

**Declaration
of Covenants,
Conditions,
and
Restrictions
for
DRY RUN
COMMONS
SUBDIVISION**

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

DRY RUN COMMONS SUBDIVISION

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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Appearing</u>
"A"	Land Initially Submitted	39
"B"	Land Subject to Annexation	40
"C"	By-Laws of Dry Run Commons Subdivision Unit Owners Association, Inc.	
"D"	Development Plan	

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

DRY RUN COMMONS SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made and dated this 12th day of July, 1993, by Rock Cliff Drive Limited Partnership, a West Virginia limited partnership (hereinafter referred to as "Declarant"), and consented to by the undersigned owners of property;

Declarant is the owner or is acting with the consent of the owners of the real property described in Schedule "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration;

Declarant hereby declares that all of the property described in Schedule "A" and any additional property as is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, liens, and assessments which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the West Virginia Uniform Common Interest Ownership Act, Chapter 36B, West Virginia Statutes (the Act), et seq. This Declaration is intended to create a common interest community and planned community as defined in the Act, but the planned community shall not be subject to the Act pursuant to Chapter 36B, Article I, Section 203(2) of the Act except Article I, Sections 105, 106, 107, and 114 of the Act.

Article I
Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration becomes the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public right-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the articles of Incorporation of Dry Run Commons Subdivision Unit Owners Association, Inc., as filed with the Secretary of State of the State of West Virginia.

Section 3. "Association" shall mean and refer to Dry Run Commons Subdivision Unit Owners Association, Inc., a West Virginia corporation, its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under West Virginia Corporate Law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean and refer to assessments levied against all Units in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean and refer to the By-laws of Dry Run Commons Subdivision Unit Owners Association, Inc., attached hereto as Schedule "C" and incorporated herein by reference, as they may be amended from time to time.

Section 6. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 7. "Common Area" shall be an inclusive term referring to all General Common Area as defined herein. The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchaser other than a builder or developer holding title for the purpose of development and resale.

Section 8. "Common Expense" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 9. "Community Standard" shall mean the standard of construction quality and design, conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 10. "Concept Plan" shall mean and refer to the Concept Plan for the development of the property described in Schedule prepared by P. C. DiMagno, Engineers - Surveyors, dated April 30, 1992, as approved by the City of Martinsburg, West Virginia Planning Commission, on _____, as it may be amended from time to time, a copy of which is annexed hereto as Schedule "F". The attached Schedule contains the modification that Phase I is shaded and the addition of the statements "Subject to Development Rights", "Need Not Be Built", "Development Rights Reserved In All Areas".

Section 11. "Declarant" shall mean and refer to Rock Cliff Partners Limited Partnership, a West Virginia limited partnership, or its successors, successors-in-title or assigns who take title to any portion of the property described on Schedules "A" or "B" for the purposes of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 12. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 13. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 14. "Mortgage" shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 15. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 16. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 17. "Owner" shall mean and refer to one or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one year and the Lease specifically so provides, then upon filing a copy of the Lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner.

Section 18. "Parcel Developer" means any developer who purchases land within the Properties (as defined in this Article I) for the purpose of development and sale.

Section 19. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 20. "Properties" shall mean and refer to the real property described in Schedule "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 21. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 5, of this Declaration.

Section 22. "Supplemental Declaration" shall mean any amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Section 23. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) townhouse units, cluster homes, patio and zero lot line homes, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties, and shall include those portions of the Properties developed as commercial units as are specifically subjected to this Declaration as part of a mixed-use/residential regime. Commercial Units located outside of Dry Run Commons Subdivision but which are subject to assessment for road maintenance purposes are included in this definition solely for the purpose of assessment and access for ingress to and egress from such commercial unit. All other rights and privileges pertaining to such commercial units are to be set forth in a separate Declaration for the Commercial Areas in the Dry Run Commons Development.

The term Unit shall include all portions of the lot owned including any structure thereon. In the case of any structure which contains multiple dwelling units, each dwelling unit shall be deemed to be a separate Unit. The term Dwelling Unit as hereinafter used shall mean and refer to any building or portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Dwelling Units designated for such parcel on the Improvement Location Permit issued for such Unit or the site plan approved by Declarant, whichever is more recent. After construction is completed the Association shall from time to time physically inspect and determine the number of Dwelling Units contained within a Unit.

Article II
Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, members and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to Article VIII hereof, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Dry Run Commons Subdivision and Dry Run Commons Development desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Dry Run Commons Subdivision and Dry Run Commons Development.

The right of the Declarant to dedicate all or any part of the Common Area, including but not limited to all streets and ways and parks and other open area to the City of Martinsburg, West Virginia, or in the case of the parks and other open areas to the City of Martinsburg Park and Recreation Board, to be held and maintained in accordance with law.

Article III
Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Dwelling Unit in which they hold the interest required for membership under Section 1 hereof; and there shall be only one (1) vote per Dwelling Unit.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the

absence of such advice, the Unit's vote shall be suspended if more than one (1) person seeks to exercise it.

(b) Class "B". The Class "B" Members shall be the Declarant. The rights of the Class "B" Members, including the rights to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Members shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3, of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" Membership upon the earlier of:

- (i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or

Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but needs not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Areas, including, but not limited to, drainage systems, recreation and open space, utilities, traffic control devices, the pedestrian walking path system, such emergency shelters which Declarant or the Association may construct, all private streets within the Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a Common Expense to be allocated among all Units as part of the Base Assessment.

The Association may, in the discretion of its Board, assume the maintenance responsibilities of a Neighborhood set out in this Declaration or in any Supplemental Declaration or declaration subsequently recorded which creates any Neighborhood Association upon all or any portion of the Properties. In such event, all costs of such maintenance shall be assessed only against the Units within the Neighborhood to which the services are provided. The assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. The provision of services in accordance with this Section shall not constitute discrimination within a class.

A Neighborhood Association or the Association shall provide exterior maintenance upon each Town House Unit which is not part of a condominium regime as follows: paint repair, replace and care (including lawn care) for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, yards, grass, walks and other exterior improvements. The Common Expenses associated with the costs of such exterior maintenance shall be assessed to the Town House Unit and Units upon which maintenance is done and shall be added to and become a part of the Neighborhood Assessment to which such Unit or Units are subject.

The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Any person authorized by the Association shall have the right of access to all portions of the Properties for the purpose of performing exterior maintenance; for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, meters, wires and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, and with such force as is apparently necessary to gain entrance, whether or not the Unit Owner is present at the time.

Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following notice and hearing. In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Unit Owner for any damages caused to the Unit in gaining entrance to the Unit or in otherwise responding to the emergency. The Unit Owner shall be responsible for making all repairs to the Unit which result from the emergency and shall hold the Association harmless from any damages resulting therefrom.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the owner thereof in accordance with Article X, Section 5, of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Article V Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a Two Million (\$2,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Five Million (\$5,000,000.00) Dollar limit per occurrence, if reasonably

available, and One Million (\$1,000,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Area shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article I and as more particularly described in Article X, Section 1. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed 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.
- (b) All policies on the Common Area shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Area, as their interests may appear.
- (c) Exclusive authority to adjust losses under policies by the Association on the Properties shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.
- (e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction costs in Berkeley County, West Virginia.
- (f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
 - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
 - (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

- (iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager 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 manager, any Owner, or Mortgagee;
- (v) that any "other insurance" clause in any policy excludes the individual Owners' policies from consideration; and
- (vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than twelve (12) months; assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit which is subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Common Area. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The 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 Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

Section 3. Damage and Destruction.

