

## **DECLARATION OF COMMON INTEREST COMMUNITY**

### **FOR**

### **THE BACKWATERS**

**THIS DECLARATION**, effective the 1st day of January, 2008, by **WINDSTAR HOLDINGS LLC**, a West Virginia limited liability company (hereinafter referred to as “Declarant”), the owner of certain real estate and improvements thereon and appurtenances thereto, as described in Article III herein, for itself, and its grantees and assigns, hereby makes the following declaration:

#### **I.**

#### **SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP**

Declarant does hereby submit as a “Planned Community” the real estate particularly described in Article III herein, together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to **THE BACKWATERS**, a common interest community (hereinafter sometimes referred to as “Common Interest Community” or “CIC”), a form of ownership in the manner provided for by West Virginia Code Chapter 36B as amended to the date hereof (the “CIC Act”). The covenants, restrictions, conditions, limitations, duties and obligations herein created are imposed for the benefit of the Declarant, the owners of all Units in **THE BACKWATERS**, The Backwaters Property Owners Association, Inc. as the duly formed association of Unit Owners, and their successors and assigns in ownership of either the land dedicated to **THE BACKWATERS** or certain contiguous tracts of land affected by development of **THE BACKWATERS**, as hereinafter described.

#### **II.**

#### **NAME AND LOCATION**

The name of the Common Interest Community is “**THE BACKWATERS**” and it is comprised of real property located in Union District, Monongalia County, West Virginia.

#### **III.**

#### **THE LAND**

1. The land submitted to the Common Interest Community form of ownership by this instrument is to be known and designated as **THE BACKWATERS**, as more fully shown on the Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. \_\_\_\_, Envelope No. \_\_\_\_\_. Said Plat and any later additions, amendments and subsequent plats as may be from time to time be recorded are hereby made a part hereof for all pertinent purposes. The legal description of the Common Interest Community real estate is described as follows:

A parcel of land located northwest of the intersection of Morgan Run Road (WV County 71) and Lubbuck Lane (WV County Rt. 71/1) and being more particularly described as follows:

Beginning at a point in the northern Right-of-Way of Morgan Run Road (WV County 71), being the southwest corner to the 120.17 acre tract formerly owned by Sure Ventures, L.L.C. (DB 1260 PG 660) and now owned by Windstar Holdings LLC (DB 1354 PG 426), thence with the west line of said Windstar Holdings LLC N 31° 59' E 1,286.45 feet to a 36" ash snag found passing a rebar at 31.25 feet, being the northwest corner to said Windstar Holdings LLC tract, thence S 62° 17' E 843.92 feet to a point passing a rebar at 667.80 feet, thence S 56° 26' E 489.25 feet to a point in the Right-of-Way limits of WV County Rt. 71/1, thence with the westerly Right-of-Way limits of said Co. Rt. 71/1 S 06° 58' W 187.58 feet to a point, thence S 04° 40' W 184.33 feet to a point, thence S 01° 02' E 70.28 feet to a point, thence S 06° 52' E 78.46 feet to a point, thence S 08° 07' E 98.90 feet to a point, thence S 18° 50' E 155.47 feet to a point, thence S 07° 33' E 51.71 feet to a point, thence S 13° 57' W 60.20 feet to a point, thence S 24° 48' W 160.84 feet to a point, thence S 43° 23' W 73.00 feet to a point, thence S 68° 53' W 176.04 feet to a point and being the common corner of Michael M. & Nancy Roder (DB 711 PG 453), thence leaving said Right-of-Way limits of WV County Rt. 71/1 and with line of Roder N 56° 46' W 74.75 feet to a point, thence S 24° 48' W 42.00 feet to a point, thence S 49° 58' W 98.00 feet to a point, thence S 80° 45' W 161.14 feet to a point, thence N 46° 20' W 100.30 feet to a point, thence S 80° 48' W 207.00 feet to a point in the Right-of-Way limits of Morgan Run Road (WV County Rt. 71) and being a common corner of said Roder tract, then leaving Roder line and with said Right-of-Way limits of Morgan Run Road N 54° 16' W 315.22 feet to a point, thence N 52° 05' W 53.78 feet to a point, thence N 36° 03' W 123.15 feet to a point, thence N. 56° 45' W 398.50 feet to a point, thence N 52° 28' W 363.90 feet to a point of beginning containing 51.36 acres, MORE OR LESS.

EXCEPTING that certain real estate conveyed to Brian P. Anderson and Tina L. Anderson, by a Deed dated September 15, 2005, from Stony Brook Properties, LLC, of record in said Clerk's Office in Deed Book 1303, at Page 649, and shown on a plat of record in said Clerk's Office in Map Cabinet D, Envelope 36B as Unit 18 of Lake Crest Estates.

And further, EXCEPTING AND RESERVING all coal, oil, gas and other minerals that have not been previously conveyed, and all rights appurtenant to the mining and severance of the same, with the express agreement by the Declarant to not use or interfere with the surface of the real estate hereby conveyed for such purposes.

And being PART OF the same real estate conveyed to WINDSTAR HOLDINGS LLC, a West Virginia limited liability company, by a deed dated November 1, 2007, from Metropolitan Savings Service Corporation, of record in said Clerk's Office in Deed Book 1354 at Page 426, and more particularly PART OF TRACT D.

2. The Declarant shall cause a plat or plats to be recorded depicting the roadways and improvements in each Phase of THE BACKWATERS as the same are opened for sale to the public.

3. The above-described land owned by the Declarant is encumbered by that certain Deed of Trust dated November 2, 2007, from Windstar Holdings LLC, to James B. Hayhurst, as Trustee, securing United Bank, Inc., the principal sum of \$591,500.00, of record in said Clerk's Office in Trust Deed Book 1598, at Page 25; and that certain Credit Line Deed of Trust dated November 2, 2007, made by Declarant to Craig M. Steele, Trustee, to secure R. Scott Summers in the payment of the principal sum not to exceed \$500,000.00, of record in said Clerk's Office in Trust Deed Book \_\_\_\_\_, at Page \_\_\_\_\_.

4. The Declarant shall cause partial releases for said Deeds of Trust to be recorded as Units are sold, and Declarant shall require said lenders to subordinate their Deeds of Trust to this Declaration by an instrument of record.

5. The above-described land is further subject to all exceptions, reservations, rights-of-way, easements and other conditions as made and imposed upon the real estate as conveyed to Declarant or its predecessors in title.

6. Declarant expressly reserves the right to within the fifteen (15) years subsequent to execution hereof, dedicate additional phases to THE BACKWATERS. Any tracts of real estate which are not dedicated as a future phase by an amendment to this document duly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, are not encumbered by this Declaration.

7. The Declarant reserves from this Declaration rights-of-way or easements to utilize the roadways in THE BACKWATERS for vehicular and pedestrian access through any dedicated Phase to any undedicated or unopened Phase or any retained portion of the parent tract from which THE BACKWATERS is created. Declarant further reserves a right-of-way or easement over and through all Common Areas for installation, construction, laying extension, maintenance, operation, inspection, repair and replacement of utility lines, conduits, pipes, wires, drain ways, mains, and other reasonable and necessary means of transmitting and transporting general utilities, including but not limited to gas, water, electric, telephone, television, sewer and other common utilities to any undedicated or unopened Phase of any retained portion of the parent tract from which THE BACKWATERS is created for the benefit of said real estate. Declarant is not limited in its use of said right-of-way or easements or in its assignment or transfer thereof or its interest therein, nor is Declarant obligated to provide any such utilities to any Phase of the CIC, except as expressly provided herein.

#### **IV. DEFINITIONS**

Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless, as used elsewhere, the text or context in which such term is used indicates another definition:

1. Association: The Backwaters Property Owners Association, Inc., a non-profit corporation, its successors and assigns, which association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, placement, administration and operation of the Common Interest Community.
2. Board: The Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with this Declaration.
3. Building Control Committee (“BCC”): The committee appointed by the Board and composed of three (3) members with Declarant or its designees initially as at least two of such members. The BCC shall approve or disapprove plans and specifications, including color, for all dwellings, structures and improvements erected or placed on any Unit.
4. Building Control Standards (“BCS”): Building standards set forth herein and hereafter promulgated by the Declarant, the Association or the BCC, as the same may be amended from time to time.
5. By-Laws: The By-Laws of the Association, as the same may be amended from time to time.
6. Common Areas: All of the Common Interest Community property other than the Units, including, without limitation, the land and all the improvements and appurtenances thereto and areas of common use (sometimes referred to as “Common Elements”). Any references to “Common Areas” or “Common Elements” on the Plat are solely for general information and do not define or limit the Common Areas.
7. Common Expenses: Expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, a portion of which shall be assessed to individual Unit Owners as set forth hereinafter.
8. Common Interest Community: The real estate with respect to which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvements of other real estate described in this Declaration. “Ownership of a Unit” does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options.

9. Declarant: Windstar Holdings LLC, a West Virginia limited liability company, and its successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns. Declarant has and hereby reserves Special Declarant and Development Rights as set forth hereinafter.

10. Declarant's Other Tracts: Tracts now or hereafter owned by the Declarant which are located near or adjacent to the CIC, including but not limited to Parcels A, B and C as shown on the Plat.

11. Declaration: This document and any subsequent amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a Common Interest Community known as THE BACKWATERS. This document may be amended from time to time by Declarant as may be necessary for Declarant to add additional phases or Units, add or withdraw Common Areas or adjust boundary lines of Units of THE BACKWATERS, and for such other purposes as may be permissible hereunder or otherwise by law.

12. Development Rights: Any rights or combination of rights reserved by Declarant in this Declaration to (1) add contiguous, adjoining or nearby real estate to the Common Interest Community; (2) create Units and Common Areas within the Common Interest Community; (3) subdivide Units or convert Units into Common Areas; (4) withdraw real estate from the Common Interest Community, (5) withdraw Common Areas, or any part thereof, and develop the same into Units or add the same to Units, and/or (6) the right to utilize all Common Interest Community easements for Declarant's Other Tracts.

13. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the terms "Dispose" and "Disposition" do not include the transfer or release of a security interest.

14. Governing Instruments: Collectively and individually, this Declaration and any exhibits recorded herewith, the By-Laws and the Articles of Incorporation for the Association, the Building Control Standards, the Plat, and the Rules and Regulations hereafter adopted by the Association, all as the same may be amended from time to time.

15. Member: All persons or entities holding membership in the Association in accordance with Article XV hereof.

16. Phase: A physical portion of the CIC designated for separate development by the Declarant and containing more than one Unit, but encompassing less than the entire CIC.

17. Plat: That plat of survey and plan of THE BACKWATERS recorded in the aforesaid Clerk's Office in Map Cabinet No. \_\_\_\_, Envelope No. \_\_\_\_, together with those plats of the Common Interest Community hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.

18. Rules and Regulations: Rules and regulations pertaining to the CIC, in addition to those set forth herein, hereafter promulgated or adopted by the Association.

19. Special Declarant's Rights: Rights expressly reserved for the benefit of a Declarant herein, to, among other things, (1) complete improvements indicated on plats; (2) exercise any Development Right; (3) maintain sales offices, management offices and signs advertising the Common Interest Community, Units and improvements thereon; (4) use easements through the Common Areas for the purpose of making improvements within the Common Interest Community or for real estate that may be added to the Common Interest Community; (5) merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or (6) appoint or remove any officer of the Association or any Board of Director during any period of Declarant control.

20. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described on the Plat. A Unit shall be one homesite. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON AREAS, AS DETERMINED BY ARTICLE X.

21. Unit Owner: Any and every record owner, whether one or more persons or entities, of a surface interest in any Unit, excluding those holding an interest merely as security for performance of an obligation, and including, in respect to all unsold Units, the Declarant.

## **V. THE PLATS**

The Plat sets forth the measurements, locations, exterior boundaries and other required data with respect to the Units and the Common Areas. DECLARANT RESERVES THE RIGHT TO, AND MAY CAUSE TO BE RECORDED, FROM TIME TO TIME, AMENDED PLATS OR PLANS SHOWING THE ACTUAL LOCATIONS AND DIMENSIONS OF THE BOUNDARIES OF THE COMMON INTEREST COMMUNITY, FOR WHICH AMENDED PLATS OR PLANS ARE COMPLETED AFTER THE DATE HEREOF. IN THIS DECLARATION, WHENEVER THE TERMS "PLAT", "PLATS" OR "PLANS" APPEAR, THEY SHALL BE DEEMED TO INCLUDE SUCH AMENDED PLATS OR PLANS AS MAY HEREAFTER BE RECORDED PURSUANT TO THIS PARAGRAPH. PRIOR TO THE TIME DECLARANT HAS SOLD ITS FINAL UNIT IN THE CIC, DECLARANT MAY GRANT SETBACK WAIVERS OR AFFECT BOUNDARY ADJUSTMENTS BETWEEN UNITS AND CONSOLIDATE UNITS WITH THE SAME FORCE AND EFFECT AS IF THE SAME WERE EXECUTED BY THE ASSOCIATION.

## **VI. THE UNITS - LEGAL DESCRIPTION**

The legal description of each Unit is generally designated by the identifying number of such Unit as shown on the Plat of the Common Interest Community. No improvement to any

Unit constructed by the Declarant is an encroachment onto any Common Area. No Unit Owner except the Declarant shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause such Unit Owner's Unit to be separated into any lots, tracts or parcels different from the whole Unit as shown on the Plat. The identifying number for each Unit shall always be deemed to include all of that Unit's appurtenant ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth.

