveyance or other instrument.

Section 4.2. Adjusted Square Footage. The term "adjusted square footage" shall be deemed to mean square footage of the Unit excluding basement area and fifty-one and two-tenths percent (51.2%) of the square footage in any basement areas, computed by reference to the plans, regardless of actual construction.

ARTICLE V
PARTITION, ENCROACHMENTS & EASEMENTS

Section 5.1. Covenants Against Partition. The Common Areas and Facilities, both General and Limited, shall remain undivided. No owner of any Unit or any other person shall bring any action for partition or division thereof except as may be provided for in the Indiana Horizontal Property Act.

Section 5.2. Encroachments. If any portion of the Common Areas and Facilities now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Areas, as a result of the construction or repair of the buildings, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist. In the event any building, any Unit, any adjoining Unit, or any adjoining Common Area, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then reconstructed, encroachments of parts of the Common Areas upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Areas, due to such reconstruction, shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

Section 5.3. Easements.

(a) Each Unit shall be subject to an easement for the benefit of Co-Owners of all of the other Units to and for the unobstructed and uninterrupted use of any and all pipes, wires, ducts, flues, chutes, conduits, cables and wire outlets and utility lines of any kind and other common facilities located within or accessible only from any particular Unit and for support.

(b) The Property shall, in addition, be subject to an easement for the benefit of abutting and adjoining property owners for the flow and passage of storm and surface waters; provided, however, that such waters may be managed in the discretion of the Board of Directors to the extent that such management does not adversely affect the use and enjoyment of Common Areas and Facilities or of abutting and adjoining properties.

(c) All paved road and parking surfaces in the Property shall be subject to an easement for the benefit of the Prestwick Community Services Association, Inc., its members, licensees and invitees, its successors and assigns and members, licensees and invitees thereof for their use and enjoyment and for the maintenance and street lighting of such streets, roads and paved areas.

(d) All sewer and water mains, trunks and transmission lines and land in which they are installed are subject to an easement for the benefit of the water and sewer utility companies providing service for the transmission of water and sewage and for the care and maintenance of such lines, all as more particularly described in an easement dated February 4, 1975, and recorded February 5, 1975 as Instrument No. 6407 in Book 235 at page 393-6 in the Office of the Recorder for Hendricks County, Indiana and an easement dated February 4, 1975, and recorded February 5, 1975 as Instrument No. 6408 in Book 235 at page 397-400 in the Office of the Recorder for Hendricks County, Indiana.

ARTICLE VI
ENFORCEMENT

Section 6.1. Construction and Enforcement. The provisions hereof (including the By-Laws) as well as the Rules and Regulations adopted by the Board of Directors, shall be liberally construed to effectuate the purpose of creating and maintaining a uniform plan for the development and operation of a Horizontal Property Regime. Enforcement of these covenants and restrictions, including the By-Laws and Rules and Regulations, shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants and restrictions, either to restrain or enjoin violation or to recover damages, or both, and against any Unit to enforce any lien created thereby. The right of enforcement belongs to the Association and to any Owner. The failure or forbearance by the Association or any Owner to enforce any such covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restrictions, including the By-Laws, cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 6.2. Severability. Each provision of this Declaration (including the By-Laws and the Rules and Regulations) is severable from every other provision, and the invalidity or unenforceability of any one or more provisions shall not change the meaning of or otherwise affect any other provision. To the extent that any such provision is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent lawful, the provision shall be enforced.

Section 6.3. Captions. The captions contained in this Declaration (including the By-laws) are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

Section 6.4. Costs and Attorneys Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of the Indiana Horizontal Property Act or this Declaration (including the By-laws), the party initiating such proceeding shall be entitled to recover its costs and expenses, including but not limited to, reasonable attorneys' fees, incurred in connection with such proceeding from such Owner, if it is found or agreed in such proceeding that such failure or default did occur.

ARTICLE VII **AMENDMENT**

Section 7.1. Amendment. This Declaration, including the By-Laws herein, may be amended at any time by the affirmative vote of a Majority of the Owners (as defined in Section 9.5(e) below) at any meeting of the members duly called for such purpose. An amendment shall be effective only upon the recording of the same among the Land Records with the Hendricks County Recorder, and shall be signed by the President and Secretary of the Association. Amendments may be proposed by the Board of Directors or by petition signed by members representing at least ten percent (10%) of the total percentage interest. A description of any proposed amendment shall accompany the notice of any regular or special meeting of the Association at which such proposed amendment is to be voted upon.

ARTICLE VIII **MEMBERSHIP**

Section 8.1. Members. Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, which owns a Unit within the Prestwick One Property shall, automatically upon becoming an owner, be and become a member of the Association and shall remain a member until such time as his ownership of a Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Unit; provided, however, that any person who holds the interest of an Owner in a Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Association.

ARTICLE IX
MEETINGS OF ASSOCIATION

Section 9.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a meeting of the Co-Owners shall be held for the purpose of electing the Board of Directors, and for such other purposes as may be required by the Declaration, these By-Laws, the Articles, or the Indiana Horizontal Property Act.

Section 9.2. Annual Meeting. The annual meeting for the Co-Owners and the Association shall be held in the month of October of each year, with the specific date, time and place to be determined by the Board of Directors. At each annual meeting, the Co-Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 9.3. Special Meetings. A special meeting of the Co-Owners and the Association may be called by the President, by resolution of the Board of Directors or upon a written petition of the Owners of not less than ten percent (10%) of the total percentage interest. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 9.4. Notice and Place of Meetings. All meetings of the Members of the Association shall be held at the Prestwick clubhouse or at any suitable place in Hendricks County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, and place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. Any written notice delivered to the Co-Owners as part of a newsletter or other publication regularly sent to the Co-Owners constitutes a written notice. If at any meeting an amendment to the Declaration, the Articles of Incorporation, or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Co-Owners at their respective addresses as the same shall appear upon the records of the Association. If an annual or special meeting of Co-Owners is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place is announced at the meeting pursuant to the Indiana Nonprofit Corporations Act of 1991 (as the same may be amended) before adjournment.

Section 9.5. Voting.