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

- (b) Any damage or destruction to the Common Area or to the common property of any Neighborhood Association shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total vote of the Association, if Common Area, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed, except for access streets and ways within the Properties; provided, however, this provision shall not apply to construction Mortgages providing construction financing for such damaged property.
- (c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, in a neat and attractive condition consistent with the Community-wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for Base Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VI No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provision of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VII
Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns any property described on Schedules "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Schedules "A" or "B" of this Declaration, and Members representing at least seventy-five (75%) percent of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VIII
Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership.
As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Schedule "B" has been subjected to this Declaration or December 31, 2017, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Schedule "B", attached hereto and by reference made a part hereof. Such annexation shall be accomplished by filing in the public records of Berkeley County, West Virginia, an amendment to this Declaration annexing such property. Such Supplemental Declaration shall be executed by the Declarant and shall not require the consent of Members. Any such annexation shall be effective upon the filing for record by Declarant of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Schedules "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership.
Subject to the consent of the owner thereof, the Association may annex real property other than that described on Schedule "B", and following the expiration of the right in Section 1, any property described on Schedule "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members or alternates representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such

purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Berkeley County, West Virginia, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Schedules "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Schedules "A" or "B" hereof.

Section 5.1. Development Rights. The Declarant, by way of explanation and not limitation, reserves fully, completely, and to the maximum the following Development Rights:

- (a) The right by amendment to add real estate to the Properties. The real estate to which this development right applies is set forth in Schedule "B".
- (b) The right by amendment to create Units and Common Area within the Properties.
- (c) The right by amendment to subdivide and combine Units or convert Units into Common Area.
- (d) The right by amendment to withdraw real estate from the Properties.
- (e) The right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Properties for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the land designated Subject to Development Rights on the Concept Plan. The Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Properties not occupied by buildings, for the above-mentioned purposes.

Section 5.2. Limitations on Development Rights.

- (a) The Development Rights reserved in this Article must be exercised within fifteen (15) years after the recording of the initial Declaration.
- (b) Not more than Six Hundred (600) Dwelling Units may be created under the Development Rights.
- (c) All Units and Common Areas created pursuant to the Development Rights will be as more fully set forth and defined in Article XII restricted to residential use, but all Units will not be single family detached Units. Future

Units will consist of an undetermined mix, number, quality, size, location and density of various types of residential housing including town house, patio and zero lot line. Access and utilities to surrounding lands not presently in or intended to be included in Development may be over Artisan Way, Dry Run Commons and other roads within the Subdivision.

- (d) There are no limitations on the styles, size, location, design, height, and quality of construction of town houses, patio homes and zero lot line residences.

Section 5.3. Phasing of Development Rights. Any of the Development Rights set forth in Section 5.1 above may be exercised with respect to different parcels of real estate within the Properties at different times, and at different locations. However, no assurances are made by the Declarant as to when, where, or the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

Section 5.4. Special Declarant Rights. The Declarant fully and completely reserves the following Special Declarant Rights anywhere within the Properties:

- (a) To complete any and all Improvements (including by way of explanation and not limited to streets, roads, walking paths, utilities, and dwelling units of every type and nature) indicated on Plats and Plans filed with the Declaration, any Supplemental Declaration or reasonably anticipated and implied from the nature of the development;
- (b) To exercise any Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Properties and Dry Run Commons Development and models;
- (d) To use easements through the Common Area for the purpose of making Improvements within the Properties or within real estate which may be added to the Properties, or within Dry Run Commons Development.
- (e) To appoint or remove an officer of the Association or a Board member during the period of Class "B" Control Period.
- (f) The real estate to which the Special Declarant Rights specified in Sections (a) through (f) above apply is shown on Schedule "B".

Section 5.5. Models, Including Model Homes and Homesites, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Area as a model Unit or sales office or management office. The Declarant is also a West Virginia licensed Real Estate Broker and Declarant's right to maintain a sales office shall also include the right to offer general real estate sales services on all property whether or not located within the Properties.

Section 5.6. Construction: Declarant's Easement. The Declarant reserves the right to perform initial building and construction work, warranty work, repairs and construction work, and to store materials in secure areas, in Units and in Common Area, and the

further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has such an easement through the Common Area as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development Rights or Special Declarant Rights, whether or not specifically reserved in this Declaration such easement including the right to convey utility (including cable t.v.) and drainage easements to public utilities private cable t.v. entities, municipalities, counties, and the State, to fulfill the plan of development.

Section 5.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Area to promote sales of Units, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 5.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the Properties promptly after the sale of the last Unit permitted under the Declaration any and all goods and improvements used in development, marketing, construction and maintenance, whether or not they have become fixtures.

Section 5.9. Declarant Control of the Association.

- (a) There shall be a period of Declarant control of the Association as more fully set forth and defined in this Declaration and Article III, Section 2, of the By-Laws, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board and have all other such rights of control as are set forth in this Declaration and the By-Laws.

Section 5.10. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right specified in Sections 5.4, 5.5, 5.6, 5.7, and 5.8 may be exercised by the Declarant until the earlier of the following: so long as the Declarant (i) is obligated under any warranty or obligation, (ii) holds a Development Right to create additional Units or Common Area, (iii) owns any Unit; or (iv) owns any Security Interest in any Units; or (v) for fifteen (15) years after recording this Declaration, whichever is earliest.

Section 5.11. Interference with Development Rights or Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Development Rights or Special Declarant Right without the prior written consent of the Declarant.

DRY RUN COMMONS SUBDIVISION IS BEING DEVELOPED BY BARNEY ENTERPRISES, INC. IN CONJUNCTION WITH ADJOINING REAL ESTATE OWNED AND CONTROLLED BY DECLARANT AND WHICH DECLARANT EXPECTS AND INTENDS TO DEVELOP AS A MULTI-FACETED AND PHASED BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC COMPLEX CONTAINING A BROAD RANGE OF BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC ENTERPRISES AND ACTIVITIES INTENDED TO SERVE THE ENTIRE COMMUNITY, MEANING ALL OR PARTS OF BERKELEY COUNTY AND NEIGHBORING COUNTIES AND STATES AND TO DRAW CUSTOMERS FROM A WIDE TRADE AREA FAR IN EXCESS OF THE PROPERTIES. IT IS FURTHER ANTICIPATED AND EXPECTED THAT THE BUSINESS, COMMERCIAL, OFFICE PUBLIC AND SEMI-PUBLIC AREA WILL CONTAIN A BROAD MIX OF HIGH RISE AND LOW RISE BUILDINGS OF VARYING ARCHITECTURAL STYLES AND DESIGNS, AND THAT THE AREA WILL BE BUILT IN MULTIPLE PHASES. IN ADDITION, THE MASTER PLAN CONCEPT APPROVED BY THE CITY OF MARTINSBURG PLANNING COMMISSION REFLECTING BROAD

CONCEPT AND DYNAMIC DESIGN FOR THE HIGH DENSITY RESIDENTIAL DEVELOPMENT OF APPROXIMATELY 30 ACRES OF THE DECLARANT'S ENTIRE LAND HOLDINGS IN THE AREA INTO VARIOUS SINGLE FAMILY DETACHED AND ATTACHED RESIDENTIAL, AND ZERO LOT LINE RESIDENTIAL AREAS. DECLARANT AS OWNER AND BARNEY ENTERPRISES, INC. AS DEVELOPER IS A FLEXIBLE DESIGN WHICH WILL BE REGULARLY MODIFIED AND AMENDED FROM TIME TO TIME. IT IS NOT INTENDED AND THE DECLARANT AND BARNEY ENTERPRISES, INC. DOES NOT GUARANTEE AND SHALL NOT BE BOUND TO DEVELOP THE PROPERTY AS OUTLINED ON THE CONCEPT PLAN. THE DECLARANT AND BARNEY ENTERPRISES, INC. SPECIFICALLY RESERVING THE RIGHT TO AMEND THE GENERAL PLAN OF DEVELOPMENT SET FORTH IN THE MASTER PLAN CONCEPT IN RESPONSE TO CHANGES IN THE TECHNOLOGICAL, ECONOMIC, ENVIRONMENTAL, SOCIAL AND GENERAL MARKET CONDITIONS RELATING TO THE DEVELOPMENT OR MARKETING OF THE DECLARANT'S LAND HOLDINGS SET FORTH ON THE CONCEPT PLAN OR TO CHANGES IN REQUIREMENTS OF GOVERNMENTAL AGENCIES OR FINANCIAL INSTITUTIONS. THE ASSOCIATION AND UNIT OWNERS WILL HAVE NO CONTROL OVER THE DECLARANT'S OR BARNEY ENTERPRISES' DEVELOPMENT PLANS, AND EXCEPT FOR DECLARANT'S COMMITMENTS (1) TO NOT EXCEED A TOTAL OF SIX HUNDRED (600) RESIDENTIAL UNITS, (2) TO ENSURE THAT THE AREA SET FORTH IN EXHIBIT "B" IF ANNEXED INTO AND MADE A PART OF THE PROPERTIES SUBJECT TO THIS DECLARATION WILL BE USED ONLY FOR MULTI-FACETED RESIDENTIAL PURPOSES WITH THE EXCEPTION OF THE SPORTS AND RECREATIONAL AREAS. OTHERWISE, DECLARANT AND BARNEY ENTERPRISES, INC. ARE TOTALLY FREE TO AND RESERVE THE RIGHT TO INCREASE OR DECREASE THE SIZE OF RESIDENTIAL AREAS AND THE DENSITY OF POPULATION THEREIN AND THE RIGHT TO DEVELOP ALL OF THE REMAINING LANDS OF THE DECLARANT IN THE AREA FOR ANY RESIDENTIAL, BUSINESS, COMMERCIAL, OFFICE AND INDUSTRIAL USES AREAS AND TO CHOOSE AND SET THE DENSITY OF POPULATION AND USES THEREIN. THERE ARE NO USE DESIGN OR SITE PLAN REGULATIONS UPON REVIEW OF THE DECLARANT DEVELOPMENT OF ALL OF ITS REMAINING REAL ESTATE BY ANY LOT OWNER OF THE ASSOCIATION.