**VII.**  
**THE DECLARANT, DEVELOPMENT OF CIC AND DECLARANT RIGHTS**

1. Declarant is the owner of all land dedicated as Phase I in the CIC. The CIC is comprised of Units which will eventually be owned by individuals or entities other than Declarant and Common Areas such as roadways. The CIC shall also include easements which will benefit all Units and will be owned by Declarant and/or the Association. Declarant will be responsible for completing the graveling and paving of the roadways as set forth herein below and installing residential electric and telephone services to the boundary lines of the Units. The individual Unit Owners are responsible for all wells and water systems, septic systems and any other utilities serving such Unit Owner's Unit, and the maintenance, improvement and upkeep of their respective Units, and the Association is responsible for all maintenance, improvement and upkeep of the Common Areas.

2. Any land dedicated as a Common Area will be deeded from Declarant to the Association prior to the sale of Declarant's last Unit and it is not necessary that Declarant complete all improvements to Common Areas prior to delivery of such deed.

3. Declarant excepts and reserves from the land dedicated to the CIC, the following perpetual rights appurtenant to its ownership of Units in the CIC, Declarant's Other Tracts, and also as appurtenant to its vested interest as Declarant and present or future owner of other land which may be, but has not yet been, dedicated for development of the CIC:

- A. To complete improvements including, but not limited to, those improvements indicated on the Plat, other Governing Instruments, or advertisements pertaining to the CIC;
- B. To maintain sales offices, management offices, and signs advertising the CIC, Units and improvements thereon;
- C. To use easements through the Common Areas and Units for the purpose of making improvements within the CIC or within real estate that may be added to the CIC and to grant others the right to do so;
- D. To merge or consolidate the CIC with another CIC of the same form of ownership;
- E. To appoint or remove any officer of the Association or any member of the Board of Directors during any period of Declarant's control;

- F. To appoint or remove a majority of members of the Building Control Committee of the Association during any period that Declarant owns at least one (1) Unit in the CIC and thus the BCC is initially a committee of the Declarant rather than the Association. Also the right to assign all BCC rights and control of the BCC to the Association at which time the BCC shall be only a committee of the Association;
- G. To approve all revisions and modifications to the BCS and Rules and Regulations during any period that Declarant owns at least one (1) Unit in the CIC;
- H. To add real estate to, or withdraw real estate from the CIC, which said right may be exercised with regard to any tract or parcel of real estate, whether or not it is described herein or otherwise identified on any exhibits attached hereto or any of the Governing Instruments;
- I. To create Units, Common Areas and Limited Common Areas;
- J. To subdivide Units, combine Units, adjust boundaries between Units, convert Units into Common Areas or Limited Common Areas;
- K. To withdraw Common Areas or Limited Common Areas, or any part thereof, and develop the same into a Unit or Units or add the same to a Unit or Units, including but not limited to roadways, cul-de-sacs and streets shown on the Plat;
- L. To store construction equipment and materials on Common Areas, Limited Common Areas, or Units notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from doing the same;
- M. To maintain construction signage, contractor signage, broker signage, material supplier signage, financier signage, or other advertisements on Units, Common Areas and Limited Common Areas, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from doing the same;
- N. The right to enter into and onto any Common Area, Limited Common Area or Unit and fix, modify and change the grades and elevations of easements and rights-of-way and all streets within the CIC;
- O. To exercise a first right of refusal with regard to any top or other soil removed from any Unit within the CIC. In the event that Declarant shall exercise such right, the soil shall be deposited by the Unit Owner in such area of said CIC as may be determined by Declarant. In the event that Declarant does not desire said soil, it may then be deposited or disposed of by the Unit Owner elsewhere;
- P. To deed and otherwise transfer ownership of Units, and Common Areas and Limited Common Areas to the Association;



- Q. To grant easements and licenses permitting any individual or entity to utilize utilities and utility systems, storm water management systems, and infrastructure servicing and benefiting the CIC in connection with the development, use and enjoyment thereof;
  - R. To utilize any utility systems, lines, ways, pipes, conduits, wires and other utility transportation systems in the CIC for the benefit of Declarant's Other Tracts; and to utilize all roadways in the CIC with regard to Declarant's Other Tracts. Declarant's right to develop Declarant's Other Tracts specifically includes the right to construct, manage and operate non-residential Units thereon.
4. Any and all Development Rights and Special Declarant Rights are and shall be perpetual in duration.
5. Any or all of Declarant's Rights and obligations set forth in this Declaration or other Governing Instruments may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary.

### **VIII. EASEMENTS AND RIGHTS-OF-WAY**

Declarant excepts and reserves the following easements, rights-of-way and other rights for the benefit of Declarant's performance of its development duties and also to Declarant as appurtenant to Declarant's Other Tracts, **BUT BY DOING SO IMPOSES ABSOLUTELY NO OBLIGATION OR DEVELOPMENT DUTY TO INSTALL OR CONSTRUCT ANY SUCH PUBLIC OR PRIVATE CONVENIENCES, UTILITIES OR SIGNAGE, OR DUTY TO EXERCISE SUCH POWERS, RIGHTS AND AUTHORITY:**

1. Roadway and Common Area Use Easements: Declarant reserves unto itself, its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights as follows:
- A. To make vehicular and pedestrian use of all roads in the CIC;
  - B. To utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements for the conveyance, transportation, distribution and use of electricity, telephone equipment, gas, sewer, water, drainage, and other public or private conveniences or utilities within the right of way of the roads and Common Areas of the CIC. Declarant reserves the aforesaid easement and rights-of-use for the benefit of Declarant and for Declarant's Other Tracts. Therefore, Declarant expressly

reserves the right to add to CIC tracts of land which are located near or adjacent to the CIC, and such tracts are identified on the Plat as Tracts A, B and C.

2. Set-Back and Boundary Perimeter Easements: Declarant reserves unto the Association and also to Declarant, its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way twenty-five (25) feet wide along each side of all road rights of way, ten (10) feet wide along each side of each Unit boundary and twenty-five (25) feet wide along each side of all State owned roadways (County Routes 71 and 71/1), for the purpose of:

A. installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction, inspecting and monitoring of the following, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance:

- a) utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer and other common utilities;
- b) lines, mains, drain ways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the CIC; and
- c) CIC entrance, traffic and directional signage.

B. exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein.

3. Exercise of Easement Rights: Each easement, right-of-way and right reserved to Declarant and Association as aforesaid expressly includes the right to cut any trees, tree roots, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations, surface water control and to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any licensee of Declarant or Association but this reservation shall not be considered an obligation of Declarant to provide or maintain any such improvements, including drainage system, utilities or services. All drainage systems not installed by a Unit Owner (other than Declarant) will be maintained by the Association. All drainage systems installed by any Unit Owner are owned and maintained by the Unit Owner. There is further reserved the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to remove any improvement located therein or thereon whenever and wherever such action may appear to Declarant and/or Association to be necessary. Neither Declarant nor Association shall be liable to any Unit Owner for damage by reason of the exercise of these easement rights, including the cutting of any trees, tree roots, bushes, foliage, brush, shrubbery, soil or

improvement which is damaged or removed is located partially within the aforesaid easements, the same shall be deemed to be entirely within said easement for the purposes of this paragraph. Declarant and/or Association may exercise any right, power or authority with regard to same, without liability to the Unit Owner by reason of trespass, conversion or any other tort notwithstanding the fact that said tree, foliage, brush and/or improvement is not entirely located within the aforesaid easement. Said easements and rights-of-way are reserved to Declarant and Association for the benefit of Declarant and Association in their exercise of the powers and authorities set forth herein.

4. Easements of Encroachment: Declarant grants reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or Limited Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Unit Owner claiming the benefit of such easement. Declarant may not grant such easements pursuant to this Paragraph as: (A) would render a Unit unsuitable for construction of a dwelling; or (B) would lie within any existing dwelling.

5. Right to Grant Specific Easements: Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements in, over and across Units, Common Areas and Limited Common Areas as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property which is within the CIC, or any property which Declarant has reserved the right to incorporate into the CIC. Declarant may exercise such right and power for the benefit of such additional property regardless of whether such additional property is dedicated as future phases of the CIC. In the event that such easement is over or through a Unit, the Unit Owner of the Unit to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant.

6. Minimal Interference: All work associated with the exercise of the easements described in the foregoing subsections of this Article shall be performed in such a manner as to reasonably minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the individual or entity exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after 10 days written notice to the Unit Owner.

7. Easements to Serve Additional Property: Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Areas and Limited Common Areas for the purposes of enjoyment, use, access, and development of the CIC, the Declarant's Other Tracts, and all real property which Declarant has

reserved the right to incorporate into the CIC, whether or not such property is made subject to this Declaration. Some of the lands to which Declarant reserves such easement are described on the Plat as Tracts A, B and C. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas and Limited Common Areas for construction of roads and for connecting, laying, building, using, maintaining, and installing any and all utilities on such property and that Declarant shall cause same to be reasonably restored. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas and Limited Common Areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property or any portion thereof benefiting from such easement which is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along roadway providing access to such property.

8. Easements for Maintenance, Emergency and Enforcement: An easement is reserved to the Association whereby the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing this Declaration, the By-Laws Rules and Regulations, or such other Governing Instruments. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after ten (10) days written notice to the Unit Owner.

9. Easement to Inspect and Right to Correct: Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within the CIC, including Units, and a perpetual, nonexclusive easement of access throughout the CIC to the extent reasonably necessary to exercise such right. Said right may be assigned by Declarant, in whole or in part to the Association. Except in an emergency, entry onto a Unit shall be only after ten (10) days written notice to the Unit Owner and no entry into a locked and completely enclosed dwelling shall be permitted without the consent of the Unit Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10. Transfer of Easement Rights: Any or all of the above easement rights reserved to Declarant may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary.

11. Miscellaneous Easements: To the extent that any drain way, access way, road, utility or other right-of-way or easement is shown on any Plat, and also to the extent that any utility system, drainage system or component thereof is shown on any Plat, express, alienable,

transferable and non-exclusive rights-of-way and easement are reserved to Declarant and Association for same.

12. View Easements: In addition to the Building Control Standards and other easements set forth herein, the Association and Declarant reserve the right to impose on the Units, certain “View Easements” for the purpose of maintaining the visibility of the Unit and the visibility of Cheat Lake and surrounding properties from the Units. The View Easements shall be imposed on a Unit per Unit basis at the time construction plans and specifications are approved for the purposes of assuring that the improvements to any Unit do not unreasonably impact the views from, and value of, other Units. All view easements shall be based on the competing interests of all affected Unit Owners and shall be based on a balancing test wherein each respective interest is compared to all remaining interests. Provided, however, that under no circumstances shall any view easement render any Unit or Units unsuitable for the construction of a dwelling. View easements may expressly limit the size, type, location and height of dwellings and improvements. The Association may not impose a “View Easement” over or across the Declarant’s Other Tracts without the prior written consent of the Declarant.

## **IX.**

### **COMMON AREAS AND COMMON EXPENSE ALLOCATIONS**

1. Common Areas are all land, and improvements thereon, dedicated for use by all Unit Owners and, when completed by the Declarant, shall be owned by and under the control and supervision of the Association. The use of all Common Areas is subject to the Governing Instruments including, but not limited to, such Rules and Regulations as may be, from time to time, promulgated by the Declarant and/or Association.

2. Each Unit is apportioned fractional equitable ownership of the Common Areas and fractional liability for the costs of ownership, maintenance, upkeep and operation of Common Areas. This liability is part of the Common Expense of the Association. The precise formula for calculating the Common Expense liability and Limited Common Expense liability allocated to a Unit is set forth herein below in Article X. The formula and allocations shall be modified as and if additional Units are dedicated to the CIC.

3. Limited Common Areas are a variety of Common Areas and are owned by the Association. Limited Common Areas are restricted to use by less than all Units and equitable ownership and Common Expense Liability for the Limited Common Areas is apportioned only among those Units entitled to use of same. The term “Common Areas” as used herein includes Limited Common Areas in the absence of specific contextual language to the contrary.

4. Neither the Building Control Committee nor the Association are vested with any plan, construction or other approval rights with regard to the completion and improvement of the Common Areas and Limited Common Areas or of Declarant’s Other Tracts.

5. The CIC contains or may contain various Common Areas which are generally described as follows:

- A. Streets: The streets and roadways are Common Areas allocated to all Unit Owners and are to be constructed as set forth herein by Declarant. Declarant covenants that the streets designated on the Plat of the CIC and needed to service Units conveyed by Declarant will be graveled prior to the conveyance of such Units. The streets shall be graveled to an average width of approximately twenty (20) feet but shall not be graveled to Department of Transportation standards. The streets shall be paved with asphalt not later than nine (9) months after the sale by Declarant of its Unit in the CIC that represents the sale of more than 75% of the Units in that specific Phase of the CIC (i.e. in Phase I after the sale of the 16<sup>th</sup> of the 21 Units). Prior to the sale of 75% of the Units in the CIC and after the Declarant has graveled the streets, the Association shall maintain high quality gravel roads in the CIC. The streets shall be paved to an average width of approximately sixteen (16) feet but shall not be paved to Department of Transportation standards. Paved shall mean, a gravel base, a Type II aggregate asphalt base course which is approximately 2” in thickness, and a Type I aggregate asphalt wearing course which is approximately 1” in thickness. The width and thickness of the roads will vary from location to location. The Declarant expressly reserves the right to reduce the thickness of asphalt in low traffic areas such as cul-de-sacs. The Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving, if any, and maintenance of any section of street or roadway beginning at the time that gravel is initially applied to same. The Association’s road maintenance obligation includes repairs after gravel roads are constructed and repairs to asphalt after application of the base course of asphalt.
- B. Parcels: Any parcel shown on the Plat and labeled Common Area is a Common Area allocated to all Unit Owners. The Declarant may transfer ownership and maintenance obligations for one or more Common Areas to the Association at any time.