(a) Number of Votes. Each Owner shall be entitled to cast that number of votes on each matter coming before the meeting which is equal to the percentage interest of ownership in the General Common Areas and Facilities applicable to the Owner's Unit or Units as set forth in Exhibit "C" attached hereto. The total number of votes for all Co-Owners will be one hundred (100). The total number of votes for or against any matter shall then be divided by the total Percentage Vote to determine the respective proportions of Owners supporting or opposing such matter, or by the number of votes of those Owners who are present or represented at such meeting, to determine the respective proportions of

Owners present or represented at such meeting supporting or opposing such matter. In voting for directors, each Owner (or his or her representative) shall be entitled to cast such number of votes for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner shall be allowed to accumulate his or her votes. To the extent provided in the Indiana Nonprofit Corporations Act of 1991, and except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, all as amended, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

(b) Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Unit, all such persons or entities shall be members of the Association, but all of such persons or entities shall have only such number of votes applicable to the Unit which is equal to the percentage of ownership in the General Common Areas applicable to the Owner's Unit as set forth in Exhibit "C", which votes shall be exercised as they among themselves determine, but in no event shall more than such number of votes be cast with respect to any such Unit.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Association stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. An Owner may vote either in person or by his or her duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Association prior to the commencement of the meeting. No such proxy shall remain valid for longer than eleven (11) months from the date of its execution, unless a longer term is specified in the proxy.

(e) Quorum. Except where otherwise expressly provided in the Indiana Horizontal Property Act, the Declaration, these By-Laws, or the Articles or the Indiana Nonprofit Corporations Act, the presence of Owners or their duly authorized representatives owning at least ten percent (10%) of the total percentage interest shall constitute a quorum at all meetings. Unless otherwise required herein or by the Indiana Horizontal Property Act or the Indiana Nonprofit Corporations Act, the Owners at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum. As used elsewhere in these By-Laws, the term "**Majority of Owners**" shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total percentage interest, and the term "**Majority of the Vote**" shall mean a majority of the votes of the Owners present or represented at such meeting at which a quorum is present.

Section 9.6. Conduct of Annual Meeting. The Chairman of the annual meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

- (1) Roll call and certificate of proxies.
- (2) Proof of notice of meeting or waiver of notice.
- (3) The Secretary shall read the minutes of the last annual meeting and the minutes of any regular or special meeting of the members held subsequent thereto, unless such reading is waived by a Majority of the Vote as defined in Section 9.5(e) hereof.
- (4) Reports of officers, if any.
- (5) Reports of committees, if any.
- (6) Unfinished business.
- (7) Election or appointment of inspectors (or "tellers") of election.
- (8) Election of Directors. Nominations for the Board of Directors may be made by an Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least thirty (30) days prior to the annual meeting. Nominations for the Board of Directors will also be accepted from the Owners attending the annual meeting. Voting for the Board of Directors will be by paper ballot, unless balloting is dispensed with by the unanimous consent of the members present at the meeting, in person or by proxy. Because the Owners have different percentage interests and, thus, have different numbers of votes, each Owner must sign his or her ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he or she is entitled for as many nominees as are to be elected; however, no Owner shall be entitled to accumulate his or her votes. Those persons receiving the highest number of votes shall be elected.
- (9) Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a Majority of the Vote as defined in Section 9.5(e) hereof.
- (10) Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting;.

Section 9.7. Conduct of Special Meeting. The President of the Association shall act as Chairman of any special meetings of the Association. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

Section 9.8. Written ("Mail-In") Ballots. In lieu of any annual or special meeting of the Co-Owners, written (or "mail-in") ballots may be utilized in the manner prescribed in the Indiana Nonprofit Corporations Act of 1991 (as amended).

ARTICLE X **BOARD OF DIRECTORS**

Section 10.1. Board of Directors. The affairs of the Association shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The Board of Directors shall be composed of five (5) persons who each own at least one (1) Unit.

Section 10.2. Additional Qualifications. To be eligible to be elected as a Director and in order to continue to serve as a Director, the person must not only be an Owner of a Unit, but also be:

- (a) a resident in Prestwick One;
- (b) not delinquent for more than sixty (60) days on the payment of any Association dues or assessments or any other amounts payable to the Association; and
- (c) in compliance with the covenants, restrictions, rules and regulations applicable to Prestwick One, as determined by a majority of the Board of Directors.

Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Unit may be represented on the Board of Directors by more than one person at a time.

Section 10.3. Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of the Association. Each Director shall serve a term of two (2) years, with the terms being staggered. For annual meetings held in even numbered years, two (2) Directors shall be elected. For odd numbered years, three (3) Directors shall be elected. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled through a vote of a majority of the remaining Directors to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Despite the expiration of a Director's term, the Director continues to serve until a successor is appointed or elected and qualified.

Section 10.4. Removal of Directors. A Director or Directors may be so removed by the Owners only at a special meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 10.5. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment, the following:

- (a) Protection, repair and replacement of the General Common Areas and Limited Common Areas, unless the same are otherwise the responsibility or duty of the Owners; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) Procuring of utilities, removal of garbage and waste if not provided by the municipality, and snow removal from the General Common Areas;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas and, where applicable, Limited Common Areas;
- (d) Surfacing, paving, and maintaining private streets, driveways, parking areas, and sidewalks, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner prior to the commencement of the next year;
- (g) Preparing annually a full accounting of all receipts and expenses incurred during each year, which accounting shall be made available to each Owner upon request;
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Prestwick One Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours upon reasonable advance notice;
- (i) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable with or without cause upon thirty (30) days written notice, and any such agreement may not exceed three (3) years, renewable by agreement of the parties for successive one (1) year periods. This shall prohibit the Association from being "self-managed";
- (j) Procuring and maintaining in force all insurance coverage required by the Declaration, these By-Laws and the Indiana Horizontal Property Act, as amended;

(k) Performing such other duties as may be reasonably inferred from the provisions of the Declaration or the Indiana Horizontal Property Act.

Section 10.6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

- (a) To purchase for the benefit of the Co-Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (b) To procure for the benefit of the Co-Owners fire and extended coverage insurance covering the buildings and improvements on the Property to the full insurable value thereof, to procure public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, the Indiana Nonprofit Corporations Act, or the Indiana Horizontal Property Act, all as amended, for the benefit of the Owners, and the Association;
- (c) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas;
- (e) To include the costs of all of the above and foregoing as Common Expenses of the Association and to pay all of such costs therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association and to designate the signatories thereto;
- (g) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof;
- (h) To grant licenses, easements, rights-of-way and other rights of use in all or any part of the Common Areas.

Section 10.7. Limitations on Board Action. The authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00), unless the prior approval of a Majority of Owners (as defined in Section 9.5(e) hereof) is obtained, except in the following cases:

(a) Supervision and management of the replacement or restoration of any portion of the Property damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and,

(b) Proposed contracts and proposed expenditures expressly set forth in the annual budget as approved by the Board of Directors. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded and by doing so, the total budget will not be increased; and

(c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

The said Ten Thousand Dollar (\$10,000.00) maximum shall automatically be adjusted every five (5) years from the date of recording of these By-Laws to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

Section 10.8. Compensation. No Director or Officer shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a Majority of Owners as defined in Section 9.5(e) hereof. The Managing Agent, if any, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10.9. Meetings and Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. For all other Board meetings, the Secretary shall give notice of such meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. Special meetings of the Board may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. To the extent provided in the Indiana Nonprofit Corporations Act, a Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

Section 10.10. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held immediately after the adjournment of the Association's annual meeting at which Directors are elected, or within ten (10) days thereafter.