Article IX

Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. Fines shall constitute a lien against Units.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city ordinances or permit municipal authorities to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privileges given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. The Association shall permit the Declarant reasonable authority to designate sites within the properties for fire, police, water, sewer, cable t.v. facilities, and other necessary services and utilities.

Article X Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 8 of this Article. There shall be two (2) types of assessments: (a) Base Assessments to fund Common Expense for the benefit of all Members of the Association; (b) Special Assessments as described in Section 3 below.

Base Assessments shall be levied equally on all Units. Parcel Developers shall pay 100% of the Base Assessment levied upon the Units designated for such parcel on the site plan approved by Declarant or on the Improvement Location Permit, whichever is more recent, on the date the budget is adopted, such amount to be adjusted at least annually to reflect single family home Units platted. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of a deed or recorded contract of sale to any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate not to exceed the highest rate allowed by West Virginia law as computed from the date the delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee, nominee of the Mortgagee, or third party purchaser who obtains title to a Unit pursuant to the remedies provided in the Mortgage, or third party purchaser who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or management agent of the Association setting forth whether such assessment has been paid for any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Base Assessment for delinquents. Unless the Board otherwise provides, the Base Assessment shall be paid in annual installments.

No Owner may waive or otherwise exempt himself from liability for assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant shall either pay the Base Assessments on its unsold Units or in the alternative and in lieu of paying Base Assessments on its unsold Units the Declarant shall be obligated for the difference between the amount of assessments levied on all Units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. The Declarant from year to year may alternate its manner of payments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget.

The Base Assessment to be levied for the coming year against each Unit subject to assessment under Section 8 below shall be computed by dividing the budgeted Common Expenses by the total number of Units then subject to assessment under this Declaration and any Supplemental Declaration. The Board shall cause a copy of the Common Expense budget and notice of the amount of Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members by the vote of seventy (70%) percent of the total Class "A" vote in the Association, and by the Class "B" Member, if such membership exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Article II, Section 4, of the By-Laws.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the dues per Unit in effect for the immediately preceding year shall continue for the current year, with the Board having the authority to allocate the total budget funds to the various budget categories.

Section 3. Special Assessment. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments from time to time; provided, such assessment shall have the affirmative vote or written consent of Members representing at least fifty-one (51%)

percent of the Class "A" vote in the Association and the affirmative vote or written consent of the Class "B" Member, if such exists. The obligation to pay Special Assessments shall be computed on the same basis as for Base Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, with Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Capital Budget and Contribution. The Board of Directors shall annually in preparing the Base Assessment Budget prepare as a part thereof a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the Base Assessment budget and assessment, as provided in Section 2 of this Article.

Section 6. Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Unit on the first day of the first month following (1) the date of conveyance of the Unit by Declarant, or (ii) the effective date of the first budget, whichever is later. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 7. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of West Virginia Law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage, or transfer to a first Mortgagee or third party pursuant to a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien

rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expense or assessment shall be deemed to be Common Expenses collectible from Owners of all Units, including such acquirer, its successors, and assigns.

Section 8. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempted from payment of Base Assessments, and Special Assessments:

- (a) All Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

Section 9. Assessment Limitation. Notwithstanding anything herein to the contrary, the annual average Common Expense liability of all Units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed One Hundred (\$100.00) Dollars as adjusted pursuant to Section 114 of Article I, Chapter 36B of the West Virginia Code (titled Uniform Common Interest Ownership Act). Common Expense liability as used in this Section 9 is not intended to include and shall not include fines and penalties permitted and levied against Owners and Units for violations of this Declaration, the By-Laws and the Rules and Regulations of the Association; Assessments permitted and levied against Owners and Units for failure to maintain their Units as required by this Declaration, the By-Law and Rules and Regulations of the Association; Assessments permitted and levied against Owners and Units due to an Owner's willful or negligent damage to the Common Area or other Units as permitted by this Declaration, the By-Laws and Rules and Regulations of the Association, and other similar Assessments permitted and levied against Owners and Units pursuant to this Declaration, the By-Laws, and the Rules and Regulations of the Association other than the normal annual Base Assessments, Special Assessments levied by appropriate affirmative vote, and normal annual Capital Budget and Contributions permitted by this Declaration.

Article XI Architectural Review

Section 1. Applicability. All architectural review shall be performed by the Board, or a committee appointed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee to perform the architectural review functions, there shall be no less than three (3) members and no more than seven (7) members, a majority of which must be Owners. The terms of office shall be as designated by the Board. Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Unit is required to obtain the approval of the Board pursuant to this Article prior to making any such alteration or addition. Any owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board, upon its own motion, shall proceed as though the Owner gave the notice of completion as specified in Section 11.8.1. Nothing in this Article shall be deemed to relieve any owner from obtaining all necessary consents and permits and otherwise complying with all applicable State and local laws and ordinances.

Section 2. Duties. The Board shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may impose architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration and the Community Standard by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration, and the Community Standard. The Architectural Standards shall be accepted as Rules when adopted in accordance with the provisions of the By-Laws.

Section 3. Application for Approval of Improvements. Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board.

Section 4. Basis for Approval of Improvements. The Board may approve the proposals only if the Board finds that (i) the plans and specifications conform to this Declaration, the Community Standard and to the Architectural Standards in effect at the time the proposal was submitted; (ii) the proposed alteration or addition will be consistent with the standards of the Properties, the Community Standard, the provisions of this Declaration, and the Architectural Standards as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures, environment location with respect to topography and finished grade elevations; and (iii) the proposed alteration or Improvement is in conformance with conditions imposed by any municipal or county ordinance having jurisdiction.

Section 5. Form of Approval and Denials. All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed approved.

Section 6. Proceeding With Work. Upon approval of the Board the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

Section 7. Failure to Complete Work. Completion of the work approved must occur in the twelve (12) month period following the approval of the work unless the Board determines the completion would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If Owner fails to complete the work within the one (1) year period, the Board shall proceed in accordance with the provisions of Section 11.8.2 below.

Section 8. Determination of Compliance. Any work performed, whether or not the Owner obtained the proper approvals, shall be inspected and a determination of compliance shall be made as follows:

Section 8.1. Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

Section 8.2. Within Thirty (30) days the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

Section 9. Failure to Remedy the Non-Compliance. If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner and constitutes a lien upon the involved Unit.

SFE
Supplement
DATED
NOV 15, 2001

Section 10. Waiver. Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 11. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. This certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

Section 12. Liability. If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Section 13. Non-Applicability to Declarant. The provisions of this Article shall not apply to any Unit owned by Declarant or prior to his first conveyance of a Unit to an Owner.