## X.

### **ALLOCATED INTEREST, USE AND ENJOYMENT OF COMMON AREAS AND LIMITED COMMON AREAS**

1. Each Unit is allocated as appurtenant thereto an undivided ownership and use interest in the Common Areas and share of the undivided obligation of the Common Expenses of the Association. Common Expenses are the Association’s operating costs and include the cost of maintaining the Common Areas. Limited Common Areas are the portions of the Common Areas which may only be used by certain Units. The Expense of Limited Common Areas is a Limited Common Expense which is allocated only to those Units entitled to utilize the Limited Common Areas.
2. Each Unit’s allocated share of the Common Expenses of the Association will depend on the total number of Units in the CIC. The allocations of Common Expenses will vary as Units are created, subdivided and/or withdrawn from the CIC.

3. With regard to Units entitled to utilize Limited Common Areas, each Unit's allocated share of the Limited Common Expense attributable to the Limited Common Area will depend on the total number of Units utilizing or benefiting by the Limited Common Area. Only Units entitled to utilize or be benefited by the Limited Common Area shall be allocated the expense of same and allocations may vary as Units are created, subdivided and/or withdrawn from the CIC.

4. Declarant reserves the right to create not more than sixty (60) total Units in all phases of the CIC. The final Common Expense liability and Limited Common Expense liability for each Unit will depend on the total number of Units created by Declarant and the extent to which Limited Common Areas are dedicated. Final Common Expense liability and Limited Common Expense liability will not be determined until all Units in all phases, present and future, are dedicated. Because there are initially 21 Units in Phase I, the total Common Expense liability of Units in Phase I shall not be less than 1/21st of the total Common Expense of the Association.

5. At this time, Unit Owners can determine their allocated interests by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units in the CIC. Likewise, any Limited Common Expense liability is allocated by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units entitled to utilize the Limited Common Area (total Units to which the Limited Common Area is allocated). In Phase I, there are currently no Limited Common Areas and no Limited Common Areas are anticipated by the Declarant.

## **XI. BUILDING CONTROL COMMITTEE ("BCC") AND CONSTRUCTION APPROVAL**

The following are covenants applicable to all Units in Phase I running with the land for the benefit of the Declarant, the Declarant's Other Tracts, the Association and all Unit Owners of Units in Phase I, but shall not be applicable to the Declarant's Other Tracts unless the Declarant executes an amendment to this instrument for such purpose and then only to the extent so dedicated:

1. The Building Control Committee ("BCC") is initially a committee of the Declarant charged with monitoring, reviewing, and approving all construction plans in the CIC, on-going maintenance of improvements and compliance with the Building Control Standards ("BCS") and maintenance of the character, harmony, esthetics and appearance of Phase I. BCC does not, however, have construction approval or oversight authority with regard to completion of Common Areas, Limited Common Areas, drainage or utility systems by Declarant or with regard to the construction on the Declarant's Other Tracts unless Declarant records an amendment to this instrument for such purpose. Declarant alone, and not the Association, is vested with all construction approval rights with regard to the Declarant's Other Tracts. BCC shall initially be a committee of the Declarant but Declarant shall assign all of its BCC powers and authorities to the Association not later than when the Declarant no longer owns any Unit in the CIC. Beginning at the time of such assignment, the BCC shall be a committee of the Association. So

long as the BCC is controlled by the Declarant, the BCC shall be composed of three (3) members, at least one of whom shall be a Unit Owner and two of whom shall be appointed by Declarant. When Declarant assigns its construction approval rights to the Association, all members of the BCC shall be appointed by the Board of Directors of the Association. In the event of any tie vote between the members (due to absence, vacancy or abstention) of the BCC: (1) if during a period of Declarant Control of the BCC, Declarant reserves the right to cast a deciding vote on that issue; and (2) if subsequent to termination of Declarant Control of the BCC, the Board of Directors shall cast a deciding vote on that issue. All covenants set forth herein are reserved to the Declarant and the Association with enforcement authority vested in the Declarant so long as BCC is a committee of Declarant and thereafter such authority shall be vested in the Association. Declarant may make one or more partial assignments of such authority to the Association during development of the CIC.

2. No improvement, including but not limited to a dwelling, structure, fence, pool, driveway, parking area or wall, may be constructed, placed or maintained upon any Unit in Phase I, and no material modification or alteration to any improvement, including landscaping, may be undertaken, commenced, caused or permitted by any Phase I Unit Owner until plans and specifications for the improvement or modification have been approved in writing by BCC. Provided, however, that no such approval is required with regard to any improvement to the interior of any dwelling or structure if such improvement is not visible from the exterior of the dwelling or structure. Matters for which BCC approval is required include, but are not limited to, cutting of trees, structural improvements, modification, removal or creation of any drainage system or component thereof, excavation, grading or fill, and movement, placement or removal of dirt. **ALL PROSPECTIVE UNIT OWNERS ARE ADVISED TO OBTAIN WRITTEN PRELIMINARY CONSTRUCTION PLAN APPROVAL FROM BCC PRIOR TO PURCHASING A UNIT IN THE CIC. IT IS FURTHER RECOMMENDED THAT IF THE PROSPECTIVE UNIT OWNER HAS ANY DOUBT AS TO WHETHER THE PROPOSED PLANS WILL BE APPROVED, THE PROSPECTIVE UNIT OWNER'S CONTRACT FOR THE UNIT BE MADE CONTINGENT UPON SUCH PRELIMINARY APPROVAL.**

3. BCC shall review such plans and specifications with regard to issues which include, but are not limited to: (1) exterior color; (2) exterior construction materials; (3) structural design; (4) plot plan/site layout location on the Unit; (5) utility entrances; (6) driveway entrances; (7) walls, (8) exterior elevations, (9) topography, (10) finished grades; (11) landscaping, (12) location of structures, improvements, walkways and concerns including sedimentation control; (13) parking; (14) traffic visibility; (15) view easements benefiting Common Areas and other Units; (16) impact and effect on other Units; (17) dimensions; (18) exterior lighting; (19) general appearance and traditional residential character; and (20) any matter addressed by the BCS. The BCC may also include with regard to any application any factors which it deems relevant including, without limitation, harmony of exterior design and color with surrounding structures and environment. With regard to color: (a) BCC expressly reserves the right to require color variation within the CIC to prevent color redundancy in certain areas; and (b) to limit primary finish colors of structures to those commonly identified as earth tones and certain other usual and customary traditional house colors.



4. BCC may require Units Owners to submit such additional detail and supporting data, studies, samples, architect's renderings, and reports as may be reasonably necessary for BCC to adequately review the proposed plans and specifications. BCC may reasonably require the Unit Owner to furnish survey maps or plats prepared by licensed engineers, land surveyors and other professionals with regard to any pertinent issue including, but not limited to, surface water and drainage impact of the improvements.

5. BCC shall approve or disapprove plans and specifications within thirty (30) days from the time that all materials required by BCC have been submitted. The BCC shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest or welfare of the CIC, or any Unit Owner, the Association or Declarant. During the period of Declarant control of BCC, decisions of BCC shall be subject to appeal or review by Declarant. After assignment of BCC rights from Declarant to Association, decisions of BCC shall be subject to appeal or review by the Board of Directors of said Association.

6. A pre-condition to plan approval and authorization by the BCC for any Unit Owner to commence construction is that the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Unit Owner has or may have against Declarant, BCC or Association for any and all damages sustained as the result of future damage to, or removal of, any appurtenance or improvement which when constructed encroaches upon or into any easement.

7. Once the plans of a residential dwelling have been approved by the BCC, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Unit, the improvements must be substantially completed, including the exterior work and grading and landscaping, in accordance with the plans and specifications as approved, within twelve (12) months.

8. The Declarant, Association and BCC shall not under any circumstances be liable to any Unit Owner for damage or injury resulting from the approval of construction plans whether said plans be for the injured party's Unit or another Unit in the CIC. All Unit Owners by acceptance of a deed subject to the Governing Instruments release Declarant, BCC and Association from liability for injury and damage directly or indirectly resulting from such plan approval. Each Unit Owner in improving their own Unit bears all liability for injury to person or property resulting from such improvement and shall indemnify, defend and hold harmless Declarant, Association and BCC from all claims, causes of action and liabilities resulting from said improvements. All Unit Owners are charged with developing and improving their property in a reasonable and prudent manner so as to avoid injury or damage to person, property, other Units, Common Areas, Limited Common Areas and all adjoining and nearby properties, including but not limited to State owned roadways and the Declarant's Other Tracts.

9. All Unit Owners and prospective Unit Owners are advised that the BCC standards and aesthetics standards may change during development of the CIC and that construction of

dwellings and improvements on other Units will limit the style, color and placement of homes on nearby Units. No preliminary approval shall be deemed to constitute a waiver of the BCC's right to withhold approval of final plans when submitted. Approval of any appurtenance, color, material or improvement on any Unit does not establish a standard that similar appurtenances, color, materials or improvements will be approved on other Units. All approvals are subjective and specific to the request submitted and shall not be deemed to apply to any substantive modification to such plans or subsequent requests.

10. The standards established for plan approval are intended as a mechanism for maintaining and enhancing the overall aesthetics of the CIC and do not create any duty to any present or future Unit Owner. Review and approval of any application by the BCC is made on the basis of aesthetic considerations only and BCC, Declarant and Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor of the impact of such improvements, including drainage systems and excavations on other Units.

11. Once asphalt is applied to any road surface in the CIC, each new Unit Owner thereafter and any Unit Owner who has not completed construction on their Unit shall be required to post a road damage deposit with the Association in an amount to be determined at the discretion of the BCC, for the purpose of assuring compliance with the roadway requirements set forth in the Governing Instruments. Specifically, the Unit Owner has an affirmative duty to take reasonable and necessary steps to assure that all contractors, subcontractors, laborers, builders, delivery persons and other individuals or entities participating in construction or improvement of a Unit comply with the Governing Instruments and do not damage the existing road surface. All road deposits shall be held in the Association's Road Fund Account and all interest accrued thereon shall belong to the Association. Road deposits shall be made in the amount of **One Thousand Dollars (\$1,000)** per Unit, until the BCC otherwise changes the road deposit requirements. The BCC may increase or decrease road deposit amounts in the future commensurate with the actual risk to the roadways and the actual needs of the Association. The amount of all road deposits shall be subjective based on construction plans submitted by the Unit Owner and the amount of road deposits need not be uniform. Provided, however, that so long as Declarant owns at least (1) Unit in the CIC, the BCC may not increase the road deposit amount beyond \$1,000 for any Unit absent Declarant's prior written consent. In the event that approved construction is completed in substantial compliance with BCC construction approval, the road deposit shall be refunded within ninety (90) days after notice of completion by the Unit Owner. The BCC may, however, withhold in the Road Fund Account and not refund to any Unit Owner, such sums as are: (a) reasonably necessary to repair or remedy damage actually caused to the roads and directly attributable to construction on or improvement of the Unit; or (b) reasonable fines or penalties as a result of repeated and willful failure to utilize the construction entrance or to comply with CIC traffic regulations including, but not limited to, parking restrictions, speed limits, and stop or yield signs.

**XII.**  
**BUILDING CONTROL STANDARDS (“BCS”) – (CONSTRUCTION STANDARDS)**

The following Building Control Standards are restrictive covenants, limitations, regulations and agreement imposed upon all Units in Phase I running with the land for the benefit of the Declarant, the Declarant’s Other Tracts, the Association and all Unit Owners of Units in Phase I:

1. Only one single family detached dwelling is permitted on any Unit. No Unit may contain more than one (1) other structure (either one [1] detached garage or more than one [1] additional structure such as a storage or outbuilding, but not both).
2. No apartment or condominium may be constructed or operated on any Unit. This provision expressly prohibits the horizontal delineations of ownership of a Unit or dwelling such as multistory dwellings with separate ownership of the floors or situations where a floor, wall or ceiling forms the boundary between dwellings.
3. All dwellings, buildings and structures shall be of traditional residential character and the BCC is vested with exclusive authority to determine what constitutes traditional residential character. BCC shall consider in making such determinations the character and aesthetics of the CIC and the impact of the proposed dwellings on the CIC and other Units. The following are not of traditional residential character and may not be constructed in the CIC: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) art-deco houses; and (e) other non-traditional houses which are not common in Monongalia County, West Virginia. Flat and non-peaked roofs are not permitted. Vertical siding is only permitted for trim purposes and vertical siding may not be used as a cover or façade for more than five percent (5%) of any side of any dwelling. Notwithstanding anything herein to the contrary, “log homes” are specifically and expressly permitted in the CIC.
4. No Unit or residence thereon shall be occupied until the same has been substantially completed, as determined by the BCC.
5. All structures and improvements constructed or placed on any Unit shall be built of new material or approved reconditioned material. The BCC may provide and maintain a listing of those materials which are not approved for use in the CIC and all Unit Owners are advised to obtain such approved material list prior to purchasing a Unit.
6. No mobile or modular homes commonly known as “single wides” or “double wides” are permitted within the CIC. Panelized construction, pre-engineered homes and modular construction are permitted. BCC retains exclusive authority to determine whether any structure is permitted or excluded by the provisions of this paragraph.
7. No dwelling may be constructed more than three (3) stories above ground at any point. For the purpose of this document, the ground level or ground floor of any dwelling shall be the lowest level or floor which contains a “walk-out” exit or doorway. The BCC is vested with

absolute and unilateral discretion to make final determinations as to which floor or level of a dwelling is the ground level or ground floor.

8. No dwelling shall contain less than **Two Thousand (2,000) square feet** of total finished living area. For the purpose of calculating “finished living area” walk-out basements which are finished with dry-wall may be included in area calculations, but unfinished basements, non-walk-out basements, porches, decks and finished garages may not be included in such calculations.

9. No dwelling or building shall be located nearer to the perimeter of the Unit than the established set-back lines set forth in the Declaration or the Plat for the Phase in which such Unit is located. Provided, however, that due to the topography of the Units, and utility and septic concerns, the minimum set-back lines for certain Units may be reduced as designated or shown on the Plats of the CIC.