Section 10.11. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 10.12. Quorum. At all meetings of the Board, unless the Indiana Nonprofit Corporations Act, the Indiana Horizontal Property Act, or these By-Laws provide otherwise, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 10.13. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 10.14. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 10.15. Standards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Association shall be as set forth in the Indiana Nonprofit Corporations Act of 1991, as the same may be amended from time to time.

ARTICLE XI **OFFICERS**

Section 11.1. Officers of the Association. The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 11.2. Election of Officers. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer shall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board or upon an affirmative vote of a Majority of Owners (as defined in Section 3.5(e) hereof), any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 11.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he or

she may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 11.4. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him or her by the Board or by the President.

Section 11.5. The Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall authenticate the Association's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 11.6. The Treasurer. The Board shall elect from among the Owners or Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Association. He or she shall immediately deposit all funds of the Association coming into his or her hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Association. The Treasurer may permit the Managing Agent, if any, to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 11.7. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist and shall delegate to them such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE XII

ADDITIONAL RIGHTS AND DUTIES OF BOARD

Section 12.1. Right of Entry. An Owner or occupant of a Unit shall be deemed to have granted the right of entry to his Unit to the Board, the Managing Agent, or any person authorized by the Board in case of any bona fide emergency, in order to remedy any circumstance threatening his or her Unit, the building located therein, or any other property or person, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work, when required, to enter his Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.

Section 12.2. Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of the Property as the Board may deem desirable, including but not limited to the use of the General Common Areas, Limited Common Areas and Units. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

ARTICLE XIII

INDEMNIFICATION

Section 13.1. Indemnification of Directors and Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director or officer of the Association shall be indemnified by the Association to the same and fullest extent that directors of nonprofit corporations are indemnified under the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended.

ARTICLE XIV

MANAGEMENT

Section 14.1. Maintenance, Repairs and Replacements. Except as otherwise described in Appendix A attached hereto and incorporated herein, the Association shall be responsible for maintenance, repairs and replacements outside the boundaries of the Units (defined in Section 1.1(a) above), and these costs shall be a Common Expense of the Association unless such repairs or replacements are the result of negligence or misuse of the area by an Owner.

Except as otherwise described in Appendix A attached hereto and incorporated herein, each Owner shall, at his or her expense, be responsible for maintenance, repairs and replacement within the boundaries of his or her Unit. Each Owner shall promptly perform all repairs within his or her Unit which, if neglected, might adversely affect any other part of the Prestwick One property.

In the event that repair of any Unit is reasonably necessary in the discretion of the Board to protect the Common Areas or Limited Common Areas, or to preserve the appearance or value of the Prestwick One Property, or is otherwise in the interest of the general welfare of the Co-owners, the Board shall have the power to undertake such repair. No such repair shall be undertaken without a resolution by the Board, and after first informing the Owner in writing of the untenable condition of his or her property. The Board shall allow reasonable time for the Owner to respond in writing to the Board and to make repairs. Should the Owner fail or refuse to comply with the Board's request, the Board shall have repairs made and the cost of any such repair shall be assessed against the Unit. A statement for the amount assessed shall be rendered promptly to the then Owner of the Unit, at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Article XVI hereof.

Each Owner shall, at his or her expense, be responsible for the decoration and appearance of any balcony, patio, deck, or porch to which there is direct access from the interior of his or her Unit. Each Owner is responsible for the interior maintenance and appearance of the garage for such Unit.

The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Common Areas.

Section 14.2. Association as Attorney-in-Fact. The Association, by and through its Board of Directors, is hereby irrevocably appointed as attorney-in-fact for the Owners of all the Units in Prestwick One, and for each of them, to manage, control and deal with the interests of such Owners in the Common Areas, Limited Common Areas and Units to permit the Association to fulfill all of its powers, functions and duties under the provisions of the Indiana Horizontal Property Act, the Indiana Nonprofit Corporations Act, the Declaration, the By-Laws, and the Rules and Regulations, and to exercise all of its rights thereunder and to deal with the Property upon its destruction and/or the proceeds of any insurance. The foregoing shall be deemed to be a power of attorney coupled with an interest and the acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact.

Section 14.3. Easements for Utilities and Related Purposes. The Association, by and through its Board of Directors, is authorized and empowered to grant (and shall from time to time grant) such licenses, easements and/or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the Property as may be considered necessary and appropriate by the Board for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and/or welfare of the Owners of the Units.

Section 14.4. Limitation of Liability. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to person or property caused by the elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Areas or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Areas. Nothing contained in this Section 14.4 shall be deemed to void or impair any contract of insurance insuring the Association against claims and liabilities disclaimed herein on the part of the Association. No diminution or abatement of Regular Assessments or Special Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas, or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE XV

MISCELLANEOUS

Section 15.1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 15.2. Personal Interests. Except as permitted under Section 10.8 hereof, no member of the Association shall have or receive any earnings from the Association; provided, however, that a member who is an officer, director, employee, or agent of the Association may be reimbursed for expenses incurred on the Association's behalf.

Section 15.3. Contracts, Checks, Notes, Etc. In the conduct of the ordinary course of business of the Association, all contracts and agreements entered into by the Association and all checks, drafts and bills of exchange and orders for the payment of money shall be signed by the Treasurer or Managing Agent, unless otherwise directed by the Board of Directors, or unless otherwise required by law.

ARTICLE XVI ASSESSMENTS

Section 16.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments; and (2) Special Assessments, such assessments to be established and collected as hereinafter provided. The Regular and Special Assessments, together with interest, late fees, costs, reasonable attorney's fees, and any other obligation which may be charged to an Owner pursuant to these By-Laws or the Declaration, shall be a charge on the Unit, and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment or charge, together with interest, late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 16.2. Annual Accounting. Annually, within ninety (90) days after the close of the Association's fiscal year, the Board of Directors shall cause to be prepared and made available for inspection to each Owner an audited financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding year.

Section 16.3. Annual Budget. Prior to December 1st each year, the Board of Directors shall cause to be prepared an annual budget for the ensuing fiscal year, estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the beginning of the following year. The failure or delay of the Board of Directors to prepare a budget and furnish a copy thereof to the Co-Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay the Common Expenses as herein provided, whenever determined, and in the absence of an annual budget, the Owner shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is established.

Section 16.4. Regular Assessments. Promptly following the adoption of the annual budget, the Board of Directors shall give written notice of the assessment against each respective Unit based on its percentage interest (herein called the "Regular Assessment"). The Regular Assessment against each Unit shall be assessed on a fiscal year basis commencing on January 1st and shall be due and payable in equal monthly installments, in advance, on the first day of each month. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, or otherwise, as directed by the Board of Directors. The Regular Assessment shall automatically become a lien on that Unit on the date it is due and payable.