Section 14. General Exterior Painting. Paint colors for the exterior painting of single family detached dwellings shall not be subject to Architectural Review.

see supplement
DATED
SEPT 27, 1994

Article XII
Restrictions on Use, Alienation and Occupancy

Section 1. Primary Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved under Article VIII, the following use and occupancy restrictions apply to all Units and, where applicable, to the Common Areas:

- (a) Primary Residential Use. Except as permitted by Article XII, Section (c), Units shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Unit other than one (1) single family detached dwelling, duplexes or townhouses. No detached outbuildings of any type or nature are permitted, except one small, attractive outbuilding nor more than 5' x 10' in size, which is attached to and incorporated into a portion connected to the dwelling is permitted after architectural review.

See
STORAGE BUILDING
ADDITIONS IN
DRY RUN COMMONS
on dryruncommons.com
front page.

- (b) Business Use in Residential Units. No trade or business may be conducted in or from any Residential Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" or "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; and (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

Section 2. Other Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved under Article VIII the following use and occupancy restrictions apply to all Units and the Common Area:

- (a) Subdivision of Lots. No Units shall be divided, subdivided or partitioned in any way by sale, gift, devise, or other method of conveyance, except to allow for nominal boundary line adjustments. No Unit shall be combined or merged with any other Unit without the prior written approval and consent of the Board or the Architectural Control Committee.

- (b) Property Maintenance. Each owner shall keep their Unit and improvements thereon in a safe, clean, neat, and well maintained condition, and shall comply with all applicable safety, health, police and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be permitted to remain exposed on any Unit except as necessary during the construction period. Rubbish, leaves, and trash shall not be disposed of in the Properties by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be stored out of view from neighboring Units, roads, or streets, except at times of scheduled garbage or trash pickup.
- (c) Nuisance. No noxious, illegal, hazardous, dangerous or offensive use, construction or activity shall be conducted on any Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners, tenants or occupants of other Units within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise. No Unit shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Unit to appear in an unclean or untidy condition or that will be obnoxious to the eye.
- (d) Unregistered Vehicles. No unregistered vehicles of any kind, including, but not limited to, automobiles, trucks, pickups, buses, motorcycles, vans, motor homes, trailers, boats, farm tractor and equipment, or recreational vehicles shall be parked, stored, or in any way maintained on any street, right-of-way or Common Area or on any Unit, except within a garage or other permitted improvement on the Unit.
- (e) Pets. Only common domestic house pets shall be allowed on any Unit or the improvements thereon, provided they are not kept or bred for any commercial purpose. Pets shall not be allowed to roam at large, and pets shall not be housed, fenced or otherwise maintained on a regular basis outside of the primary Dwelling Unit on any Unit. Pets are permitted for periods of short duration and during daylight hours to run at large within any permitted fenced yard. Kennels, dog runs, dog houses, and other similar pet facilities are prohibited. No farm animals, livestock, or poultry of any kind shall be kept, maintained or in any way allowed on any Unit. The Unit Owners Association shall have absolute authority to prohibit unusual or exotic animals, birds, or reptiles from being kept on a Unit or in an improvement located thereon, and shall have the authority to prohibit or regulate loud and noisy pets.
- (f) Parking. Each residential Unit shall provide an off street parking area for at least two (2) 6' X 18' vehicles. All driveways shall be black topped or concreted and shall include at the street entrance an appropriate drainage culvert or depression as needed. Except for temporary and unusual irregular overflow parking from the garage and driveway of any Unit, no parking shall be permitted on any street or road within the Properties. No Unit owner shall park on a regular or continuing basis more than two (2) registered vehicles on the Unit, other than inside any improvement thereon. Motor homes, recreational vehicles less than 20 feet in length, or boats on trailers may be parked or maintained on a Unit provided that they are kept in a garage. Subject to such Rules, Regulations and Fines adopted by the Association, a recreational vehicle or motor home may be parked on the driveway of a Unit for a period

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of not to exceed three (3) consecutive days for the purpose of and the sole purpose of preparing the vehicle for a trip. No Member may park such a vehicle on their Unit for such purposes more than six (6) times in any calendar year.

- (g) Snowmobiles, trail bikes and similar vehicles. No snow mobiles, trail bikes, mini-bikes, all terrain vehicles, or other similar vehicles shall be permitted to operate within the Properties. No motorized vehicle shall be permitted in any park or on any walking paths.
- (h) Construction. During construction, Units shall be kept free and clear of unnecessary and unsightly debris. All trash, rubbish and debris shall be cleaned from the Unit on a reasonable, periodic basis during construction and all trash, rubbish and debris shall be promptly removed from the Unit after construction is completed. Existing storm water and runoff drainage patterns for each Unit shall be protected at all times both during and after construction. During construction, reasonable measures shall be taken to prevent erosion by wind and water.
- (i) Commercial vehicles, equipment, etc. Except during periods when construction is taking place on the Unit, no trucks larger than three-quarter (3/4) ton capacity, no commercial vehicles, camper tops, construction, or like equipment or mobile or stationary trailers of any kind shall be placed or permitted to remain on any Unit.
- (j) Building setback requirements. The minimum building setback line for all improvements constructed on any Residential Unit shall be as reflected and set forth upon the recorded plats of the Properties
- (k) Utility lines. All utility service lines, including but not limited to, electric, telephone, natural gas, cable television, water and sewer lines shall be buried underground, excluding all required pedestals, transformer boxes, and other required above ground improvements.
- (l) Outdoor lighting. Outdoor lighting shall be of a type and installation such that no direct glare is visible from adjoining properties.
- (m) Mail Boxes. The Architectural Control Committee may determine the location, color, size, design, lettering, and all of the particulars of all mail or paper delivery boxes, and standards and brackets and name signs for the boxes in order that the area be strictly uniform in appearance with respect to these items.
- (n) Signs. No signs of any character shall be erected, placed, permitted or maintained on any Unit or improvement except normal and reasonable address identification signs and normal and reasonable "For Sale" signs, except with the prior written approval and consent of the Architectural Control Committee.
- (o) Central water and sewer. All residences or other improvements on the Units shall be connected to the public central water and sewer systems serving the Properties, and no residence or other improvement shall be occupied until such time as it is connected to the public central water and sewer system. No private water well or septic system shall be permitted on any Unit.
- (p) Beverage restriction. No beer, wine, liquor or any other intoxicating beverages of any type or nature will be sold or stored for sale on any residential Unit.

(q) Restriction on residence types. No structure of a temporary character, trailer, house trailer, mobile home, mobile double wide, basement, tent, shack, garage, barn or other out building shall be used on any Unit at any time as a residence, either temporarily or permanently.

(r) Trees. Subject to architectural control review, Owners may cut down any tree which is diseased or constitutes a hazard on any Unit; provided, however, a new tree shall be planted and maintained to replace any trees which are cut down.

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(s) Fences. Attractive wood or wrought iron colonial fences shall be permitted in the front lawn or front yard of any Lot. Fences are permitted on the back lawn or back yard of any Lot provided that such fence does not exceed four (4) feet in height. Permitted swimming pool fencing shall not exceed five (5) feet in height. Chain link, American Wire and Barb Wire fences are entirely strictly prohibited. Front yard shall be defined as that portion of a Unit, from side line to side line, which is located between the front wall of the residence located on said Unit and the street upon which said residence fronts. Architectural review for fencing shall at all times give consideration to street sight distances and whether requested fence is appropriate at the requested location.

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DATED
Sept 27, 1994

(t) Residential unit size. No residence designated for occupancy by a single family shall contain less than seven hundred fifty (750) square feet of finished, heated living space.

(u) Occupants bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, agents and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

(v) Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties.

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(w) Pools. No above-ground pools shall be erected, constructed or installed on any Unit.

(x) Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may change or re-channel the drainage flow after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow. All residences on the lots shall, for purposes of stormwater management, be connected to a dry well on the lot which shall be constructed and installed at the same time as any residence placed upon the lot. The size and location of the dry well shall be in accordance with the dry well approved by the Martinsburg Planning Commission or such other regulatory agency having jurisdiction thereof.