10. The construction set-backs are the following number of lineal feet:

**PHASE I:**

Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side boundary(s)	Minimum distance from any Unit boundary which is also the perimeter of the CIC	Minimum distance from any Unit boundary abutting a road or Common Element
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<b>50 feet</b>	<b>50 feet</b>	<b>25 feet</b>	<b>25 feet</b>	<b>50 feet</b>
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**FUTURE PHASES (IF ANY):**

To be Determined	To be Determined	To be Determined	To be Determined	To be Determined
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11. Set-backs applicable to future Phases, if any, will vary depending upon the size, character, and type of the Units in such Phases, topography, geological condition and various other factors. For the purpose of this restriction, eaves, balconies and retaining walls shall not be considered as part of the construction; provided, however, that this shall not be construed to merit any portion of a building or structure on any Unit to encroach upon any adjoining Unit or Common Area. All of the above set-backs are subject to Unit specific waiver and/or modification by the Declarant or BCC. To the extent that any set-back is specifically shown on any plat of any Phase or modified in any deed from Declarant, said modification shall govern and supersede the provisions in this Declaration and any Amendment hereto.

12. Notwithstanding anything herein to the contrary, Declarant specifically reserves the right to reduce any set-back on any Unit to not less than ten (10) feet from the property boundary in the event that circumstances should in Declarant's exclusive opinion and belief justify such reduction.

13. No dwelling may be of substantially identical in architectural design to any dwelling approved for construction on, or constructed on, any adjoining Unit.

14. The exterior wall surfaces of all buildings shall be of either masonry construction or wood. Synthetic sidings such as "Hardy Plank" are permitted. "Masonry Construction" shall be limited to that of brick, drivot type material, stucco or natural or cultured stone. No building or other improvement shall have concrete or cinder blocks or concrete masonry exposed in any manner anywhere on the building.

15. No outside toilet shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the individual on-site septic system servicing the Unit. Unit Owners shall pay all costs associated with installing and maintaining an on-site septic system and water well servicing such Unit Owner's Unit.

16. All driveways and sidewalks are to be constructed of concrete, or paved with asphalt, brick or pavers. Non-fitted stone or gravel driveways are not permitted. Driveways and sidewalks shall be completed within twelve (12) months of commencement of construction. No Unit may share a common or joint driveway or sidewalk with another Unit absent prior written consent of the BCC. All driveways must be paved to the road with which such driveway intersects and each Unit Owner shall pay the cost of completing the driveway into, over and across the Common Areas for such purposes.

17. Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any political subdivision of the State of West Virginia, under sidewalks and/or driveways in order to facilitate the proper drainage of storm sewers along the streets of the CIC. All such culverts shall be no less than eighteen (18) inches in diameter and in compliance with the drainage plan for the CIC. Each Unit Owner shall continuously maintain all culverts, ditches and drainage lines and drain ways on their property, whether installed by the Declarant, the Association or the Unit Owner, so as to prevent the restriction of water flow through the same. Culverts, ditches, drainage lines and drain ways may not be modified without written approval of the Association and a recommendation as to the suitability and appropriateness of the modifications from a licensed and insured Engineer approved by the Board. Such written recommendations shall be addressed to and assure the Board of Directors that the modifications are to be completed in compliance with the CIC drainage plan and it shall specify the design, materials and manner of construction. Written request of changes to drainage systems must be made to the Board by the Unit Owner at least thirty (30) days in advance of the next Board meeting. All drains and drainage systems constructed or installed by Declarant are engineered to not less than 25 year storm capacity. No approved modification to same by any Unit Owners shall be engineered to less than a 50 year storm capacity. Every storm drain, pipe, outlet or other enclosed facility for transportation of

surface water from a Unit into any portion of the comprehensive drainage system shall include a back-flow valve to prevent water from the system from entering the Unit or any improvement thereon.

18. Prior to construction of a driveway or walkway, each Unit Owner shall cause two (2) four inch (4") schedule 40 P.V.C. electrical and telephone conduits with caps on each end to be buried under the portion of pavement which runs over top of the utility right-of-way, and the exact depth and location is to be designated by Allegheny Power , Verizon and/or Declarant, their successors or assigns. Such conduit shall be suitable in all manners for future installation of utility distribution and transmission services and Declarant expressly reserves, for and in behalf of itself, its successors and/or assigns the right to utilize, and to permit others to utilize, such electrical conduit for such purposes.

19. BCC shall establish standards for the size, color, style and appearance of all mailboxes and the structure to which the same are mounted. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the BCC. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Declarant reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted.

20. Each Unit Owner shall install on the Unit an approved mailbox mounting structure and mailbox designated by the BCC.

21. Each Unit Owner shall, within ten (10') lineal feet of the intersection between the Unit's driveway and any street, install a dusk-to-dawn photo-sensitive decorative electric light. The Association is vested with exclusive authority to determine the size, height, color, style, design, bulb style and wattage of all such lights. The decorative lights must be maintained in working order by the Unit Owner of each Unit and all lights must be approved by the Association. The decorative lights may not be removed, relocated, painted or otherwise modified without the prior written consent of the BCC. All such lights shall be maintained operational by the Unit Owner at all times to assure safety and visibility in the CIC. The Declarant reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of replacing light bulbs or repairing the dusk to dawn lights which such right may be exercised by the Association, at the cost of the Unit Owner, upon not less than five (5) days written notice.

22. Each Unit shall have sufficient off-street parking to service the dwelling. There shall be no parking in or along streets in the CIC, on lawns or sidewalks.

23. No Unit may contain any attached garage which accommodates more than three passenger vehicles and no detached garage may accommodate more than two passenger vehicles. The maximum footprint of the foundation of any detached garage shall not be greater than 900 total square feet in area.

24. All detached buildings and/or garages shall be constructed to match the residential dwellings and must further be reviewed and approved by the Declarant or BCC. No detached building shall exceed one story in height.

25. Each Unit Owner shall provide receptacles for garbage and recycling bins in a screened area, not visible from the road or neighboring Units, in accordance with Health Department suggestions or reasonable standards as established by the Declarant or the BCC.

26. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor, or the Declarant or BCC. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.

27. Units may be serviced by gas fuel tanks or similar fuel storage receptacles, with the prior written consent of the BCC. In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located underground or completely shielded from view by "year round" foliage or attractive screening. The fuel used in the dwelling or other structures shall be of the smokeless-type; however, interior fireplaces and/or wood stoves, in which wood is used as a fuel shall be excepted from this provision. No such fireplace or wood stove may, however, produce any fume, smoke or affluent which is an unreasonable nuisance or annoyance to the CIC. Wood stoves, fireplaces, fire-pits, barbecue pits and wood burning appliances and/or devices are not permitted on the exterior of any Unit absent prior written consent of the BCC.

28. Above-ground swimming pools are not permitted in the CIC. In-ground or below-ground swimming pools must be approved in writing by the BCC and shall be properly fenced and secured at all times. All Units containing swimming pools must carry additional liability insurance in an amount deemed adequate by the Association.

29. All construction sites must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the CIC. However, such accumulations in small quantities may be kept toward the rear of the Unit or in a location upon the Unit as designated by the Declarant or the BCC. Declarant may store any quantity of construction materials on any portion of one Unit owned by the Declarant at any given time. The Declarant shall have the exclusive right to determine which Unit shall be used for material storage. Such construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner.

30. Any top or other soil removed from any Unit within the CIC shall be deposited by the Unit Owner in such area of said CIC as may be determined by the Declarant. In the event that the Declarant does not desire said soil, it may then be deposited by the Unit Owner elsewhere.

31. In order to maintain the rural and wooded character of the CIC, no tree may be removed from any Unit or Common Area without the prior written consent of the BCC. Trees which measure eight inches (8") or greater in diameter at the base, which stand beyond a fifteen foot (15') perimeter of any structure or proposed structure shall remain, unless they create a hazard or potential hazard to any one or any property within the CIC or adjoining lands. For the purpose of this paragraph, driveways, decks, walkways, patios and porches are to be considered as structures.

32. Prior to any digging in a utility area, Unit Owner or their agents shall call the appropriate utility providers for the location of utility lines.

33. Declarant may retain the services of professional engineers for the purpose of designing and installing a comprehensive storm water drainage system within the CIC. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit, with any excess storm water discharged into the comprehensive storm water drainage system installed, or to be installed by the Declarant. Each Unit Owner must retain the services of a qualified engineer for the purpose of ascertaining the pre-construction and post-construction surface water conditions on the Unit both with regard to the Unit and development of contiguous Units and phases, and incorporating appropriate surface water controls into the development of, and construction on, the Unit. **THEREFORE, PROSPECTIVE UNIT OWNERS ARE ADVISED TO CONSULT AN ENGINEER FOR THE PURPOSE OF: (A) ASCERTAINING PRE-PURCHASE, PRE-DEVELOPMENT AND POST-DEVELOPMENT SURFACE WATER CONDITIONS ON ANY GIVEN UNIT; AND (B) ADVISING THE UNIT OWNER AND THE OWNER'S BUILDER, CONTRACTOR AND LANDSCAPER WITH REGARD TO CONSTRUCTION ON, AND DEVELOPMENT OF, THE UNIT. NO UNIT MAY DISCHARGE STORM WATER OR SURFACE WATER INTO THE STREETS AND ROADWAYS OF THE CIC.**

34. No Unit Owner, other than Declarant exercising its Special Declarant's Rights, may subdivide a Unit or combine two or more Units without the written consent of the BCC. Boundary adjustments are permitted pursuant to the provisions of WV Code Section 36B. In the event that two or more contiguous Units are consolidated as a single Unit single family residential building site, all set-back lines and easements along the contiguous sides of the consolidated Units shall be null and void so as a single family residential dwelling and attached appurtenances may be constructed across a Unit boundary line. Provided, however, all exterior set-back lines and easements, shall remain in full effect and be fully enforced. Further, the allocate undivided interest in the Common Areas and Limited Common Areas, and the Common Expense Liability apportioned to said Units as consolidated shall be on a Unit basis with the consolidated Units being one single Unit. Boundary lines may only be adjusted between Units by mutual agreement of the affected Unit Owners and with prior written consent and approval of the Association. Any combination of Units or any adjustment of boundaries between Units shall be made by deed, accompanied by a plat of survey, which said deed shall be executed by all affected Unit Owners and the Association and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.



35. Declarant may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be consistent with the tenor and integrity of those hereinbefore and hereinafter set forth, and in no event shall modifications be made that would alter the residential character of the CIC. Declarant specifically reserves the right to make reasonable modifications to the restrictive covenants set forth herein to the extent necessary to facilitate construction of Patio-Homes and Townhomes in certain future Phases.

36. All Unit Owners who construct a dwelling on any of the Units of the CIC shall deposit with the Association a construction deposit in an amount equal to the sum of **One Thousand Dollars (\$1,000.00)** to construct in compliance with Association plan approval. The construction deposit may be forfeited to the Association for violations of the approved plans, delays in construction or otherwise imposed reasonable penalties. Construction deposits shall, to the extent not forfeited, be refunded to the posting Unit Owner within three (3) months after completion of the Unit. For the purpose of this provision, no land is subject to the construction deposit requirement until the land is dedicated as a Unit by this document or an amendment to this document, and if construction commences prior to such dedication, no construction deposit may thereafter be required with regard to construction which commenced prior to dedication.

37. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining Units and more particularly into the storm water drainage ways or roadways. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.

38. If approved by the BCC, fences are permitted in the CIC subject to the following limitations:

- A. Stone fences, wood fences and synthetic fences which have the appearance of wood or stone are permitted, but hurricane, metal, chicken-wire, hardware cloth and other metal fences are not permitted;
- B. No portion of any fence may be constructed more than six (6) feet in height from grade;
- C. Fences must be located on the rear or side of the dwelling and no fence may be located nearer to the front of the Unit than the center of the dwelling thereon;
- D. No fence may be located within any set-back without prior written consent of the Association and the Unit Owner of the Unit which abuts said set-back;
- E. No fence may deny the Association or Declarant access to the easements and rights-of-way reserved to the Association and/or Declarant and neither Declarant nor Association shall be liable for any damage, cost or injury incurred in the removal of

all or any portion of an approved or unapproved fence in the event that the same is located on, over or across and right-of-way or easement reserved to Association or Declarant herein.

- F. The Unit Owner of the Unit on which the fence is constructed shall be liable for the proper maintenance, upkeep, construction and placement of the fence at all times.
- G. The Association may expressly decline to approve any fence which unreasonably limits visibility of Cheat Lake from the CIC.

39. No deck shall be constructed higher than the main floor of the dwelling, and under no circumstance shall any deck be built more than fourteen (14) feet above ground. Absent prior written consent of the Association, decks may only be constructed: (a) on the rear of the dwelling; (b) on the side of the dwelling which faces Cheat Lake; or (c) on the front of the dwelling, provided the square footage of such decks shall not be greater than 300 total square feet. The Association may aggressively limit the height, size, location and appearance of any deck constructed on the side or front, but not the rear, of any dwelling as aforesaid.

40. Declarant and BCC each reserve the right to designate the position and facing of any dwelling constructed on any Unit. With regard to any Unit which is contiguous to more than one street in the CIC, BCC and Declarant may designate which street the dwelling faces and which street the driveway servicing the dwelling intersects.