In addition to meeting the estimated cash requirements for the Common Expenses, the annual budget and the Regular Assessment shall be established to include the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement and repair of the General

Common Areas and Limited Common Areas, which replacement reserve fund shall be used only for those purposes and not for usual and ordinary repair expenses of the Property. Such reserve fund shall be:

- (a) maintained in a separate, federally insured, interest bearing account with a bank or savings association authorized to conduct business in Hendricks County; or
- (b) invested in the same manner, and in the same types of investments, in which the funds of a political subdivision may be invested under Indiana Code 5-13-9, as amended, or as otherwise provided by law.

Section 16.5. Special Assessments. From time to time, Common Expenses of an unusual or extraordinary nature or otherwise not anticipated may arise. At such time and with the approval of a Majority of the Vote as defined in Section 9.5(e) at a special meeting called for such purpose, the Board of Directors shall have the full right, power and authority to make and levy special assessments which, upon resolution of the Board of Directors, shall become a lien on each Unit, prorated in accordance with the Percentage Interest of each Unit, payable in a lump sum or installments as directed by the Board of Directors (herein called "Special Assessment").

Section 16.6. Rate of Assessments. Each Owner shall pay the Regular Assessments and Special Assessments according to the percentage interest of such Owner's Unit as set forth in Exhibit "C" to the Declaration as originally filed with the Hendricks County Recorder.

Section 16.7. Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the General Common Areas and Limited Common Areas and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the General Common Areas or Limited Common Areas, or by abandonment of the Unit belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments and all other charges. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such assessment on the Owner's Unit may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Regular or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a monthly late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to use the recreational facilities within Prestwick One as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and

(4) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the Managing Agent for processing delinquent Owners' accounts and reasonable attorney's fees and court costs, from the Owner of the respective Unit.

The Association shall, upon demand, and for a reasonable charge not to exceed \$50.00, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Unit have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 16.8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the property subject to assessment. Notwithstanding anything contained in this section or elsewhere in the Declaration or these By-Laws, any sale or transfer of a Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Unit from which it arose).

ARTICLE XVII **RESTRICTIONS**

Section 17.1. Restrictions on Use. The following restrictions on the use and enjoyment of the Units, General Common Areas, Limited Common Areas and the Property shall be applicable to Prestwick One. These are as follows:

- (a) All Units shall be used exclusively for residential purposes and the occupancy of a single family, all as permitted under local zoning ordinances. "Single Family" is defined as a single housekeeping unit, operating on a nonprofit, non-commercial basis between its occupants with a common kitchen and dining area.

- (b) No additional buildings shall be erected or located on the Property other than the buildings designated in the Declaration and shown on the Record Plat (or plans).
- (c) Nothing shall be done or kept in any Unit or in the General Common Areas or Limited Common Areas which will cause an increase in the rate of insurance on any building or the contents thereof. No Owner shall permit anything to be done or kept in his Unit or in the General Common Areas or Limited Common Areas which will result in a cancellation of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.
- (d) No nuisance shall be permitted, including without limitation any activities which are unsafe or hazardous with respect to any person or property, and no waste shall be committed in the Units, General Common Areas or Limited Common Areas.
- (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or balconies or placed on the outside walls of the Building, and no sign, awning, canopy, shutter, or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Building without the prior written consent of the Board. The placement, installation, use and maintenance of antennas, including satellite dishes, shall be subject to rules and regulations promulgated by the Board of Directors.
- (f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any part of the Property, except that small dogs, cats or customary household pets in reasonable numbers may be kept in a Unit subject to rules and regulations adopted by the Board of Directors; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. All pets (including cats) shall be taken outdoors only under leash or other restraint and while attended by its owner, and an Owner shall be fully liable for any injury or damage to persons or property, including the General Common Areas or Limited Common Areas, caused by his or her pet. The Owner shall be responsible for the cleaning of any General Common Area or Limited Common Areas made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. The tethering of pets in any area outside the Owner's home does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Property to enforce local animal control laws and ordinances.

Notwithstanding the above, in no event will any dog whose breed is known for its viciousness or ill temper, in particular, the American Staffordshire Terrier (commonly known as a "Pit Bull Terrier"), be permitted on the Property. Also, no animal of any kind that has venom or poisonous or capture mechanisms, or if let loose would constitute vermin, will be allowed on the Property. The above restrictions shall be effective on the date of filing with the Hendricks County Recorder. Any animals kept within the Prestwick One Property prior to the effective date of the above restrictions which satisfied the then-

existing restrictions for pets shall be permitted to remain on the Property. However, any animals brought into Prestwick One hereafter must comply with the above conditions.

- (g) Nothing shall be done or permitted in any Unit which will impair the structural integrity of any building or which would structurally change any building, except as otherwise provided in the Declaration or these By-Laws; nor shall the premises be used in any unlawful manner or in any manner to cause injury to the reputation of the Property or to be a nuisance, annoyance, inconvenience or damage to other residents of the building or neighborhood, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, or by loud persons, and objectionable odors.
- (h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the General Common Areas or Limited Common Areas. The General Common Areas and Limited Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (i) No industry, business, manufacturing, mercantile, storing, trade, or any commercial activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property; provided, however, that an Owner may maintain an office or home business in the Unit if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's Unit; (3) there are no employees or independent contractors within the Unit other than the Owner or other resident; (4) such Owner has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner complies with all provisions of the local zoning ordinances, including any "home occupations ordinance"; and (6) all other provisions of these By-Laws, the Declaration and the rules and regulations are complied with. The Board may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use.
- (j) No "For Sale" or other signs or other window or advertising display shall be maintained or permitted on any part of the Property or any Unit without the prior written consent of the Board, except for signs on the inside of the Unit's windows.
- (k) All Owners and members of their families, their guests, or invitees, and all occupants of any Unit or other persons entitled to use the same and to use and enjoy the General Common Areas and Limited Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Units, General Common Areas and Limited Common Areas.
- (l) No boats or other watercraft, campers, recreational vehicles, trailers of any kind, buses, mobile homes, commercial or business trucks or vans, motorcycles, mini-bikes, or any

other vehicles of any description (other than normal passenger vehicles consisting of (i) trucks with a maximum load capacity of three-quarters (3/4) of a ton or less, (ii) vans or (iii) automobiles), shall be permitted, parked or stored anywhere within the Prestwick One Property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage and the driving or using of such vehicles solely for the purpose of ingress and egress to and from the Prestwick One Property provided the shortest route to and from a public road outside the community is used. No Owners or other residents shall repair or restore any vehicle of any kind within the Prestwick One Property, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. "Commercial" vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible or which are larger than normally used for noncommercial purposes. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept on the Prestwick One Property. Any vehicle in violation of the above shall be subject to being towed at the expense of the owner thereof.