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9-5-2001

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- (y) Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.
- (z) Artificial, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similarly items must be approved in accordance with Article XI of this Declaration.
- (aa) Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.
- (bb) General Storage. All permitted personal property, including but not limited to garbage containers, grills, bicycles, toys, yard equipment, lawn mowers, and all other household personal property shall be stored within any permitted residence or other permitted outbuilding.
- (cc) No immoral, improper, offensive, or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of West Virginia and all ordinances, rules and regulations of the County of Berkeley. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

Section 3. Restrictions on Alienation.

- (a) A Unit may not be conveyed pursuant to a time-sharing plan.
- (b) A Unit may not be leased or rented for a term of less than 30 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

The Association, acting through its Board of Directors, shall have the authority to make and enforce standards and restrictions governing the use of the Properties in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private roads within the Properties. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Members representing a Majority of the total Class "A" votes in the association and by the vote of the Class "B" member, so long as such membership shall exist.

Article XIII
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Owner of a Unit;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance, as required by this Declaration; or

- (e) use hazard insurance proceeds for any Common Area losses for other than repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice of Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Unit.

Section 5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or West Virginia corporate law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Section 8. Development Rights. No Development Rights or Special Declarant Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Article XIV Additional Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the public records of Berkeley County, West Virginia. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Schedule "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units within the Properties and all permitted additions thereto shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the

Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models, sales offices, and for lodging and entertainment, respectively, of sales prospects and other business invitees.

As long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

So long as Declarant continues to have rights under this Paragraph, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale and other closing documents for the subdivision and sale of property in the Properties by any Parcel Developer shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver notice to any Parcel Developer of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Parcel Developer within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this article shall terminate upon the earlier of (a) December 31, 2017, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XV Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for the property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any provision party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE XVI
Easements, Rights-of-Way, and Licenses

Section 1. Easement for Access. Declarant reserves unto itself, its successors and/or assigns and invitees a perpetual and non-exclusive easement or right-of-way for ingress, egress and access of all kinds over and across all of the Common Areas and General and Exclusive Common Areas of the Properties to and from all points within the Properties for all purposes.

Section 2. Utility Easements. Declarant reserves unto itself, its successors and/or assigns, a perpetual and non-exclusive easement or right-of-way over, through and under the Common Areas within the Properties for the purpose of constructing, installing, operating and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities including drainage easements and slope control easements for the purpose of furnishing utility and related services within the Properties. The Declarant further reserves unto itself, its successors and/or assigns, all those utility easements, drainage easements and slope control easements shown on the plats of the Properties for the purpose of constructing, installing, operating, and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Properties. The term "utilities" as used in this paragraph includes, but is not limited to, gas, electric, telephone, water, sewer and cable television. To the extent, in the Declarant's sole discretion, it is reasonably possible easements shall be kept within ten feet of Unit front and rear lines and ten (10) feet of Unit side lines. Within all reserved easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of or the flow of drainage channels or which may obstruct or retard the flow of water through drainage easements; provided, however, any permitted side or rear yard fence may be appropriately placed in said areas.

Section 3. Easement. Declarant reserves unto itself, its successors and/or assigns a perpetual and non-exclusive access and utility easement or right-of-way and over all streets, ways and Common Areas within Phase I of Dry Run Commons Subdivision and all other streets and ways in any future Phase or addition to the Properties of Dry Run Commons Subdivision for purposes of ingress to egress from all of Declarant's surrounding and adjacent real estate and for purposes of providing all forms of utility services to said real estate.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units or any unit, including such Units as contains recreational and commercial uses, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restriction) 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 at such point; provided, however, in

no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Schedules "A" or "B", the Association, and the designees of each (which may include, without limitation, Berkeley County, West Virginia, and any utility), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Units for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar system, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area, including all streets and ways, to the City of Martinsburg, Berkeley County, West Virginia, or to any other local, state, or federal government entity, subject to such approval requirements as may be contained in Article XIII, Section 2 of this Declaration. The Declarant, unilaterally and without the necessity of any consent from any Owner, the Association or any Mortgagee, shall have the power to dedicate portions of the Common Area, including streets and ways to the City of Martinsburg or to any other local, state or federal governmental entity.

Section 6. Easement for Access Over Private Streets. There is hereby reserved to the general public an easement for ingress, egress and access over all private streets within the Properties, subject to such rules and regulations as may be promulgated by the Board of Directors.

Section 7. Zero Lot Line Easement. There are reserved and granted for the benefit of each zero lot line Unit, as dominant tenement, over, under and across such portion or portions of the adjacent Unit, as servient tenement, non-exclusive easements for encroachment, occupancy and use of such portions of adjacent Units as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsistence of any building or portion thereof, and for the maintenance, repair and reconstruction of any improvements located on the zero lot line Unit.

Article XVII
General Provision

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the then Owners of two-thirds (2/3) of the Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Schedules "A" and "B" for development as part of the Properties, and so long as the amendment has no material adverse effect upon any right of any Owner. Any amendment (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (2) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to the Commercial Declaration; (3) required by any state, federal or county agency; (4) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example and not in limitation, the Federal National Mortgage Association or Federal Home Loan Corporation, to enable such lender or purchaser to make on purchase mortgage loans or any portion of the Commercial Property; or (5) necessary to enable any governmental agency or reputable private insurance company or institutional lender to insure mortgage loans on any portion of the Commercial Property shall not be deemed material. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Berkeley County, West Virginia.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may be made during the Declarant Class "B" Control Period without the written consent of Declarant or the assignees of such right or privilege. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impair the rights granted to the Mortgagees herein without the prior written consent of such Mortgagees.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with

any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonable available.

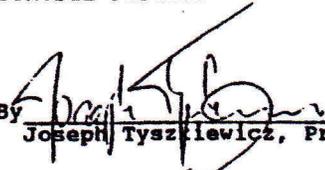
Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 5. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants, Conditions, and Restrictions this 19th day of July, 1993.

Rock Cliff Partners Limited
Partnership, a West Virginia
partnership, by Red Hawk
Corporation, a corporation, its
General Partner

By 
Joseph Tyszkiewicz, President

STATE OF WEST VIRGINIA,
COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this 19th day of July, 1993, by JOSEPH TYSEKIEWICZ, President of Red Hawk Corporation, a corporation, General Partner of ROCK CLIFF PARTNERS, LIMITED PARTNERSHIP, a West Virginia partnership, in my said County and State.



Michelle L. Cain
Notary Public

My commission expires:

November 29, 1999

Prepared by J. Lee Van Metre, Jr., Attorney at Law, 126 East Burke Street, P.O. Box 2629, Martinsburg, WV 25401-5429.

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File No. 92-RE-014

SCHEDULE "A"
LAND INITIALLY SUBMITTED

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, and Lots 1B, 2B, 3B, 4B, and 5B, Section 1, Dry Run Commons Subdivision, together with Artisan Way between West Virginia Secondary Route No. 10 on the east and the northwest corner of Lot 10 on the west and Merchant's Way between Artisan Way on the north and the southerly lines of Lots 6 and 7 on the south, as more fully shown upon a plat thereof prepared by P.C. DiMugno, Engineers-Surveyors, dated February 8, 1993, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet No. 5, at Slide No. 90.