THE BCS DO NOT APPLY TO ANY FUTURE PHASE OR DECLARANT'S OTHER TRACTS AND THE TERM "UNIT" AS UTILIZED IN THIS ARTICLE SHALL REFER ONLY TO RESIDENTIAL UNITS IN PHASE I FOR THE BENEFIT OF DECLARANT, THE ASSOCIATION, AND THE UNIT OWNERS OF OTHER UNITS. IN THE EVENT THAT UNITS ARE DEDICATED OR CREATED IN OR FROM ONE OR MORE OF DECLARANT'S OTHER TRACTS, THE BCS SHALL NOT APPLY TO THE SAME UNLESS THE DECLARANT EXECUTES AN AMENDMENT TO THIS DECLARATION SPECIFICALLY MAKING SUCH UNITS SUBJECT TO THE BCS AND THEN ONLY TO THE EXTENT OF SUCH AMENDMENT.

THE BCS MAY CHANGE FROM TIME TO TIME EITHER BY AMENDMENT TO THIS DOCUMENT OR TO OTHER GOVERNING INSTRUMENTS, WHICH SAID DOCUMENTS MAY OR MAY NOT BE OF PUBLIC RECORD. ALL PROSPECTIVE UNIT OWNERS AND UNIT OWNERS ARE ON NOTICE THAT CHANGES TO THE GOVERNING INSTRUMENTS MAY HAVE BEEN ADOPTED BY THE ASSOCIATION AND EACH PROSPECTIVE UNIT OWNER AND UNIT OWNER SHOULD OBTAIN COPIES OF THE CURRENT GOVERNING INSTRUMENTS FROM THE ASSOCIATION PRIOR TO PURCHASING AND TRANSFERRING ANY OWNERSHIP INTEREST IN ANY UNIT.

**XIII.**  
**VARIANCES FROM THE BUILDING CONSTRUCTION STANDARDS**

The BCC, whether a committee of the Association or the Declarant, may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and purposes of the general development scheme, and provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the CIC. The BCC shall have specific authority to grant variances, in appropriate circumstances, to Unit Owners who desire to construct (over or upon the easements and the set-backs along each side of all Unit boundary lines) porches, decks or other appurtenances non-integral to the primary residential structure. Any variance which the BCC may grant shall be based upon plans first submitted by the Unit Owner to the BCC. Any Unit Owner, by acceptance of any variance, waives and releases for and in behalf of its successors and assigns, any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant with regard to any and all damages that might arise with respect to such variance. The Unit Owner will bear the entire risk associated with the removal of the appurtenance or improvement (including, but not limited to, trees, shrubs and landscaping) in the event Declarant, Association or any utility provider must enter a set-back or easement for any purpose. The Declarant, Association and public utility providers shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage caused to any part of any appurtenance or improvement while working within the easement. The provisions of this paragraph apply equally to appurtenances and improvements regardless of whether same are located entirely within the easement or partially in the easement and partially outside the easement.

**XIV.**  
**UNIT AND COMMON AREA USE AND OCCUPANCY RESTRICTIONS**

The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon all Units and Common Areas in Phase I for the benefit of Declarant, Association and all Unit Owners. The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon Units in the Common Interest Community as shown on the Plat. Said restrictions shall be binding upon all Unit Owners or any and all other parties having any interest therein, and are intended to be covenants running with the land, but shall not be binding on Declarant's Other Tracts or any other land not specifically and expressly made subject to this Declaration:

1. Units may only be utilized for single family residential purposes. No more than one (1) dwelling shall be erected or maintained on any Unit and the dwelling and any appurtenance placed thereon shall only be used for personal residential purposes. Certain limited home office uses are permitted provided that such use does not entail the travel of clients, invitees, delivery persons or any other individual or entity to the Unit for any business purposes.

2. All Units, including all landscaping and improvements in or on Units, shall at all times be aggressively maintained in an attractive manner consistent with the Governing Instruments. Each Unit Owner shall also be responsible for maintaining the landscaping within that portion of any adjacent Common Area located between the Unit, and any well, fence, curb or pond located on or in the Common Area. This obligation of maintenance includes the duty to monitor and maintain drain ways, ditches and drainage systems and to report any deficiencies or defects in same to the Association. No Unit Owner shall, however, have the right to remove any landscaping, trees, shrubs or vegetation caused to be located in such area by the Association or the Declarant without the prior written consent from the Association or the Declarant. Responsibility of the Unit Owner for maintenance of landscaping includes, but is not limited to, mowing, trimming and watering of lawns as reasonable or necessary to maintain the same in a healthy condition, reasonable trimming of shrubs and trees, and removal and replacement of dead and diseased trees.

3. Except as may be necessary for delivery and construction purposes, there shall be no commercial vehicles, recreational vehicles, trailers, snowmobiles, jet skis, campers, motor homes, boats or boat trailers parked in any driveway or the yard of any Unit nor on any Common Area; all of same must be parked in enclosed garages. Commercial vehicles shall be: (a) any vehicle which is not manufactured and marketed for consumer use in the transportation of 1 to 6 passengers; or (b) any vehicle which is owned by any entity other than the Unit Owner and utilized for any purpose other than transportation of the Unit Owner and the Unit Owner's family; or (c) vehicles which exhibit any commercial placard, label or sign advertising any business interest other than the manufacturer, distributor or reseller of the vehicle.

4. No dwelling shall be occupied until the same has been substantially completed, as determined by the BCC.

5. No Unit may be utilized for any activity which: (a) tends to cause an unclean, unhealthy or unsafe condition to exist outside of the enclosed structure of the Unit; (b) emits a foul or obnoxious odor or any fumes, dust, smoke, or pollution; or (c) which creates any noise, unreasonable risk of fire or explosion, or other conditions such as music or noise which are a public or private nuisance. This paragraph shall not be deemed to be a prohibition against wood burning fireplaces which are otherwise permitted if the same comply with the remainder of this document.

6. No Unit may be utilized for any activity which violates any local, state or federal law or regulation.

7. Burning of trash, leaves and debris or other materials is prohibited without the prior written consent of the Association and then only on such terms as the Association may dictate.

8. No outdoor storage of goods, construction materials, or equipment is permitted except during approved construction on the Unit on which such materials are being stored. Provided, however, that Declarant shall at all times be permitted to store construction and/or landscaping materials, supplies and equipment on any Units owned by the Declarant.

9. There shall be no use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of Common Areas or other Units, except for home and vehicle alarm devices used exclusively for security purposes.
10. No use and discharge of firecrackers, fireworks or firearms of any variety. Hunting and trapping are expressly prohibited, without the prior written consent of the Declarant.
11. No dumping or placement of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any Common Area or any drainage system, drainage ditch or other storm water system serving the CIC or any stream or pond therein.
12. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit, and those pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to other Unit Owners or their Unit property. No dog houses of any type of permitted upon the exterior of any Unit. No dogs are permitted to be tied up, chained or otherwise restrained on the exterior of any Unit. No dogs are permitted to be caged or fenced on the exterior of any Unit. Dogs must be kept in the interior of dwellings, on leashes while accompanied by their owners, or contained on the Unit by electronic means. No more than three (3) animals may be kept on any Unit at any time. Furthermore, no rottweiler or pit bull, or mix thereof, may be kept in the CIC.
13. No dog breeding or any other commercial animal breeding activity is allowed upon any Unit.
14. No Unit nor any building (or portion thereof) erected thereon shall be used for, or allowed to be the site of, any noxious, offensive or illegal activities, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the CIC, Common Areas or neighboring Units.
15. No commercial signs, including "For Rent", "For Sale", "Garage Sale", or other similar signs shall be erected, placed or maintained on any Unit or on any common area, except with the written consent of the BCC or except as may be required by legal proceedings. Provided, however, that not more than one political sign or sign advertising or advocating any candidate for public office or political issue may be displayed on, or be visible from, any Unit at any time ("Political Signs"). No Political Signs be displayed for a period of more than twelve (12) days during any calendar month nor more than ten (10) days before or two (2) days after the election or vote subject of such sign; and (b) "For Sale" signage by advertising the Units are permitted on the Unit only and then only one (1) such sign per Unit; and (c) all of such signs shall be less than four (4) square feet in total placard area; and (d) no signs of any type may be placed or displayed at or near the entrance of the CIC or on any Common Area or Limited Common Area. Provided, however, that special advertisements, "For Sale" signs and other signs may be erected, placed and maintained by Declarant and any realtor, real estate agent or broker of Declarant pursuant to Declarant's reserved Special Declarant's Rights and there shall be no limitation on the size, location or appearance of such signage.

16. All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

17. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring the Unit Owner's Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety percent (90%) of the purchase price of the Unit and improvements. In the case of fire, casualty or other disaster, each Unit Owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to grade. If the Unit Owner chooses to reconstruct, the Unit Owner shall restore all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty or other disaster. Each Unit Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

18. All lawns must be well maintained (mowed and trimmed) in an attractive condition commensurate with the BCC standards at all times. Any Unit which is sold by Declarant, but not yet built upon, must be maintained in at least as good condition as the Units owned by Declarant. Special attention must be given to all those areas of vegetation which are adjacent to and/or visible from roadways. Any area along the roadways which has been seeded by the Declarant must be kept mowed and maintained to the road by the Unit Owner. Unless the Association expressly agrees in writing to maintain any easement, each Unit Owner is obligated to maintain the surface of all easements located on the Unit Owner's Unit.

19. No clotheslines of any type may be erected or placed upon any Unit which is visible from the streets, neighboring Units or neighboring lands.

20. Except during construction of a dwelling on a Unit, no loud power tool may be operated on the exterior of any Unit between 9:00 p.m. and 8:00 a.m. Loud power tools include, but are not limited to, the following: lawn mowers, trimmers, shredders, chain saws, jackhammers, snow blowers, circular and other electric or gas powered saws, etc. Provided, however, that snow blowers and snow removal equipment shall be an exception to this requirement when utilized to remove snow from the driveway and sidewalk of a Unit or roadways of the CIC.

21. There is a posted speed limit of 15 M.P.H. throughout the CIC and all vehicles, motorized or otherwise, shall at all times adhere to all roadway and traffic regulations promulgated by the Association.

22. Not more than four (4) vehicles may be parked in the driveway of the Unit, provided that the driveway is of sufficient size to accommodate same. The Association may from time to time grant reasonable exceptions permitting additional vehicles to be parked on a Unit or if reasonably necessary, restrict the number of vehicles which may be parked on a Unit. The Association may periodically grant any Unit Owner additional parking privileges, including parking on the streets for special occasions and events.

23. No motor vehicle or vehicle with an engine shall be operated on any non-roadway Common Area, path, walkway or trails at any time other than those necessary for approved

construction on a Unit during construction. Unlicensed motor vehicles including, but not limited to, golf carts, go carts, dirt bikes, and all terrain vehicles, may not be operated in the CIC, and specifically not on any Common Area, unless consented to in writing by the Association or Declarant.

24. All Unit Owners shall be subject to fine or penalty as a result of violation of any of these restrictions by the Unit Owner's family, friends, guests and/or invitees. In the event of such an incurred violation the Association may deny the violator non-Unit Owner the right of entry onto and use of the Common Areas of the CIC including, but not limited to, the roadways. In such circumstances, the Association may, after proper warning to the Unit Owner, have the non-Unit Owner violator prosecuted or otherwise pursue civil remedies against the violator for trespass on the Association's property.

25. No Unit Owner shall interfere with the drain ways or any ponds in the CIC or improvements on any Common Areas or Limited Common Areas, and each Unit Owner has an affirmative pro-active duty to advise the Unit Owner's family, children, guests, invitees and licensees, of all risks inherent with such drain ways, ponds, Common Areas and Limited Common Areas, and all rules, regulations, policies, procedures, covenants and restrictions applicable thereto whether set forth in this Declaration, or otherwise promulgated or enacted by the Declarant and/or Association hereafter. Children are not permitted in the vicinity of any improvements on Common Areas and Limited Common Areas unless accompanied and at all times supervised by an adult.

26. By acceptance of a deed from the Declarant, each Unit Owner covenants and agrees, for an on behalf of such Unit Owner, and its successors and assigns, to at all times exercise extraordinary care to protect all family, residents, visitors, guests, tenants, invitees, and licensees of the Unit Owner on any Common Areas or Limited Common Areas, from hazards and injury to person and property.

27. By acceptance of a deed from Declarant, each Unit Owner further covenants and agrees to: (i) defend, hold harmless and indemnify the Association and Declarant from any cost or expense, including legal fees and court costs, resulting from any injury to the Unit Owner or the Unit Owner's family, children, guests, invitees, tenants and licensees, or their real or personal property, as the result of the Common Areas or Limited Common Areas or any improvements thereon; (ii) to include in any lease or document granting occupancy or tenancy of any Unit an express provision that all tenants of the Unit Owner shall defend, hold harmless and indemnify the Association and Declarant from any injury to the tenant or the tenant's family, children, guests, invitees, tenants and licensees, or their real or personal property, as the result of the Common Areas or Limited Common Areas or any improvements thereon, and that such tenant will at all times exercise extraordinary care to protect tenant, and all family, residents, visitors, guests, tenants, invitees, and licensees of the tenant from the Common Areas or Limited Common Areas or any improvements thereon from hazards and injury to person and property.

TO THE EXTENT THAT THE TERM "UNIT" IS UTILIZED IN THIS ARTICLE, THE SAME SHALL REFER ONLY TO SINGLE FAMILY DETACHED DWELLING

RESIDENTIAL UNITS IN PHASE I AND NOT TO ANY OF DECLARANT'S OTHER TRACTS OR ANY PORTION THEREOF UNLESS AND TO THE EXTENT DECLARANT MAY SO PROVIDE IN OR BY AN AMENDMENT TO THIS DECLARATION AND RECORDS AN AMENDMENT FOR SUCH PURPOSE AND THEN ONLY TO THE EXTENT SET FORTH IN SUCH AMENDMENT.