- (m) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the General Common Areas or Limited Common Areas, except with the express written permission from the Board.
- (n) All trash or refuse shall be stored in appropriate containers inside the Unit (including the garage) or designated trash areas and made accessible for the programmed trash collection system established by the Board of Directors.
- (o) Wood of any kind, including fire wood, must be stored in the Unit Owner's garage.
- (p) Cooking, grills, etc. are not permitted on balconies. All outdoor cooking must be done on the ground level at a safe distance away from the building.
- (q) No balcony or patio shall be used for the storage of any items except normal lawn/outdoor furniture.
- (r) No Owner shall be permitted to place a storage shed, mini-barn or similar building on any part of the Common Areas or the Limited Common Areas.

ARTICLE XVII ARCHITECTURAL CONTROL

Section 17.1. Architectural Control Committee. No alterations, additions or improvements shall be made in or to a Unit or in or to the Limited Common Areas reserved for such Unit which may affect the appearance, safety, structure or mechanical systems of the building or the Property without the prior written approval of the Board of Directors or an Architectural Control Committee appointed by the Board. The Owner's request for any such approval shall be in writing, accompanied by a description of the alteration, addition or improvement, and delivered to the Managing Agent of the Association. The Board of Directors or Architectural Control Committee shall have the obligation to answer any such written request for approval of a proposed alteration, addition or improvement within sixty (60) days after the date

of receipt of such request. The consent of the Board of Directors or Architectural Control Committee may contain such conditions as the Board or Committee, in its sole discretion, deems appropriate including restrictions on the manner of performing such work and requirements for builders risk and liability insurance.

All alterations, additions or improvements in or to any Unit or in or to the Limited Common Areas reserved for such Unit (whether or not affecting the appearance, safety, structure or mechanical systems of the building or the Property) shall be performed in compliance with all applicable laws, regulations and codes. Each Owner and his contractors shall cooperate with the Board of Directors or Architectural Control Committee and other Owners so as not unduly to inconvenience or disturb the other Owners. Each Owner shall cause any alteration, addition or improvement which, in the sole opinion of the Board of Directors, is made in violation of the provisions of this Article XVII to be immediately corrected at said Owner's sole cost and expense.

Section 17.2. Architectural Control Committee - Operation. The Architectural Control Committee shall be composed of three (3) or more Owners appointed from time to time by the Association's Board of Directors, and shall serve at the pleasure of the Board. If the Board fails to appoint an Architectural Control Committee, then the Board of Directors shall constitute the Committee. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling, or to order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

Section 17.3 Approvals. Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 17.4 Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the plans are approved, and shall be substantially completed within twelve (12) months following the date of commencement, or within such longer or shorter period as the Architectural Control Committee shall specify in its approval. If construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Control Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Architectural Control Committee without the prior consent in writing of the Architectural Control Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Control Committee to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance.

Section 17.5 Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural Control Committee in accordance with the provisions of this Article, the Architectural

Control Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural Control Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of these By-Laws as may be applicable.

Section 17.6 Rules and Regulations. The Architectural Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of these By-Laws. The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural Control Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the Board of Directors and shall be entitled to a hearing before the Board of Directors. The affirmative vote of at least two-thirds (2/3) of the Board of Directors shall be required to reverse or modify any decision or determination of the Architectural Control Committee.

Section 17.7. Maintenance of Alterations, Additions or Improvements. If an Owner makes any alterations, additions or improvements as described in this Article XVII, such Owner, and his or her heirs, successors (which includes future Owners of the applicable Unit), and assigns, shall be responsible to maintain, insure, repair and replace the same at such Owner's expense. Thus, the Association shall not be responsible to do so. The Association shall maintain a permanent record of any alterations, additions or improvements which have been made to enable current, prospective, and future Owners to understand their maintenance and repair obligations. If the applicable Owner fails or refuses to maintain, repair and replace such alterations, additions or improvements in a satisfactory manner, the Association, after written notice to the Owner, shall have the right, but not the obligation, to do so. In such event, all costs and expenses incurred by the Association, including attorneys fees, shall be the responsibility of the Owner and shall constitute a lien against such Owner's Unit.

ARTICLE XVIII

INSURANCE

Section 18.1. Casualty Insurance. The Association shall obtain and continue in effect a master casualty insurance policy issued in the name of the Association for the use and benefit of the Owners affording fire and extended coverage insurance insuring the Property in an amount equal to the full replacement value of improvements which, in whole or in part, comprise the General Common Areas and Facilities and Limited Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Owner's mortgagee under a mortgage of record, as their interests appear.

Certificates of insurance shall be issued to each Owner and mortgagee upon request, and the policy shall not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee listed as a mortgagee in the policy.

The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. The Board of Directors may cause such full replacement value to be determined by a qualified appraiser, if it deems such action advisable. The cost of such appraisal shall be a Common Expense.

All proceeds payable at any time and from time to time under such insurance policy shall be payable to the Association, which shall hold such proceeds as trustee for the individual Owners and mortgagees as their interests appear. The proceeds shall be used or disbursed only in accordance with the provisions of the Declaration (including the By-Laws). In the event that the members of the Board of Directors have not posted fidelity bonds for the faithful performance of their duties as such directors or if such bonds do not exceed the funds which will come into their hands, and there is a damage to a part or all of the Property resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of their duties in an amount to be determined by the Owners having more than fifty percent (50%) of the total Percentage Vote, which amount shall not exceed 125% of the loss, before the Association shall be entitled to receive the proceeds of the insurance payable as a result of such loss.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable): (i) contain the standard mortgage clause or equivalent endorsement (without contribution) which is commonly accepted by private institutional mortgage investors in the area in which the Property is located; (ii) provide that the insurer waives any defense based on invalidity arising from the acts of the insured; (iii) provide that the insurer waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, the Owners, and their respective agents and guests; (iv) provide that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted; and (v) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Article XIX of these By-Laws.

Section 18.2. Public Liability Insurance. The Association shall also obtain and continue in effect a master comprehensive public liability insurance policy in such amounts as the Board of Directors shall deem appropriate from time to time; provided, however, that such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury (including deaths of persons) and property damage arising out a single occurrence. Such insurance shall cover each Owner and all other persons entitled to occupy any Unit, the Association, the Board of Directors, any managing agent acting on behalf of the Association and all persons acting or who may come to act as agents or employees of the foregoing with respect to the Prestwick One Property. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and death of persons in connection with the operation, maintenance or use of the General Common Areas and Facilities and Limited Common Areas and, if available at a reasonable premium, legal liability arising out of lawsuits related to employment contracts of the Association. Such insurance coverage shall also cover cross-liability claims of one insured against the other. Such policy shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee listed as a mortgagee in the policy.