**P.C. DIMAGNO
ENGINEERS - SURVEYORS**

112 EAST KING STREET SECOND FLOOR

MARTINSBURG, WV 25401

(304) 263-0157 FAX: (304) 267-0797

SCHEDULE "B"

37.6073 ACRE TRACT

THE TRACT OF LAND SHOWN ON DRAWING NO. 4650-1, SURVEYED BY P.C. DIMAGNO, ENGINEERS AND SURVEYORS, DATED AUGUST 25, 1992, LOCATED ON W.VA. COUNTY RTE. 10, APPROXIMATELY 2135' NORTHEAST OF W.VA. COUNTY RTE. 10/1, SITUATED IN MARTINSBURG DISTRICT, BERKELEY COUNTY, WEST VIRGINIA, IS BOUND AND DESCRIBED AS FOLLOWS:

BEGINNING AT (173) A 5/8" REBAR AND CAP FOUND BEING IN THE WESTERLY R/W LINE OF W.VA. COUNTY RTE. 10 AND BEING IN THE LINE OF FLORENCE L. SCHELL; THENCE WITH FLORENCE L. SCHELL THE FOLLOWING COURSE:

N 68° 51' 12" W 282.912' TO (147) A 6" TWIN HACKBERRY TREE FOUND CORNER TO FLORENCE L. SCHELL; THENCE WITH FLORENCE L. SCHELL IN PART AND IN PART WITH CHARLES R. COLE, SR. THE FOLLOWING COURSE:

S 21° 14' 57" W 100.000' TO (175) A POINT BEING IN THE LINE OF CHARLES R. COLE, SR. AND MAKING A NEW CORNER TO ROCK CLIFF LIMITED PARTNERSHIP; THENCE MAKING NEW LINES WITH ROCK CLIFF LIMITED PARTNERSHIP THE FOLLOWING COURSES:

N 64° 16' 12" W 754.319' TO (176) A POINT

N 40° 12' 41" W 683.289' TO (179) A POINT

N 61° 47' 30" W 366.821' TO (182) A POINT

N 28° 12' 30" E 950.000' TO (181) A POINT

N 81° 59' 44" E 410.533' TO (142) A WOOD FENCE POST FOUND

SCHEDULE "B"

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DN. 465B-1
37.6073 ACRE TRACT

MAKING A NEW CORNER TO ROCK CLIFF LIMITED PARTNERSHIP AND CORNER TO HERBERT A. MICHAEL; THENCE WITH HERBERT A. MICHAEL THE FOLLOWING COURSES:

S 24° 03' 46" E 931.457' TO (143) A 5/8" REBAR AND CAP FOUND

S 28° 25' 03" E 280.669' TO (144) A WOOD FENCE POST FOUND CORNER TO HERBERT A. MICHAEL AND CORNER TO BENNY J. CROUSE; THENCE

WITH BENNY J. CROUSE THE FOLLOWING COURSE:

S 50° 11' 55" E 304.730' TO (145) A PLANTED STONE FOUND CORNER TO BENNY J. CROUSE AND BEING IN THE LINE OF DONALD P. DEHAVEN (PARCEL 5); THENCE WITH DONALD P. DEHAVEN (PARCEL 5) IN PART AND IN PART WITH DONALD P. DEHAVEN (PARCEL 4) THE FOLLOWING COURSE:

S 21° 13' 15" W 294.242' TO (146) A 5/8" REBAR AND CAP FOUND CORNER TO DONALD P. DEHAVEN (PARCEL 4); THENCE WITH DONALD P. DEHAVEN (PARCEL 4) THE FOLLOWING COURSE:

S 68° 45' 43" E 281.050' TO (166) A 5/8" REBAR AND CAP FOUND BEING IN THE LINE OF DONALD P. DEHAVEN (PARCEL 4) AND BEING IN THE WESTERLY R/W LINE OF W.VA. COUNTY RTE. 10; THENCE WITH THE WESTERLY R/W LINE OF W.VA. COUNTY RTE. 10 THE FOLLOWING COURSE:

S 20° 46' 35" W 217.538' TO (173) THE POINT OF BEGINNING CONTAINING 37.6073 ACRES AND BEING SUBJECT TO EASEMENTS OF RECORD AND IN EXISTENCE.

DN. 465B-1
37.6073 ACRE TRACT

APPROVED BY:

SCHEDULE "C"

BY-LAWS

OF

DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC.

**STEPTOE & JOHNSON
Attorneys at Law**

**126 East Burke Street
P.O. Box 2629
Martinsburg, WV 25401
(304) 263-6991**

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BY-LAWS

OF

DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be Dry Run Commons Subdivision Unit Owners Association, Inc., (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of West Virginia shall be located in Berkeley County. The Association may have such other offices, either within or outside the State of West Virginia, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Dry Run Commons Subdivision (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two (2) classes of Membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meetings, shall be held within one (1) year from the date of incorporation of the Association. There shall be an annual meetings of Members for the purpose of electing Directors. Subsequent regular annual meetings shall be set by the Board so as to occur at least ninety (90) but not more than one hundred twenty (120) days before the close of the

Association's fiscal year on a date and at a time set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meetings shall state the date, time, and place of such meetings and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Member shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any such meeting. Attendance at a meeting by a Member or alternate shall be deemed waived by such Member of notice of the time, date, and place thereof, unless such voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, may adjourn the meeting at a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any

reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members representing at least fifteen (15%) percent of the total votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Members may vote by proxy. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months and every proxy shall automatically cease and terminate upon sale by the Member of his Unit or other interest in the Properties.

Section 10. Majority. Except as otherwise specifically provided in the Declaration and Articles of Incorporation or these By-Laws, as used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number present in person or by proxy.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of the Member at a meeting representing a twenty-five (25%) of the total votes in the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorum is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all the meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meetings, as well as a record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members or any action taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Members.

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to the directors appointed by the Declarant, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation, partnership, or other entity, the person designated in writing to the secretary of the Association as the representative of such corporation, partnership, or other entity shall be eligible to serve as a director.

Section 2. Directors During Class "B" Control. The Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when seventy-five (75%) percent of the six hundred (600) Units permitted by the Declaration for the property described on Exhibits "A" and "B" of the Declaration have been conveyed to Persons other than the Declarant or builders holding title solely for purposes of development and sale;

(b) December 31, 2017; or

(c) when, in its discretion, the Class "B" Member so determines.

This Section 2 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

Section 3. Right to Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Class "B" Members as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the Board and the Architectural Control Committee, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Members, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board of Directors or Architectural Control Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal deliver at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meeting with Article III, Sections 8, 9, and 10, and these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representative or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Members, its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Members, its representative, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable law and regulations.

Section 4. Number of Directors. The number of directors in the Association shall not be less than three (3) nor more than nine (9), as provided in Section 6 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to directors selected by the Class "B" Members, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to

the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty-five (25%) percent of the six hundred (600) Units permitted by the Declaration for the property described in Exhibits "A" and "B" or whenever the Class "B" Member earlier determines, the Association shall call a special meeting at which Members other than the Declarant shall elect one (1) of the three (3) directors. The remaining two (2) directors shall be appointees of the Class "B" Member. The director elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of three (3) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's terms expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Member, other than the Declarant or a builder holding title solely for purposes of development and sale, own fifty (50%) percent of the six hundred (600) Units permitted by the Declaration for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to nine (9) directors. The association shall call a special meeting at which Members other than the Class "B" Member shall elect four (4) of the nine (9) directors. The remaining five (5) directors shall be appointees of the Class "B" Member. The directors elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of three (3) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within thirty (30) days after termination of the Class "B" control Period, the Association shall call a special meeting at which Members other than the Class "B" member shall elect five (5) of the nine (9) directors. The remaining four (4) directors shall be appointees of the Class "B" Member. The directors elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within thirty (30) days after termination of

the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class "B" control Period the Members shall elect nine (9) directors. Three (3) directors shall be elected to serve a term of three (3) years; three (3) directors shall be elected to serve a term of two (2) years and three (3) directors shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such director, a successor shall be elected to serve a term of three (3) years. Thereafter, all directors shall be elected to serve three (3) year terms. For the purpose of the election of directors, each Members hall have one (1) equal vote, for each Unit owned by a Member.

At any election of directors, each Member shall be entitle to cast one (1) equal vote for each Unit owned by said Member with respect to each vacancy to be filled. The candidates receiving the largest number of votes shall be elected. The Directors elected by the Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 7. Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected solely by the votes of the Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Members other than the Declarant. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall serve for the remainder of the term of the director who vacated the position.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the membership

shall be held within (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of

directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time no less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all directors are able through telephone connection to hear and to be heard.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Members, but Members other than the directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs, and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between the meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in annual installments, each such installment to be due and payable in advance on the first day of second month following the assessment date;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Area;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Area and, where appropriate, providing for the compensation for such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulation;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Unit, any Owner of a Units, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, resale certificates and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

Section 18. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Boards supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manger.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agents from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association; provided nothing herein shall prohibit the managing agent from earning commissions for services provided by the managing agent in leasing Units on behalf of the Owners of such Units;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least annually containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the 1st day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying the annual installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (An annual installment of assessment shall be considered to be delinquent on the thirtieth (30th) day following the assessments designated due date unless otherwise determined by the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year; (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as

determined by the Board, by an independent public accountant; provided, during the Class "B" Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, or restoration of the Common Area without the approval of the Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the board shall obtain Voting Member approval in the same manner provided in Article X, Section 5, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for the fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one (51%) percent of the Members other than the Declarant and the Declarant's nominees.