THESE RESTRICTIONS ARE COVENANTS RUNNING WITH THE LAND AND MAY CHANGE FROM TIME TO TIME EITHER BY AMENDMENT TO THIS DECLARATION OR TO OTHER GOVERNING INSTRUMENTS, WHICH SAID DOCUMENTS MAY OR MAY NOT BE OF PUBLIC RECORD. ALL PROSPECTIVE UNIT OWNERS AND UNIT OWNERS ARE ON NOTICE THAT CHANGES TO THE GOVERNING INSTRUMENTS MAY HAVE BEEN ADOPTED BY THE DECLARANT OR THE ASSOCIATION AND EACH PROSPECTIVE UNIT OWNERS AND UNIT OWNERS SHOULD OBTAIN COPIES OF THE CURRENT GOVERNING INSTRUMENTS FROM THE ASSOCIATION PRIOR TO THE PURCHASE OR TRANSFER OF ANY OWNERSHIP INTEREST IN ANY UNIT.

#### **XV.**

#### **THE ASSOCIATION – PURPOSE, MEMBERSHIP, POWERS, STRUCTURE**

1. Purpose: The Association has been established for the purpose of administering the CIC in accordance with the Governing Instruments. The Association is charged with maintaining the collective interests of the majority of Units Owners rather than the individual rights of any one or more Unit Owners to the extent same are contrary to the CIC's interests. The responsibilities of the Association include, but are not limited to:

- A. maintenance, upkeep and administration of the Common Areas and Limited Common Areas;
- B. interpretation and enforcement of the Governing Instruments;
- C. upholding the community standards within the CIC;
- D. after assignment of Declarant's BCC rights to the Association, administration of the BCC;
- E. maintenance and management of Association funds;
- F. all other purposes for which homeowners associations are formed; and
- G. fair and just administration of the CIC and its financial concerns for the mutual benefit of all Units in all Phases without discrimination against Unit Owners or any Units, whether now or hereafter part of the CIC.



2. Membership: Every person or entity who is an owner of a full or fractional fee interest in any Unit, shall, by reason of ownership, automatically be a Member of the Association, and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of the Association, the By-Laws of the Association, and further subject to all Rules and Regulations promulgated or adopted by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the CIC, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder as provided by the West Virginia Uniform Common Interest Ownership Act. Membership as defined in the By-Laws shall not be inconsistent with the provisions of this Article. Each Member shall be liable for compliance with the requirements of this document by the Member's guests, licensees, tenants, invitees and family.

3. Specific Powers of the Association: Subject to other provisions of the Declaration, the Association has the power to:

- A. Adopt and amend By-Laws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expenses from Unit Owners;
- C. Hire and discharge managing agents and other employees, agents and independent contractors;
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Common Interest Community;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement and modification of Common Areas;
- G. Cause additional improvements to be made as a part of the Common Areas;
- H. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Areas in the Common Interest Community may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
- I. Grant easements, leases, licenses, and concessions through or over the Common Areas;

- J. Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Areas and for services provided to Unit Owners;
- K. Cause liability insurance on Common Areas to be placed or kept in effect;
- L. Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association;
- M. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration or statements of unpaid Assessments;
- N. Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
- O. Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent this Declaration expressly so provides;
- P. Exercise any other powers conferred by the Governing Instruments executed and delivered by the Declarant;
- Q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
- R. Exercise any other powers necessary and proper for the governance and operation of the Association; and
- S. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

4. Non-Discretionary Maintenance Obligations of Association: The Association shall, beginning at the time each improvement to a Common Area or Limited Common Area is completed by Declarant, be responsible for maintenance, repair, replacement and upkeep of the Common Areas and Limited Common Areas, including, but not limited to: (a) snow removal and roadway repairs; (b) lawn care and maintenance of the entryway and all CIC signage; and (c) monitoring, maintenance and upkeep of all drain ways and drainage systems, including holding ponds, sediment ponds and any other water retention systems. The Declarant alone is liable for all expenses in connection with Declarant's Other Tracts, and no Unit Owner and no other portion of the CIC is subject to a claim for payment of those expenses.

5. Discretionary Powers of Association: The BCC during Declarant's control thereof and the Association have the power, but not the duty, to enforce the Governing Instruments. In the event of unforeseen circumstances, violations of the Governing Instruments may occur which are of minor impact to the CIC or which would result in an unreasonable hardship in the event that strict adherence to the Governing Instruments is pursued. In determining whether the BCC

and/or Association shall take action to enforce the Governing Instruments, the Association and BCC are authorized to take into consideration such factors as individual hardship to the violating party and cost benefit analysis of the reasonable return to result from expenditure of Association funds. Thus the Association and BCC have the right, but not the obligation to enforce any part of the Governing Instruments. The Association and BCC are expressly authorized to avoid participation in disputes between individual Unit Owners or disputes which are appropriately addressed by legal authorities. In the event that Association or BCC should elect not to pursue any action they reasonably believe is not in the best interest of the majority of Unit Owners, individual Unit Owners may individually or collectively bring suit to enforce the Governing Instruments against other Unit Owners, provided however, that such litigation shall be for the purpose of compelling compliance by a Unit Owner and not for damages resulting from any action or inaction by Association or BCC. By acceptance of a deed subject to the Governing Instruments, all Unit Owners release the Declarant, BCC and Association from any and all liability resulting from a good faith Declarant, BCC or Association decision not to take any enforcement action which the Declarant, BCC or Association's Board deem in good faith to not be in the best financial or other collective interest of the CIC or the majority of the Unit Owners. The Association may not discriminate against Unit Owners of Units, whether now or hereafter part of the CIC, either directly or indirectly and is charged with fair and impartial performance of its duties.

6. Association Right to Perform Maintenance: In the event any Unit Owner of any Unit shall fail to maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, notice shall be provided by the Board, in writing, to the Unit Owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees, to enter upon said Unit and repair, maintain and restore the Unit and the exterior of the buildings and any other improvements erected thereon to the extent authorized by law. Such right shall not be exercised unless two-thirds (2/3) of such Board of Directors or fifty-one percent (51%) of the Unit Owners shall have voted in favor of its being exercised by ballot or proxy. The cost of such exterior maintenance and maintenance of the Unit shall be added to and become part of the annual Assessment to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon. All Unit Owners by acceptance of a deed subject to the Governing Instruments covenant and agree that such entry and maintenance shall not constitute an actionable trespass or breach of the peace.

7. Association Meetings: A meeting of the Association shall be held at least once a year. Special meetings of the Association may be called by the president; a majority of the Board; or by Unit Owners having twenty percent (20%) of the votes in the Association. Not less than twenty (20) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the By-Laws shall cause notice to be hand-delivered or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove an officer or member of the Board.

8. Association Meeting, Quorum and Voting: Unless the By-Laws or this Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast thirty-three percent (33%) of the votes that may be cast for election of the Board are present in person or by proxy. Voting at a meeting where a quorum is present shall be cast as follows:

- A. Members of the Association shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated on the principle of “one vote for one Unit”.
- B. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.
- C. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly-executed proxy. A Unit Owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after that date, unless it specifies a shorter term.
- D. Any Unit held by the Association shall not be entitled to vote. Voting rights of Members as set forth in the By-Laws may not be inconsistent with the provisions of this Article.
- E. Only Members in good standing shall be entitled to vote. A Member shall lose good standing status should any Association assessments or fines remain delinquent when due for a period of thirty (30) or more days.

9. Association Voting by Ballot in Lieu of Meeting: Business of the Association, including elections and approval of the budget may, at the Board’s option, be conducted by ballot and submission of ballots or proxies in lieu of a meeting. In the event that business is conducted by ballot, the Board shall distribute to all Members an agenda of the business to be addressed by ballot including a detailed narrative explanation of the issues. Each Unit shall also receive a ballot which clearly states that it shall not be counted unless returned to the Association by a specified date. In the event that an issue is to be addressed by ballot and less than a quorum of ballots are returned to the Association by the ballot cut-off date, the Board may circulate a petition and obtain such additional votes by petition as are necessary to constitute a quorum for the purposes of the business to be addressed.

10. Tort and Contract Liability: An action alleging a wrong by the Association must be brought against the Association and not against any Unit Owner or the Declarant. A Unit Owner is not precluded from maintaining an action contemplated by this section because of being a Unit Owner, member of the Board or officer of the Association.

11. Association Conveyance or Encumbrance of Common Areas:

- A. Portions of the Common Areas may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units now owned by the Declarant, agree to that action.
- B. An agreement to convey Common Areas or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed, by the requisite number of the Unit Owners.
- C. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Areas pursuant to subsection A above, but the contract is not enforceable against the Association until approved pursuant to subsections A and B of this Section. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds, deeds of trust or other instruments.
- D. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Areas of the Common Interest Community is void.
- E. A conveyance or encumbrance of Common Areas pursuant to this section does not deprive any Unit of its rights of access or ingress, egress and regress across the roads and ways as designated upon the recorded Plats of the Common Interest Community.
- F. A conveyance or encumbrance of Common Areas pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

## **XVI.**

### **BOARD OF DIRECTORS AND BY-LAWS**

1. Board of Directors: The initial Board shall be appointed by the Declarant. As certain increments of Units are conveyed by Declarant, a percentage of Board Members will be elected by the Membership of the Association as set forth herein. After termination of Declarant control, all Board members will be elected by Unit Owners.

2. Board Powers: Subject to other provisions of the Declaration, the Board of Directors shall be generally empowered as follows:

- A. Except as otherwise provided in this Declaration or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the members of the Board are required to exercise (i) if appointed by the Declarant, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.
- B. The Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.
- C. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Board shall provide a summary of the budget to all the Unit Owners. In preparing the budget the Board shall provide for long-term capital expenses of the Association such as maintenance of Common Areas.
- D. Subject to subsection E. below, Declarant or its successors and assigns have the right to appoint all or a majority of the persons who will serve as members of the Board of Directors of the Association until the occurrence of certain designated events as set forth below.
- E. There shall be an initial period of Declarant's control of the Association during which the Declarant or persons designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control terminates no later than the earlier of: (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units by the Declarant; (ii) Two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Two (2) years after any right to add new Units was last exercised.
- F. Initially, there shall be two (2) Board members, but not less than ninety (90) days after conveyance of fifty percent (50%) of the Units that may be conveyed to Unit Owners other than Declarant the Board shall consist of three (3) members and not less than one (1) of the members of the Board must be elected by Unit Owners other than the Declarant. The three (3) Directors so elected shall serve for staggered terms of at least two (2) years, but shall hold office until their respective successors shall have been chosen and qualified. Beginning in the second year after election of the initial Directors of the Association, no more than two (2) Directors shall be elected during any given year. Except as otherwise provided in the Declaration, not later than the termination of any period of Declarant's control, the Unit Owners shall elect a Board of three (3) members, at least a majority of which must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election. Provided, however, at all times prior to the sale of Declarant's final Unit in the CIC, Declarant may appoint at least one (1) member of the Board.

- G. Notwithstanding any provision of this Declaration or By-Laws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.
- H. If entered into before the Board elected by the Unit Owners pursuant to subsection F. above takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to subsection F. takes office upon not less than ninety (90) days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the Common Interest Community or reduce its size; or (ii) a proprietary lease.
- I. The Board shall elect all officers of the Association who shall conduct the daily business and affairs of the Association. Officers may be Board members. The Board members shall take office upon election.
- J. The Board is expressly authorized and empowered to accept assignment of the BCC rights from the Declarant at the earliest possible opportunity to thereby vest the Association with BCC control and all BCC rights.

3. Board Meetings/Quorum: A quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty percent (50%) of the votes on that Board are: physically present at the meeting; present by electronic means such as telephone or video conference; or represented by proxy.

4. By-Laws: The By-Laws of the Association, and all amendments thereof, in addition to other matters, provide and shall provide :

- A. That the number of members of the Board is to be two (2) in number until increased by Unit sales as set forth hereinabove.
- B. Election by the Board of a president, treasurer, secretary and other officers of the Association. Board members may fill some or all officer positions.
- C. The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies.
- D. The delegation by the Board or officers of duties to other persons or to a managing agent.

- E. Which of its officers may prepare, execute, certify and record amendments to this Declaration on behalf of the Association.
- E. A method for amending the By-Laws.
- G. Board members shall serve two-year terms which are staggered with no more than two (2) members elected during a given year beginning at the time of the first election after the election of the initial Board.

**XVII.**  
**ASSOCIATION ASSESSMENTS, FINES AND FEES**

1. General Authority. The Association is vested with authority to levy Annual assessments, Special assessments, initial membership assessments (sometimes hereinafter individually or collectively or in combination, "Assessment"), fines, fees, penalties, and to require the posting of road fund deposits and construction deposits pursuant to the Governing Instruments. All levies made by Association, whether Annual, Special or fines, fees and penalties, shall run with the land and ownership of the Unit. Sale or transfer of any Unit shall not affect the Assessment lien or relieve such Unit from assessment liability. All Units are subject to Assessment. Common Areas, Limited Common Areas and land which may be dedicated as future phases of the CIC, but which has not been dedicated, are not subject to Assessment. Assessments apply to only those Units which were dedicated and in existence at the time of levy and have been conveyed by the Declarant. Any expense Assessment or installment thereof bears interest from the date the same is due at the rate to be established by the Association which rate shall not exceed twelve percent (12%) per year.

2. Initial Assessment: The initial purchaser from the Declarant of any Unit in the CIC shall, on the date of purchase, pay to the Association the sum of **Five Hundred Dollars (\$500.00)**. All Initial Membership Fees shall be deposited by the Association in its operating account to be held for future repairs, maintenance and improvement of the Common Areas, preservation and maintenance of natural areas, development or improvement of recreational facilities on the Common Areas and for community events and community activities benefiting the Unit Owners. The initial membership fee is, and during Declarant control of the Association shall remain, Five Hundred Dollars (\$500.00). After termination of Declarant control, the Board shall have the sole discretion to determine the amount and method of determining such Initial Membership Fee, provided, however, that the Initial Membership Fee shall never exceed or be greater than twice the amount of the most recent Annual Assessment for Common Expenses. Initial Membership Fees are not due or payable as the result of any conveyance or transfer to any entity wholly owned by the Declarant. Provided, however, that Initial Membership Fee shall be due when such otherwise exempt Units are subsequently conveyed by such entities.