Section 18.3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and such other liability insurance as the Board of Directors shall deem necessary, advisable or appropriate. In the event that all or any portion of the Property shall be determined to be in a flood hazard zone, the Association shall also obtain appropriate flood insurance on all Units and General Common Areas and Facilities and Limited Common Areas. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any managing agent acting on behalf of the Association. Such insurance coverage shall also cover cross-liability claims of one insured against the other.

Section 18.4. Premiums. The insurance premiums for any insurance coverage hereinabove described shall be a Common Expense to be paid by assessments levied by the Association.

Section 18.5. Notice; Distribution. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner and to each mortgagee whose interest may be affected thereby. Such notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of proceeds be made by the Association directly to an Owner where there is a mortgage endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and his mortgagee jointly.

Section 18.6. Separate Insurance. Each Owner shall have the right, at his own expense, to purchase such additional insurance as he may deem necessary. Each Owner shall be solely responsible for loss or damage to the contents of his Unit, however caused, including but not limited to all floor and wall coverings and fixtures and betterments installed by the Owner, and to his personal property stored elsewhere on the Property, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in Section 18.1 above relating to the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Unit, but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this section due to proration of insurance purchased by an Owner, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as provided in this Declaration, including the By-Laws.

Section 18.7. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to casualty or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative, including any trustee with whom such Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing such casualty or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association or any trustee or substitute trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and for the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the

execution of all documents; and the performance of all other acts necessary to accomplish such purposes. The appointment of such attorney-in-fact shall not be affected by the incompetence of such owner.

ARTICLE XIX

CASUALTY AND RESTORATION

Section 19.1. Repair. Except as hereinafter expressly provided in this Article XIX, in the event of damage to or destruction of the Property due to fire or other casualty or disaster, the Association shall promptly cause the same to be repaired, reconstructed and restored as nearly as practicable to its former condition and character. The proceeds of insurance, if any, received by the Association shall be applied to the cost of such repair and reconstruction.

Section 19.2. Complete Destruction of the Buildings. In the event of "complete destruction of the Buildings" (hereinafter defined), repair and reconstruction shall not be compulsory, but shall be done only in accordance with the following provisions of this Article XIX. The phrase "complete destruction of the Buildings," as used in this Section 19.2, shall mean a determination, made by the Owners having more than two-thirds (2/3) of the total percentage interest within Prestwick One ("two-thirds (2/3) of the Owners") at a special meeting of the Association called for the purpose of making such determination, that the total destruction of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or other casualty or disaster substantially damaging or destroying the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of the Building. If such a special meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of the Buildings has not been made within such ninety (90) day period, then it shall be conclusively presumed that the Owners determined that there was not a complete destruction of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

Section 19.3. Decision To Repair Even if Complete Destruction. If, under Section 19.2, it is determined by the Owners at the special meeting of the Association referred to therein that there has been a complete destruction of the Buildings, the Buildings shall not be reconstructed and repaired unless, by a vote of two-thirds (2/3) of the Owners (taken at the same special meeting referred to in Section 19.2), a decision is made to repair and reconstruct the Buildings. If two-thirds (2/3) of the Owners vote to repair and reconstruct the Buildings, the insurance proceeds; if any, received by the Association shall be applied to the cost of such repair and reconstruction.

Where there has been a determination by the Owners that there has been a complete destruction of the Buildings, if less than two-thirds (2/3) of the Owners vote in favor of the repair and reconstruction of the Buildings, the Buildings shall not be repaired and reconstructed; and, in such event, the Property shall be deemed to be removed from the provisions of the Indiana Horizontal Property Act as provided in said Act, and the disposition of the proceeds of insurance shall be divided among the Owners in accordance with the respective percentage interest allocated to each Owner's Unit and shall be subject to the applicable provisions of the Indiana Horizontal Property Act.

Section 19.4. Inadequate Insurance Proceeds. If the insurance proceeds, if any, received by the Association as a result of any such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or if there are no insurance proceeds, and if the Property is not to be removed

from the provisions of the Indiana Horizontal Property Act, each Owner shall contribute to the cost for restoring the damage and repairing and reconstructing the Property (or the costs thereof in excess of insurance proceeds received, in any) in accordance with the respective percentage interest allocated to such Owner's Unit. Any such amount payable by the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Indiana Horizontal Property Act.

Section 19.5. Surplus of Insurance Proceeds. If there is any surplus of insurance proceeds after the repair and reconstruction of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the General Common Areas and Facilities and Limited Common Areas.

Section 19.6. Non-Waiver. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against an Owner for committing willful or malicious damage.

ARTICLE XX **LEASING OF UNITS**

Section 20.1. Limits on the Number of Leased Units ("Rental Cap"). In order to insure that the residents within Prestwick One share the same proprietary interest in and respect of the Units and the Common Areas, no more than twenty percent (20%) of the Units may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article XX. If at any time such percentage of Units are leased or rented, an Owner who wants to rent or lease his or her Unit which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Unit shall immediately notify the Board of Directors or Managing Agent of such fact and that Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Unit. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if Units may be leased or whether the maximum number of Units within Prestwick One is currently being leased. If the maximum number of Units is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

Notwithstanding the foregoing, the "rental cap" described above shall not apply to any Unit of an Owner in Prestwick One who, as of October 14, 2002, is renting or leasing said Unit and provides written proof thereof to the Association's Managing Agent by that date. Such proof shall include a copy of each executed lease by such Owner which identifies the tenant (but which may have the rental amount deleted). The Owners of record of such currently-rented Units shall not be subject to the provisions of this Section 20.1, but shall be subject to the remaining provisions of this Article XX. However, when the legal owners of record of any of the above-described Units sell, transfer or convey such Unit(s) to another Owner after October 14, 2002, such Unit(s) shall immediately become subject to this Section 20.1.

Section 20.2. Hardship Exceptions and Waiver. Notwithstanding Section 20.1 above, if an Owner wishes to rent or lease his or her Unit, but the maximum number of Units is currently being leased, the Owner may request the Board of Directors to waive the "rental cap" and approve a proposed lease if

the Owner establishes to the Board's satisfaction that the "rental cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Unit, but only if the Owner satisfies all other requirements of this Article XX. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;
- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Prestwick One due to a change of employment or retirement of at least one (1) of such Owners;
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (5) other similar circumstances.

Section 20.3. General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors. No portion of any Unit other than the entire Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Unit. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

Section 20.4. One Year Waiting Period. In addition to all other provisions of this Article XX, for a period of at least one (1) year after an Owner's acquisition of a Unit, said Owner cannot lease such Unit. After such time, said Unit will be eligible to be leased if all other conditions of this Article XX are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 20.4, if an Owner wishes to lease a Unit prior to the end of the one year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 20.2 above.