Section 21. Rights of the Association. With respect to the Common Area, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operation, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Declarant control of the Board of Directors unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of directors to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to non payment of assessments. In the event that any

occupant of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rules or regulations shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the Architectural Control Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Architectural Control Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provisions of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any

violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupants responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of the President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Architectural Control Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Architectural Control Committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-laws, and resolutions the Board may adopt, the Architectural Control Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings pursuant to Article III, Section 22 of these By-Laws.

Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board Resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with West Virginia law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of West Virginia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provision of West Virginia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-laws, membership register, books of account, and minutes of

meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the costs of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director include the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demand, bills, statements, or other communication under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of directors, or the managing agent, at the principal office of the Association, or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws so long as it still owns property described in Exhibits "A" and "B" to the Declaration for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Member. Any amendment (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in

conflict therewith; (2) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to the Commercial Declaration; (3) required by any state, federal or county agency; (4) required by an institutional or governmental lender or purchase of mortgage loans, including, for example and not in limitation, the Federal National Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Commercial Property; or (5) necessary to enable any governmental agency or reputable private insurance company or institutional lender to insure mortgage loans on any portion of the Commercial Property shall not be deemed material. Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall be effective until recorded in the public records of Berkeley County, West Virginia.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien or any Mortgage held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

CERTIFICATION

I, the undersigned, to hereby certify:

That I am the duly elected and acting Secretary of Dry Run Commons Subdivision Unit Owners Association, Inc., a West Virginia Corporation;

The foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 19__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 19__.

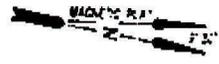
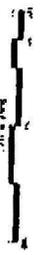
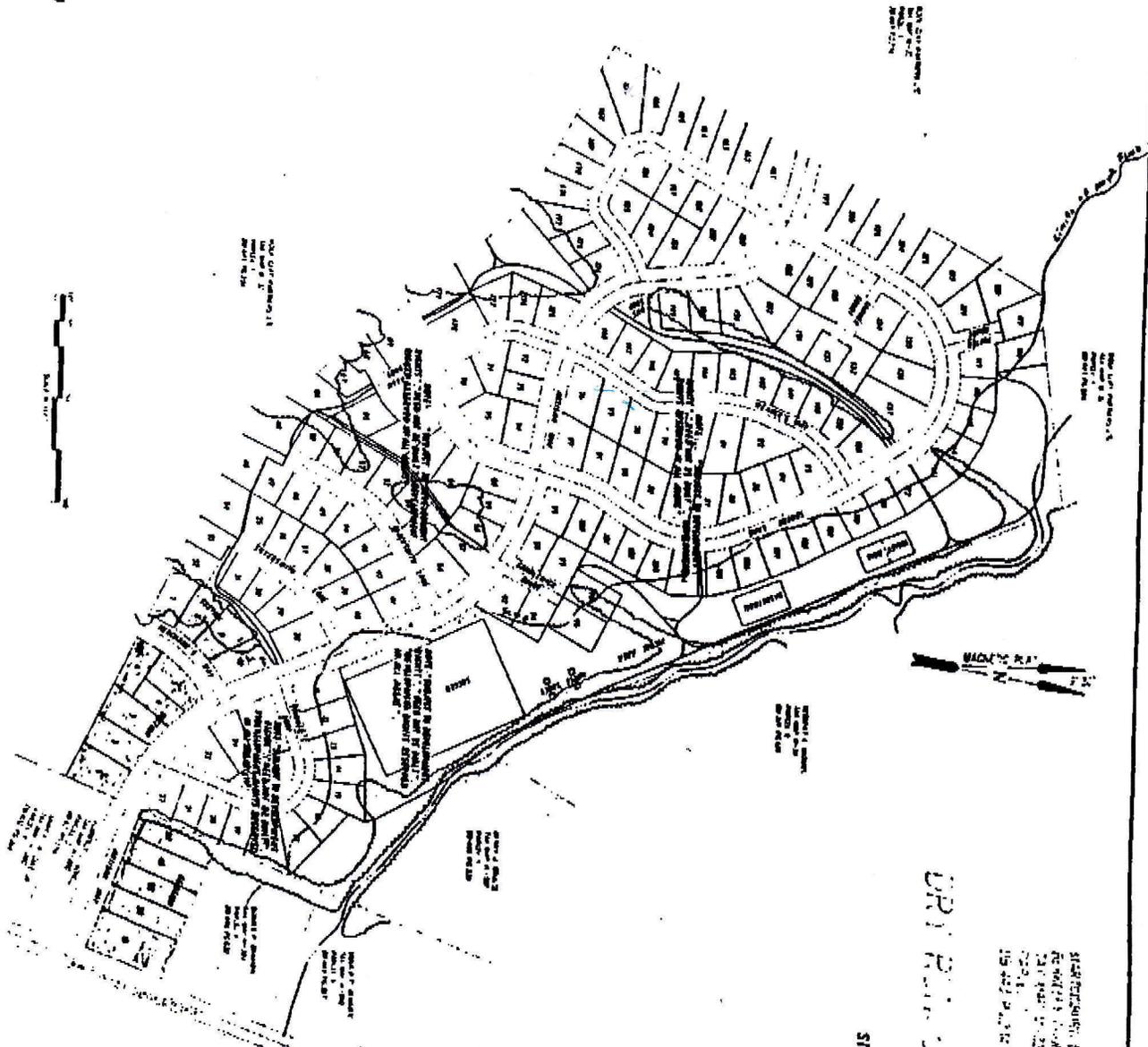
_____, Secretary

04884\92801\DRYRUN.BYL
File No. 92-RE-014



OWNER: ROCK CLIFF PARTNERS LTD.
 C/O JOSEPH TRSZCZAKOWICZ
 143 PELTON ROAD
 STEUBEN, VA 22170

DEVELOPER: BLANNEY ENTERPRISES, INC.
 106 PINEISIDE STREET
 MARTINSBURG, WVA 25401



STARTING POINT: EXISTING
 ROADWAY CENTER, WVA
 200' FROM 100'
 100' FROM 100'
 100' FROM 100'

SINGLE FAMILY LOT DETAILS
 SCALE 1"=40'



DRAWN BY: [] CHECKED BY: [] DATE: []	MASTER PLAN CONCEPT FOR DRY RUN COMMONS	DATE: [] REVISIONS: []	P C DIMASO ENGINEERS - SURVEYORS 112 EAST KING STREET SECOND FLOOR MARTINSBURG, WV 25401 (304) 261-8157 FAX: (304) 267-6797
	PROJECT NO. [] SHEET NO. [] OF [] DRAWING BY: [] CHECKED BY: [] DATE: []		

FILE COPY

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made this 27th day of September, 1994, by ROCK CLIFF PARTNERS LIMITED PARTNERSHIP, a West Virginia limited partnership, hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, by a Deed of Declaration of Covenants, Conditions, and Restrictions, dated July 12, 1993, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 514, at page 287, (hereinafter called "Deed of Declaration"), the Declarant subjected certain real property known as Section 1 of Dry Run Commons Subdivision to all of the rights, reservations, restrictions, covenants, conditions, easements, rights-of-ways, liens, charges and assessments more fully set forth in said Deed of Declaration; and

WHEREAS, said Deed of Declaration provided that authorized amendments shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, said Deed of Declaration stated in Article XVII, Section 2, that the Declarant may amend the Declaration so long as it still owns property described in Exhibits "A" and "B" for development as part of the Properties, and so long as the amendment has no material adverse effect upon any right of any Owner; and

WHEREAS, the Declarant desires at this time to annex additional land and to extend the scheme of the Covenants and Restrictions of said Deed of Declaration as amended,

NOW, THEREFORE, the Declarant declares that all of the real property, including, but not being limited to, all of the lots and roads known and shown as Lots 22 through 30 of Section 3, Dry Run Commons Subdivision, together with a part of Artisan Way running from the southeast corner of Lot 30 to the southeast corner of Lot 22 and all of Silversmith Lane between Artisan Way on the east and Lots 26 and 27 on the west, all as more fully shown upon a plat thereof prepared by P. C. DiMagno, Engineer-Surveyors, dated May 17, 1994, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this Supplementary Declaration of Covenants, Conditions and

Restrictions in Plat Cabinet No. 5, at Slide No. 105, which plat is hereby incorporated herein by reference, is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions, Restrictions, Easements and Rights-of-Way, (sometimes referred to as "Covenants and Restrictions") set forth in that certain Declaration of Covenants, Conditions, and Restrictions heretofore executed by Rock Cliff Partners Limited Partnership, a West Virginia limited partnership, the Declarant, dated July 12, 1993, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 514, at page 28, all of said easements, reservations, rights-of-way, restrictions, covenants, conditions, rights, obligations, liens and assessments set forth in said Deed of Declaration, AS HEREINAFTER AMENDED, being hereby incorporated herein by reference as if the same were set forth verbatim.