3. Annual Assessment for Common Expenses:

- A. Annual Assessment. The Association shall make a Common Expense Assessment, which will initially be in the amount of **TWO HUNDRED FORTY DOLLARS (\$240.000) PER YEAR**. Assessments must be made at least annually based on a budget adopted at least annually by the Association. In the event that a budget should not be adopted in a timely manner, the annual Assessment for each year shall automatically be One Hundred Four percent (104%) of the Annual Assessment for the preceding year with such increase imposed to compensate for the annual anticipated increase in the Consumer Price Index. The annual budget shall include the reasonably anticipated cost of future capital expenses and preventative maintenance of Common Areas and Limited Common Areas (as more particularly set forth elsewhere herein). The budget shall provide for future paving, road maintenance and snow removal. Future expenses shall be assessed annually, in advance in increments calculated to meet the anticipated actual future needs of the Association. A separate capital reserve or capital improvement account shall be maintained with regard to all monies collected for future capital expenses.
- B. Declarant Obligation. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Assessments must be made at least annually based on a budget adopted at least annually by the Association.
- C. Common Expenses to be Levied Pursuant to Common Expense Liability. All Common Assessments and Special Assessments levied as a result of Common Expenses must be levied against all Units such Assessments shall be proportionate to the Units' respective Common Expense liability as set forth in Article X.
- D. Units Not Subject to Assessment. Provided, however, that Assessments may only be levied against those Units which are in existence on the date of Assessment. Units which are created during a fiscal year are not subject to Assessment until the succeeding fiscal year.
- E. Limited Common Expense Assessment. To the extent reasonably determinable, any Common Expense or portion thereof exclusively benefiting fewer than all of the Units must be assessed exclusively against the Units benefited. Limited Common Expenses must be assessed exclusively against those Units entitled to utilize, and benefit by, the Limited Common Area subject thereof. Any individual Unit reserve for Limited Common Area repair/replacement is not refundable and will transfer to the new Unit buyer.
- F. Judgment Assessments. Assessments to pay a judgment against the Association may be made only against the Units in the CIC at the time the judgment was entered, and in proportion to their Common Expense liability.

G. Common Expense Attributable to Unit. If any Common Expense is caused by the misconduct of any Unit Owner, or their invitees, lessees or tenants, the Association may assess that expense exclusively against such Unit Owner's Unit.

H. Minimum & Maximum Annual Assessment. The minimum Annual Assessment for Common Expenses is **Two Hundred Forty Dollars (\$240.00)**, which is the initial annual assessment, and the minimum Annual Assessment may never be less than the original amount. During the period of Declarant control, the Annual Assessment for Common Expenses may not exceed **Four Hundred Eighty Dollars (\$480.00)**, per year absent Declarant's prior written consent.

4. Special Assessments. The Board may periodically levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments must be budgeted for and levied against all Units proportionate to the Units' Common Expense liability allocation. Special Assessments may, at the Board's discretion, be made payable over a period of time which extends beyond the calendar year in which same is levied. Special Assessments for Common Expenses such as road maintenance must be made proportionate to the Common Expense liability.

5. Fines and Penalties. The Association may assess any Unit Owners with reasonable fines and penalties for any uncured violation of the Governing Instruments. The Association may not assess Units owned by Declarant for any material violation by Declarant as Declarant rather than Declarant as a Unit Owner. The Association, not the Declarant, is vested with exclusive authority to assess and levy fines and penalties resulting from violations of the BCS or any BCC ruling. Prior to assessing any reasonable fine or penalty Association shall:

- A. provide the Unit Owner with written notice of the violation and a reasonable opportunity to cure same, which said period shall, except in circumstances where the violation is reasonably likely to result in immediate damage or injury to person or property, not be less than thirty (30) days;
- B. if the violation continues after initial notice, notify Unit Owner that a fine or penalty will be imposed if the violation is not cured within an additional thirty (30) days;
- C. notify the Unit Owner of the amount of the fine, whether the fine will be re-occurring and, if so, on what basis; and
- D. afford the Unit Owner an opportunity to address the offense at a hearing with the Association Board. The Association shall not levy any fine or penalty against a Unit Owner, and the Association shall not attempt to collect any fine or penalty if Unit Owner produces a petition signed by the Unit Owners entitled to cast votes on behalf of fifty-one percent (51%) of all Units indicating that said Unit Owners oppose the fine or approve of the violation.

6. Surplus of Assessment: In the event that any Assessments collected by the Association during any fiscal year exceeds the actual needs of the Association for said year, the Board shall at its discretion, either: (a) refund the excess Assessment to the Unit Owners in proportion to the Unit Owner's contribution of said excess; or (b) transfer the excess to the capital reserve or capital improvement account and credit the same to the Unit Owners with regard to future capital expenses. Any interest earned on any reserve accounts shall be for the benefit of the Association generally and not individual Unit Owners, and shall be used for Common Area maintenance costs and not Limited Common Area maintenance costs.

7. Limitation on Assessments. *The initial purchase price of all lots in the CIC reflects the improvements provided by Declarant and which Declarant has elected to provide in the future. Declarant has elected to forego construction of certain amenities which, if constructed by Declarant, would have resulted in a greater Unit sales price at the time of the initial sale of each Unit from Declarant to a purchaser. Declarant does not intend, nor does it agree, to construct, create, install or otherwise cause any of the following amenities, services, utilities and/or improvements to exist in the CIC:*

- A. public water, sewage or cable servicing the Units;*
- B. water wells and water systems servicing the Units;*
- C. sewage disposal systems servicing the Units;*
- D. sidewalks, street lights or fire hydrants;*
- E. underground utilities of any type;*
- F. additional storm water system;*
- G. comprehensive or uniform roadway curbing;*
- H. access to or a community beach or boat dockage on Cheat Lake;*
- I. construction of any Common Area improvement such as a pool, park, pavilion, gazebo, fire-pit or playground equipment; or*
- J. any other amenity not clearly included on the Plat.*

8. Agreement Not to Undertake Additional Improvements without Declarant's Consent. By acceptance of a Deed from the Declarant, each Unit Owner, and such Unit Owner's successors and assigns, covenant and agree that, so long as Declarant owns at least one (1) Unit, the Association shall not, without Declarant's prior written consent, make any special assessment for the cost or purpose of installing, constructing or otherwise paying the cost of any of the above referenced amenities and improvements. Because Declarant would not have undertaken development and sale of the CIC and Units therein if it intended to affect the above amenities and improvements, the Association may not undertake such capital improvements without Declarant's consent or until Declarant no longer owns any interest in any Unit. Provided, however, in the event that Declarant should elect to implement or install such amenities and improvements to any portion of the CIC, but not all of the CIC, no such partial provision of amenities and/or improvement shall be deemed to create any obligation for Declarant to provide same to all Units in the CIC.

**XVIII.**  
**ASSOCIATION LIENS**

1. Lien for Assessments. The Association has a lien on a Unit for any Assessment levied against that Unit or fines imposed against its Unit Owner from the time the Assessment or fine becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.
2. Assessment Lien Priority. A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the Assessment sought to be enforced becomes delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other Assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, courtesy or other like exemptions.
3. Limitation on Liens. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Assessments become due. This limitation shall, however, only apply to the lien against real property and shall in no manner restrict the limitations period applicable to the underlying obligation.
4. Enforcement of Lien. This section does not prohibit actions to recover sums for any valid Association lien or prohibit the Association from taking a deed in lieu of foreclosure.
5. Attorney's Fees, Costs, Expenses. Any lien shall include the costs of preparation, service, and recordation of same. A judgment or decree in any action brought to enforce a lien or collect any past due Assessment shall include costs and reasonable attorney's fees for the prevailing party.
6. Statement of Assessment Balance. The Association, upon written request, shall furnish to a Unit Owner a statement setting for the amount of unpaid Assessments against the Unit Owner's interest in real estate. The statement must be in recordable form. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and/or every Unit Owner.
7. Notice of Lien. For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the Unit Owner of the liability for payment of the Assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. The notice shall contain:

- A. a legally-sufficient description of the Unit;
- B. a name or names of the Unit Owners of the Unit;
- C. the amount of unpaid Assessments due, together with the date when each became due;
- D. the date of recordation; and
- E. the Clerk of the County Commission in whose office the notice is recorded shall index the notice in the appropriate lien books in the names of the Unit Owners as debtors and in the name of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.

8. Release of Lien. Upon payment of the Assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense of the Unit Owner in the Office of the Clerk wherein the notice of the lien was filed.

9. Other Association Liens. A judgment for money against the Association (if recorded) is not a lien on the Common Areas, but is a lien in favor of the judgment lien holder against all of the Units in the CIC at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association. If the Association has granted a security interest in the Common Areas to a creditor of the Association pursuant to Article XV, Section 11, the holder of that security interest shall exercise its right against the Common Areas before its judgment lien on any Unit may be enforced.

## **XVIII.**

### **ASSOCIATION FINANCIAL MATTERS, BUDGET AND RECORDS**

1. Annual Budget: The Board shall annually adopt a proposed budget for the succeeding fiscal year and within thirty (30) days after adoption of any proposed budget for the CIC, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than twenty (20) nor more than sixty (60) days after mailing of the summary. Unless a majority of all Unit Owners reject the budget, the budget is ratified. In the event the proposed budget is rejected by a majority of the Unit Owners, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. Provided, however, the new budget shall automatically be One Hundred Four percent (104%) of said prior budget with such increase imposed to compensate for the annual anticipated increase in the Consumer Price Index from the date of the adoption of the preceding budget and the date of the proposed budget.

2. Financial Needs/Basis for Budget: The annual budget shall be based on the actual anticipated financial needs of the Association. Matters which may be included in the Association's annual budget include, but are not limited to, the costs of: (1) property taxes for the Common Areas; (2) Association business licensing and registration fees and the cost of other governmental filings; (3) insurance; (4) snow removal; (5) preventative maintenance, repair and upkeep of the roadways, drainage systems and Common Areas; (6) legal fees and accounting fees; (7) improvements to Common Areas; (8) operational expenses such as mailings, notices,

recordkeeping and maintenance of accounts; (9) periodic inspection of drainage systems and utility systems by qualified professionals; (10) mowing and trimming of vegetation in and on the Common Areas; (11) leases for Common Areas; and (12) budget preparation expenses.

3. Association Accounts. The Association shall maintain the following bank or investment accounts which said accounts shall not be co-mingled and all such accounts shall require signatures of the Declarant's designee during Declarant's control and not less than two officers or directors for any disbursement or withdrawal after Declarant's control.

A. Operating Account. The operating account is the fiscal account from which the Association shall pay its daily expenses. The Operating Account is funded with revenue including Annual Assessments and interest accrued thereon, and receipts from fines and penalties. Any excess funds remaining in the Operating Account at the end of a fiscal year shall be transferred, within four (4) months after the end of the operating year to the Capital Account. The four (4) month delay is intended to permit the Operating Account to be funded by payment of subsequent year's Annual Assessments.

B. Capital Account. The capital account is the fiscal account from which the Association shall accumulate funds for, and when appropriate, pay for long-term capital expenses such as future paving, drainage system repairs and other reasonably certain significant expenses such as replacement of improvements to the Common Areas and Limited Common Areas. All monies held in the Capital Account are held on account of individual Units as a credit for future reasonably certain expenses. Funds held in the Capital Account may be transferred to the Operating Account as a credit to the individual Units and in lieu of a Special Assessment in the event of unforeseen operating expenses which exceed the sums budgeted by Association during any fiscal year. The Capital Account is funded with: (1) excess sums remaining in the Operating Account at the end of any fiscal year; (2) Special Assessments for capital expenses; (3) Annual Assessments for capital expenses; and (4) Voluntary Capital Contributions by Declarant. Nothing herein shall be deemed to limit or prohibit investment of the Association's capital funds in reliable sources which are reasonably certain to generate revenue greater than interest paid on bank accounts.

C. Road & Construction Fund Account. All road fund and construction deposits required by the BCC and posted by Unit Owners to secure compliance with the Governing Instruments during construction and intended to prevent roadway damage during construction shall be held in an independent Association bank or investment account, interest bearing if possible, and shall not be co-mingled with other Association funds.

7. Capital Contributions by Declarant. At the time of the initial sale of the first Unit conveyed by Declarant to an unrelated third party, Declarant shall contribute Five Hundred Dollars (\$500.00) to the Association's Operating Account and Five Hundred Dollars (\$500.00) to the

Association's Capital Account. Said sums shall be held in said accounts until after Declarant relinquishes control of the Association, at which time the Declarant may withdrawal all or part of such contributions.

8. Association Records. The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing the Association's assets and to permit the Association to provide, upon request, for a One Hundred Dollar (\$100.00) fee relative to each Unit, a Unit Resale Summary setting forth information required to be submitted to a prospective Unit Owner by the current Unit Owner to lawfully convey such Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended. Said fee shall be charged to the then current Unit Owner requesting such information, excluding the Declarant.

## **XIX. ASSOCIATION AND UNIT OWNER'S INSURANCE**

### 1. Association Insurance:

A. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

(a) Blanket all-risk insurance on the Common Areas and undeveloped Units, or if all-risk coverage is not available, then at a minimum an insurance policy covering loss or damage by fire, and other hazards, including extended coverage, vandalism, and malicious mischief. The total amount of insurance after application of any deductibles must be not less than one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction, at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(b) Public liability insurance on the Common Areas, the Association and its Members for damage or injury caused by the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall include medical payment insurance, in limits of \$300,000/\$1,000,000 and thereafter, in an amount determined by the Board so to cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas.