Section 20.5. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and

any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 20.6. Association's Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Managing Agent by the Owner within thirty (30) days after execution.

Section 20.7. Violations. Any lease or attempted lease of a Unit in violation of the provisions of this Article XX shall be voidable at the election of the Association's Board of Directors or any other Prestwick One Owner, except that neither party to such lease may assert this provision of this Article XX to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Prestwick One Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 20.8. Institutional Mortgagees. The provisions set forth in this Article XX shall not apply to any institutional mortgagee of any Unit which comes into possession of the Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure.

This Amended and Restated Declaration and By-Laws is executed on the date and year first above written.

PRESTWICK ONE HOMEOWNERS ASSOCIATION, INC.

By: _____
Judith A. Hill, President

Attest:

Patricia L. Colbert, Secretary

ACKNOWLEDGMENT

STATE OF INDIANA)
)
COUNTY OF HENDRICKS)

Before me a Notary Public in and for said County and State, personally appeared Judith A. Hill and Patricia L. Colbert, the President and Secretary, respectively, of Prestwick One Homeowners Association, Inc., who acknowledged execution of the foregoing for and on behalf of said corporation and its members and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this ____ day of April, 2003.

My Commission Expires:

Notary Public - Signature

Residence County: _____

Printed

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Eads Murray & Pugh, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256. (317) 842-8550.

APPENDIX A
CHECKLIST OF MAINTENANCE/REPAIR RESPONSIBILITIES
CLARIFICATION OF AND EXCEPTIONS TO ARTICLE V SECTION 5.01

<u>DESCRIPTION</u>	<u>OWNER</u>	<u>ASSOCIATION</u>	<u>CSA</u>
Balconies		X	
Chimneys			
Flashing (exterior)		X	
Cleaning	X		
Dryer Vents			
Cleaning			
Repair/replacement	X		
Ductwork			
Cleaning			
Repair/replacement	X		
Exterior Doors			
Doors, framing, threshold	X		
Hardware and jams	X		
Operation and adjustments	X		
Patio doors	X		
Exterior caulking, painting, trim		X	
Exterior lights			
Attached to unit	X		
Street lights			
Pool lights			X
Fences (screening, privacy, patio, gates)			
Replacement and repair		X	
Painting		X	
Flower and garden beds			
Side, front, rear of units	X		
Within privacy area	X		
Common areas		X	X
Furnaces and air-conditioning			
Cleaning	X		
Inspection, testing	X		
Repair, replacement	X		
HVAC add-on equipment			
Humidifiers	X		
Dedumidifiers	X		
W Water softeners	X		
Water purifiers	X		
Air cleaners	X		

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CLARIFICATION OF AND EXCEPTIONS TO ARTICLE V SECTION 5.01

<u>DESCRIPTION</u>	<u>OWNER</u>	<u>ASSOCIATION</u>	<u>CSA</u>
Insurance			
Casualty			
Public Liability		X	
Interior damage		X	
Personal contents	X		
	X		
Interior repairs			
Settling cracks			
Appliances, lights, thermostats	X		
Caulking (interior)	X		
Plumbing fixtures	X		
Plumbing, electric, gas lines (inside unit boundaries)	X		
Plumbing, electric, gas lines (outside unit boundaries)			
		X	
Lawn			
Common and limited areas			
Cutting		X	X
Trimming		X	
Cleaning of sidewalks, patios		X	
Fertilization		X	
Replacement, reseeding		X	
Painting			
Interior of unit	X		
Exterior of unit		X	
Patios and decks			
Ground level			
Maintenance, repair, replacement	X		
Extension with approval	X		
Second and third level decks			
Maintenance, repair, replacement		X	
Recreational			
Swimming Pool		X	
Roofs			
Shingles, flashing		X	
Gutters, downspouts			
Cleaning		X	
Painting		X	
Repair, replacement		X	

**APPENDIX A
CHECKLIST OF MAINTENANCE/REPAIR RESPONSIBILITIES
CLARIFICATION OF AND EXCEPTIONS TO ARTICLE V SECTION 5.01**

<u>DESCRIPTION</u>	<u>OWNER</u>	<u>ASSOCIATION</u>	<u>CSA</u>
Roof leak damage			
Repair (exterior)		X	
Repair, repainting (interior)		X	
Drywall repair		X	
Sidewalks, stairs, steps			
Common area sidewalks, steps		X	
Private steps attached to decks or wooden patios			
Maintenance, repair, replacement	X		
Security system, smoke detectors			
Installation, repair, replacement	X		
Snow removal			
Stoops, sidewalks		X	
Common streets		X	
Unit and visitor parking		X	
Storm doors			
Installation	X		
Maintenance, repair, replacement	X		
Screen repair, replacement	X		
Streets			
Signs			X
Paving, repair			X
Numbering parking spaces		X	
Termite/pest control			
Check with management company for details	X	X	
Trees, shrubs			
Pruning, removal		X	
Fertilization, spraying		X	
Weeding common, limited area		X	X
Replacement		X	

APPENDIX A
CHECKLIST OF MAINTENANCE/REPAIR RESPONSIBILITIES
CLARIFICATION OF AND EXCEPTIONS TO ARTICLE V SECTION 5/01

<u>DESCRIPTION</u>	<u>OWNER</u>	<u>ASSOCIATION</u>	<u>CSA</u>
Windows			
**Crank type			
Non-opening	X		
Skylights (with approval)	X		
Garden (with approval)	X		
Other than mentioned above must be approved	X		
Broken window glass	X		
Exterior framing, trim			
Exterior caulking, painting		X	
Flashing		X	
Exterior sills if spearable from jams		X	

**Upon completion of the renovation project (2003-????), all windows, repair and replacement will become the responsibility of the homeowner. Exterior items listed above will still be maintained by the Association.

Note: CSA stands for Community Services Association. All Prestwick homeowners pay a yearly fee to CSA. This covers common areas, street paving, street lights, common ponds, entry areas and other items.

<u>DESCRIPTION</u>	<u>OWNER</u>	<u>ASSOCIATION</u>	<u>CSA</u>
Garages			
Floor, interior repair, replacement	X		
Overhead door operation, openers	X		
Overhead door repair, replacement		X	
Door repair, replacement		X	

EXHIBIT C

PRESTWICK I

UNIT NO.	ADJUSTED SQUARE FEET	PER CENT INTEREST	UNIT ADDRESS	REVISED ADDRESS
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1-1-FOH	1824	1.54168	5109 Fairway Drive	5183 Fairway Drive
2-1-C	1367	1.15296	5111 Fairway Drive	5185 Fairway Drive
3-1-A	1251	1.05513	5113 Fairway Drive	5189 Fairway Drive
4-1-B	1196	1.00874	5115 Fairway Drive	5187 Fairway Drive
5-1-E	1665	1.40430	5117 Fairway Drive	5191 Fairway Drive
1-2-EOH	2075	1.75011	5101 Fairway Drive	5175 Fairway Drive
2-2-D	1909	1.61010	5103 Fairway Drive	5177 Fairway Drive
3-2-C	1735	1.46334	5105 Fairway Drive	5179 Fairway Drive
4-2-F	2239	1.89096	5107 Fairway Drive	5181 Fairway Drive
1-3-FOH	2239	1.89096	5009 Fairway Drive	5149 Fairway Drive
2-3-D	1909	1.61010	5011 Fairway Drive	5151 Fairway Drive
3-3-C	1735	1.46334	5013 Fairway Drive	5153 Fairway Drive
4-3-E	2075	1.75011	5015 Fairway Drive	5155 Fairway Drive
1-22-EOH	2075	1.75011	5001 Vantage Point Road	5109 Vantage Point Road
2-22-COH	1735	1.46334	5003 Vantage Point Road	5111 Vantage Point Road
3-22-DOH	1909	1.61010	5005 Vantage Point Road	5113 Vantage Point Road
4-22-D	1909	1.61010	5007 Vantage Point Road	5115 Vantage Point Road
5-22-C	1735	1.46334	5009 Vantage Point Road	5119 Vantage Point Road
6-22-E	2075	1.75011	5011 Vantage Point Road	5125 Vantage Point Road
1-23-FOH	1829	1.54168	605 Cobblestone Road	668 Cobblestone Road
2-23-D	1541	1.29972	607 Cobblestone Road	672 Cobblestone Road
3-23-C	1367	1.15296	609 Cobblestone Road	676 Cobblestone Road

4-23-D	1541	1.29972	611 Cobblestone Road	680 Cobblestone Road
5-23-C	1367	1.15296	613 Cobblestone Road	686 Cobblestone Road
6-23-F	1665	1.40430	615 Cobblestone Road	690 Cobblestone Road
1-26-F	1829	1.54168	510 Cobblestone Road	621 Cobblestone Road
2-26-B	1196	1.00874	512 Cobblestone Road	625 Cobblestone Road
3-26-A	1251	1.05513	514 Cobblestone Road	627 Cobblestone Road
4-26-D	1541	1.29972	516 Cobblestone Road	633 Cobblestone Road
5-26-EOH	1665	1.40430	518 Cobblestone Road	635 Cobblestone Road
1-27-E	1665	1.40430	526 Cobblestone Road	641 Cobblestone Road
2-27-B	1196	1.00874	528 Cobblestone Road	645 Cobblestone Road
3-27-A	1251	1.05513	530 Cobblestone Road	647 Cobblestone Road
4-27-C	1367	1.15296	532 Cobblestone Road	653 Cobblestone Road
5-27-FOH	1829	1.54168	534 Cobblestone Road	657 Cobblestone Road
1-28-F	1829	1.54168	5102 Coppertree Lane	5146 Coppertree Lane
2-28-B	1196	1.00874	5104 Coppertree Lane	5152 Coppertree Lane
3-28-A	1251	1.05513	5106 Coppertree Lane	5154 Coppertree Lane
4-28-D	1541	1.29972	5108 Coppertree Lane	5158 Coppertree Lane
5-28-EOH	1665	1.40430	5110 Coppertree Lane	5160 Coppertree Lane
1-29-E	1665	1.40430	602 Ironwood Drive	663 Ironwood Drive
2-29-D	1541	1.29972	604 Ironwood Drive	665 Ironwood Drive
3-29-B	1196	1.00874	606 Ironwood Drive	667 Ironwood Drive
4-29-A	1251	1.05513	608 Ironwood Drive	671 Ironwood Drive
5-29-C	1367	1.15296	610 Ironwood Drive	679 Ironwood Drive
6-29-B	1196	1.00874	612 Ironwood Drive	681 Ironwood Drive
7-29-A	1251	1.05513	614 Ironwood Drive	683 Ironwood Drive
8-29-EOH	1665	1.40430	616 Ironwood Drive	685 Ironwood Drive
1-30-E	1665	1.40430	626 Ironwood Drive	695 Ironwood Drive

2-30-D	1541	1.29972	628 Ironwood Drive	699 Ironwood Drive
3-30-B	1196	1.00874	630 Ironwood Drive	703 Ironwood Drive
4-30-A	1251	1.05513	632 Ironwood Drive	707 Ironwood Drive
5-30-C	1367	1.15296	634 Ironwood Drive	711 Ironwood Drive
6-30-B	1196	1.00874	636 Ironwood Drive	715 Ironwood Drive
7-30-A	1251	1.05513	638 Ironwood Drive	717 Ironwood Drive
8-30-EOH	1665	1.40430	640 Ironwood Drive	721 Ironwood Drive
1-31-EOH	2075	1.75011	5101 Vantage Point Road	5173 Vantage Point Road
2-31-D	1909	1.61010	5103 Vantage Point Road	5175 Vantage Point Road
3-31-C	1735	1.46334	5105 Vantage Point Road	5177 Vantage Point Road
4-31-F	2239	1.89096	5107 Vantage Point Road	5179 Vantage Point Road
1-32-FOH	1829	1.54168	707 Ironwood Drive	733 Ironwood Drive
2-32-C	1367	1.15296	709 Ironwood Drive	737 Ironwood Drive
3-32-A	1251	1.05513	711 Ironwood Drive	739 Ironwood Drive
4-32-B	1196	1.00874	713 Ironwood Drive	741 Ironwood Drive
5-32-E	1665	1.40430	715 Ironwood Drive	747 Ironwood Drive
1-33-F	1829	1.54168	702 Ironwood Drive	738 Ironwood Drive
2-33-B	1196	1.00874	704 Ironwood Drive	740 Ironwood Drive
3-33-A	1251	1.05513	706 Ironwood Drive	746 Ironwood Drive
4-33-D	1541	1.29972	708 Ironwood Drive	744 Ironwood Drive
5-33-EOH	1665	1.40430	710 Ironwood Drive	748 Ironwood Drive
1-34-E	1665	1.40430	5120 Fairway Drive	5184 Fairway Drive
2-34-B	1196	1.00874	5122 Fairway Drive	5186 Fairway Drive
3-34-A	1251	1.05513	5124 Fairway Drive	5188 Fairway Drive
4-34-C	1367	1.15296	5126 Fairway Drive	5190 Fairway Drive
5-34-FOH	1829	1.54168	5128 Fairway Drive	5192 Fairway Drive