B. If the insurance described above is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United State Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners. Provided,

however, that the Association shall not have any insurance responsibility for any individual Unit not owned by the Association or the Declarant.

- C. Insurance policies carried pursuant to this subsection must provide that:
- (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Areas or membership in the Association;
  - (b) The insurer waives its right to subrogation under the policy against any Unit Owner or member of such Unit Owner's household;
  - (c) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
  - (d) If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy the Association's policy provides primary insurance.
- D. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of subsection G. below, the proceeds must be disbursed first for the repair or restoration of the damaged property and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the CIC is terminated.
- E. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for such Unit Owner's own benefit.
- F. An insurer which has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.
- G. Any portion of the CIC for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the CIC is terminated; (ii) repair or replacement would be illegal under any State or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Unit Owners vote not to repair or rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If



- the entire loss is not repaired or replaced, the insurance proceeds attributable to the damaged Common Areas must be used to restore the damaged area to a condition compatible with the remainder of the CIC. Any surplus insurance proceeds shall be credited to the Common Expense for the benefit of the Unit Owners who were members of the Association at the time of the loss.
- H. Premiums for all insurance required under this section shall be Common Expenses of the Association and shall be included in the Common Assessment. The policy may contain a reasonable deductible, and in the case of casualty insurance, the amount thereof may be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
  - I. All policies shall be written with a company authorized to do business in West Virginia which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.
  - J. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board. No lien holder shall have any right of participation with respect to losses pertaining to the Common Areas.
  - K. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Unit Owners, occupants, or their lenders, and the insurance carried by the Association shall be primary.
  - L. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one (1) or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Monongalia County, West Virginia, area.
  - M. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
    - (a) a waiver of subrogation by the insurer as to any claims against the Association, the Unit Owners, and their respective tenants, servants, agents and guests;
    - (b) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
    - (c) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one (1) or more individual Unit Owners; and

(d) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director or officer of the Association or its duly authorized agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Board or any Unit Owner.

2. Individual Unit Owner's Insurance:

- A. By virtue of taking title to a Unit subject to the terms of this Declaration, each Unit Owner covenants and agrees with all other Unit Owners and with the Association that each Unit Owner shall carry blanket all-risk casualty insurance on the Unit(s) purchased by such Unit Owner and structures constructed thereon. Each Unit Owner of a Unit further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising such Unit Owner's Unit, the Unit Owner shall remove all debris within sixty (60) days and complete repair or reconstruction of the damaged structure within six (6) months in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Unit Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Unit Owner of the Unit shall rebuild the structure(s), and return it to substantially the same state in which it existed prior to the damage and the Unit Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the BCS as provided in this Declaration and elsewhere in Governing Instruments.
- B. All policies of insurance required by the terms of this section shall name the Association as additional insured and shall require that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.
- C. In the case of fire, casualty, or other disaster, each Unit Owner covenants to apply all of the insurance proceeds to the extent necessary for the reconstruction of the improvements on the Unit to substantially the same state in which it existed prior to the damage. Reconstruction, as used in this paragraph, shall mean the restoration of all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty, or other disaster. Each Unit Owner covenants and agrees to carry a policy of liability insurance and to name the Association as an insured party as a condition precedent to the purchase of any Unit, the Unit Owners shall exhibit a policy of casualty insurance issued by a good and solvent insurer authorized to do business in the State of West Virginia, which policy contains an endorsement that the proceeds from the policy are jointly payable "as their interest may appear" to (1) the Unit Owner, (2) the Association, and (3) any person, firm, or corporation secured by a deed of trust on the subject property. It is the intent of this section that a power and right be created for the Association to see that the funds

payable by reason of loss to the property under said policy of casualty insurance is used for reconstruction, if so required.

## XX.

### ASSOCIATION RULES AND REGULATIONS

1. Purpose/Amendment. The initial Rules and Regulations of the Association shall be promulgated by the Declarant and are intended as a mechanism for establishing guidelines for use of the Units and Common Areas. The Rules and Regulations may be amended by the Board for the purpose of explaining, interpreting and expanding the provisions of the Governing Instruments. Provided, however, that no such modification to the Rules and Regulations shall be enforceable against any party until thirty (30) days after the Rules and Regulations have been published to all Unit Owners. Further, so long as Declarant owns any Unit in the CIC, no such amendment may be made without Declarant's prior written consent.
2. Limitations on Rules and Regulations. Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules and Regulations of the Association, all Rules and Regulations shall comply with the following provisions:
  - A. Similar Treatment. Similarly situated Unit Owners shall be treated similarly. No rule or regulation may directly or indirectly discriminate against any Unit Owner.
  - B. Displays. The rights of Unit Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units shall not be abridged, except that the Association may adopt time, place, size, lighting, number and manner restrictions with respect to displays visible from outside the structure.
  - C. Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place, number and manner of posting such signs.
  - D. Household Composition. No rule shall interfere with the freedom of Unit Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Areas.
  - E. Activities Within Units. No rule shall interfere with the activities carried on within the confines of structures on Units, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities within residential Units which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Unit Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures on Units, or that create an unreasonable source of annoyance to persons outside of the Unit.

- F. Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Areas to the detriment of any Unit Owner over that Unit Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who are delinquent in paying Assessments or abuse the Common Areas or violate the Governing Instruments. This provision does not affect the right to increase the amount of Assessments set elsewhere herein. This provision does expressly limit and is intended to prevent the Unit Owners of Phase I Units from discriminating against the Unit Owners of Units in any additional Phases.
  
- G. Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Unit Owners use lease forms approved by the Association.
  
- H. Abridging Existing Rights. No rule shall require a Unit Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Unit Owner's ownership of the Unit, and shall not apply to subsequent Unit Owners who take title to the Unit after adoption of the rule.
  
- I. Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the CIC, the Declarant's Other Tracts or other properties in the vicinity of the CIC, nor increase the cost to Declarant thereof.

The limitations herein shall only limit rule making authority exercised by the Association; they shall not apply to amendments to this Declaration adopted in accordance with the provisions hereof.

## **XXI. REPRESENTATIONS AND WARRANTIES**

1. All Unit Owners herein, their heirs, successors and assigns, by their acceptance and recordation of a deed conveying any interest in any Unit acknowledge the conditions, limitations, restrictions, provisions, exceptions and reservations set forth herein. The Declarant makes no representation or warranty direct, express or implied, which is contrary to the provisions hereof and no representation or warranty by any realtor, real estate broker or real estate agent contrary to the provisions of this document shall be binding on the Declarant unless reduced to writing and signed by the Declarant.

2. The Backwaters is a Common Interest Community created and designed for use as a single-family residential community. Declarant makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all expressed or implied warranties of quality are excluded. Units are being offered for sale by Declarant upon an "AS IS" basis.

## **XXII. REMEDIES**

In the event of any violation of the provisions of the Declaration by any Unit Owner other than Declarant (either by the Unit Owner's own conduct or by the conduct of any occupant of a Unit, or other person present in the CIC on the Unit as a guest, family member, or invitee of a Unit Owner), the Association and Declarant shall have all of the rights and remedies which are set forth in the Governing Instruments or otherwise provided for in the CIC Act to which this CIC is submitted and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any subject actions or proceedings, including court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expenses of the Association and the Association shall have a lien against the Unit for all of the same.

## **XXIII. AMENDMENTS**

The provisions of this Declaration may be changed, modified or rescinded with regard to future Units, future Phases or real estate withdrawn from the CIC by an instrument in writing setting forth such change, modification or rescission and executed by Declarant.

The provisions of this Declaration may be changed, modified or rescinded as to platted and dedicated Units and Phases which have not been withdrawn by Declarant only by an instrument in writing setting forth such change, modification or rescission and executed by vote or agreement of Unit Owners owning Units to which not less than sixty-seven percent (67%) of the votes in the Association are allocated and prepared, executed, acknowledged and properly recorded for the Association by its President; provided, however, no change, modification or rescission may increase or create Special Declarant's Rights, increase the number of Units, alter Unit boundaries, increase the allocated interests of a Unit or the uses to which any Unit is restricted, without the consent or agreement of all Unit Owners and of all lien holders unless otherwise specified in this Declaration, and any instrument changing, modifying or rescinding

any provision of this Declaration with respect to such action shall be signed by all the affirmatively voting Unit Owners and all lien holders as required by this Declaration.

The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the CIC Act to which the CIC is submitted, and FURTHER PROVIDED that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Association Board where alteration of the provisions hereof are made solely to bring this document into compliance with the CIC Act, other existing law or to correct errors of scribes, architect or surveyor with no notice to Unit Owners or lien holders as above unless such change, modification or rescission directly affects an individual Unit Owner's or lien holder's interest in the real estate or appurtenances held as security.

#### **XXIV. NOTICES**

Notices provided for in the CIC Act, Declaration, Articles of Incorporation or By-Laws shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at the Unit address provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notice by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof. Upon written request to the Board setting forth its address, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or the By-Laws to be given to the Owner or Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in the absence of submission of a lien holder's address.

#### **XXV. SEVERABILITY**

If any provision of the Declaration, Articles of Incorporation, or By-Laws or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and the Articles of Incorporation and the By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration, Articles or Incorporation or the By-Laws shall be construed as if such invalid part was never included therein.

**XXVI.**  
**PERPETUITIES AND RESTRAINTS ON ALIENATION**

If any provision of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the President of the United States, George W. Bush.

**XXVII.**  
**TERMINATION AND EMINENT DOMAIN**

1. Termination. The CIC (which includes all Units, Common Areas, rights and restrictions herein created) may be terminated only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate must be evidenced by: (1) the execution of a termination agreement; or (2) ratification of a termination agreement by the requisite number of Unit Owners. The termination agreement or individual ratifications thereof must: (i) be executed in the same manner as a deed; (ii) specify a date after which the agreement or ratification shall become void if not recorded before that date. No termination agreement shall be valid until recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

- A. Notwithstanding any provision to the contrary herein contained, Declarant may, by recording a Notice of Termination, terminate this Declaration as to the entire CIC prior to the recordation of the first deed for a Unit from the entire CIC or within the particular Phase but not as to any remaining Phase.
- B. Foreclosure or enforcement of a lien or encumbrance against the entire CIC or any part thereof does not itself terminate the CIC or withdraw that part thereof from the CIC or from this Declaration and other related documents herein set forth.
- C. The termination agreement may provide all of the Common Areas and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.
- D. The Association on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. Upon termination, if any real estate is to be sold following termination, title to that real estate vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effectuate the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner and Unit Owner's successors in interest have an

exclusive right to occupancy of that portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Declaration.

- E. If a lien or encumbrance against a portion of real estate has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure may record an instrument excluding the real estate subject to that lien or encumbrance from the CIC.

2. Eminent Domain. If a Unit is acquired by eminent domain or any part of any Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Unit and its allocated interests, whether or not any Common Areas are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Any such remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Area. Further:

- A. Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Areas, whether or not any Common Areas are acquired. Upon acquisition, unless a decree provides otherwise, (i) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially-acquired Unit are automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced allocated interests.
- B. If part of the Common Areas is acquired by eminent domain, the portion of the award attributable to the Common Areas taken must be paid to the Association.

## **XXVIII. SEPARATE TITLES AND TAXATION**

After conveyance by the Declarant, each Unit, together with its interest in the Common Areas, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.



**XXIX.  
RIGHTS AND OBLIGATIONS OF GRANTEES**

Each grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same **SUBJECT TO** all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and **ALL MATTERS SET FORTH IN THIS DECLARATION**. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

**XXX.  
HEADINGS**

The headings or paragraphs and sections in this Declaration or the other Governing Instruments are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**XXXI.  
DESCRIPTION INCLUSIONS BY REFERENCE**

The legal description of the real estate submitted to the CIC form of ownership is set forth herein in Article III and on the Plat heretofore referenced and is made a part hereof by reference.

**XXXII.  
SUBMISSION TO LAW**

The Declarant, as the legal title holder in fee simple of said real estate set forth herein in Article III and on the Plat heretofore referenced expressly intends to, and by the recording of the Declaration, does hereby submit said real estate to the provisions of the CIC Act as amended to the date hereof.

**XXXIII.  
STATUTE OF LIMITATIONS**

**All prospective Unit Owners shall execute a separate instrument attached to the Public Offering Statement titled “Agreement and Waiver”.** This Agreement and Waiver, between Declarant and prospective Unit Owners, waives prospective Unit Owners’ statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by prospective Unit Owners for breach of warranty within two years of the date the Unit Owner enters into possession.

Prospective Unit Owners should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver.

Executed this \_\_\_\_\_ day of February, 2008, by the Declarant:

**WINDSTAR HOLDINGS LLC**

By: \_\_\_\_\_

R. Scott Summers

Its: Sole Member & Manager

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, TO-WIT:

The undersigned, a Notary Public for the State of West Virginia, hereby certifies that R. SCOTT SUMMERS, the sole Member and Manager of WINDSTAR HOLDINGS LLC, a West Virginia limited liability company, whose name is signed to the foregoing Declaration, this day personally appeared before me in said County and State and acknowledged his signature to be the same, and to be the free act and deed of said limited liability company, upon authority duly granted.

Given under my hand this \_\_\_\_\_ day of February, 2008.

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

(SEAL)

My Commission Expires: \_\_\_\_\_

**This instrument was prepared by:**

R. SCOTT SUMMERS, ESQUIRE  
R. SCOTT SUMMERS, P.L.L.C.  
LAW OFFICES OF REEDER & SHUMAN  
POST OFFICE BOX 842  
MORGANTOWN, WEST VIRGINIA 26507