Section 14 "General Exterior Painting" of Article XI is amended by deleting the Section as written and by substituting therefore the following:

"Section 14. General Exterior Painting. Paint colors for the exterior painting of all structures shall be subject to Architectural Review."

Subparagraph (s) "Fences", of Section 2 of Article XII is amended by deleting the subparagraph as written and by substituting therefore the following:

"(s) Fences. All fences are subject to approval by the Architectural Review Committee. Attractive wood or wrought iron colonial fences will be required. Chain Link, American Wire and Barb Wire fences are strictly prohibited. Back yard fence heights shall be limited to six (6) feet. Front yard fence height shall be suitable for the location with appropriateness and safety being considered. All fences shall be painted."

In all other respects the Declaration of Covenants, Conditions and Restrictions dated July 12, 1993 is ratified and affirmed.

It is the intent and purpose of the Declarant that the amendments herein set forth shall apply to Sections 1, 1B, 2, and 3 of Dry Run Commons Subdivision and such other future additions to Dry Run Commons Subdivision as may be subjected to the Deed of Declaration as herein amended.

The Declarant hereby designates Section 3 of Dry Run Commons Subdivision as hereinbefore described as an area designated for single-family detached residences.

The above described amended Easements, Rights-of-way, Covenants, Conditions, Rights, Obligations, Reservations, Liens and Assessments are for the purpose of protecting the values and amenities in this addition to Dry Run Commons Subdivision and for the purpose of preserving certain rights-of-way, easements, and rights and shall run with the real property and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

WITNESS the corporate name and seal of the said corporation and the signature of its president hereto affixed this 27th day of September, 1994.

ROCK CLIFF PARTNERS LIMITED PARTNERSHIP,
a West Virginia limited partnership, by
Red Hawk Corporation, a corporation, its
General Partner

(CORPORATE SEAL)

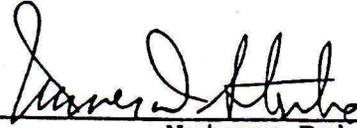
By Joseph Tyszkiewicz, President
Joseph Tyszkiewicz, President

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

I, James D. Stepic, a Notary Public in and for said County and State, do hereby certify that JOSEPH TYSZKIEWICZ, its _____ President, who signed the writing above for ROCK CLIFF PARTNERS LIMITED PARTNERSHIP, a West Virginia limited partnership, by Red Hawk Corporation, a corporation, its General Partner, bearing date the 27th day of September, 1994, has this day acknowledged the same before me in my said County to be the act and deed of said partnership.

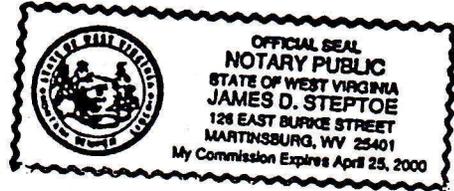
Given under my hand this 27th day of September, 1994.



Notary Public

My commission expires:

4-25-2000



This instrument was prepared by J. Lee Van Metre, Jr., Attorney,
126 E. Burke Street, Martinsburg, WV, 25401.

D:\CLIENT\048840\92801\SECTION3.DEC
File No. 92-RE-014

DB 550

234

David T. J. See Van Meter Jr.
8/17/95

DEED BOOK NO. 550 ^{564B} BERKELEY COUNTY, W. VA.
THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS, made this 15th day of August, 1995, by ROCK CLIFF
PARTNERS LIMITED PARTNERSHIP, a West Virginia limited
partnership, hereinafter called "Declarant",

W I T N E S S E T H:

WHEREAS, by a Deed of Declaration of Covenants, Conditions,
and Restrictions, dated July 12, 1993, and recorded in the office
of the Clerk of the County Commission of Berkeley County, West
Virginia, in Deed Book No. 514, at page 287, (hereinafter called
"Deed of Declaration"), the Declarant subjected certain real
property known as Section 1 of Dry Run Commons Subdivision to all
of the rights, reservations; restrictions, covenants, conditions,
easements, rights-of-ways, liens, charges, and assessments more
fully set forth in said Deed of Declaration; and

WHEREAS, said Deed of Declaration provided that authorized
amendments shall be made by filing of record a Supplementary
Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, said Deed of Declaration stated in Article XVII,
Section 2 thereof, that the Declarant may amend the Declaration
so long as it still owns property described in Exhibits "A" and
"B" for development as part of the Properties, and so long as the
amendment has no material adverse effect upon any right of any
Owner; and

WHEREAS, the Declarant desires at this time to annex
additional land and to extend the scheme of the Covenants and
Restrictions of said Deed of Declaration as amended;

NOW, THEREFORE, the Declarant declares that all of the real
property, including, but not being limited to, all of the lots
and roads known and shown as Lots 45, 46, 47, 49, 50, 51, 54, 55,
85, 86, 87, 88, 89, 90, 130, 131, 132, 133, 134, and 135 of
Section 4 of Phase 2, Dry Run Commons Subdivision, together with
all of Sentry Lane running from the northwesterly corner of Lot
No. 50 to the northeasterly corner of Lot No. 130, all of
Weaver's Way running from its terminus between Lots Nos. 47 and
50 to the northerly side lot line of Lot No. 51, and all of
Artisan Way leading from the northwesterly corner of Lot No. 84

to the southwesterly corner of Lot No. 135, all as more fully shown upon a plat thereof prepared by P. C. DiMagno, Engineers-Surveyors, dated May 8, 1995, and recorded in said Clerk's office immediately prior hereto in Plat Cabinet No. 6, at Slide No. 79, which plat is hereby incorporated herein by reference, is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions, Restrictions, Easements and Rights-of-Way, (sometimes referred to as "Covenants and Restrictions") set forth in that certain Declaration of Covenants, Conditions, and Restrictions heretofore executed by Rock Cliff Partners Limited Partnership, a West Virginia limited partnership, the Declarant, dated July 12, 1993, and recorded in said Clerk's office in Deed Book No. 514, at page 28, all of said easements, reservations, rights-of-way, restrictions, covenants, conditions, rights, obligations, liens and assessments set forth in said Deed of Declaration, AS HEREINAFTER AMENDED, being hereby incorporated herein by reference as if the same were set forth verbatim.

Article XII, Section 2, Paragraph (f) ("Parking"), is hereby amended so as to rewrite the fourth sentence thereof, which shall now read as follows:

No Unit owner shall park on a regular and continuing basis more than four (4) registered vehicles on the Unit, other than inside any improvement thereon; all outdoor vehicular parking within and upon the Unit shall be located within the off-street parking area required in the first sentence of this paragraph.

Article XII, Section 2, Paragraph (v) ("Antennas") is hereby amended so as to include the following additional terms and provisions:

Nothing herein shall restrict or prohibit the installation and use, within and upon a Unit, of a "mini-dish" satellite receiver for television reception, Declarant recognizing that subsequent advances in technology and design have resulted in the

common manufacture and sale of such receivers that are smaller, and less obtrusive and unsightly; nevertheless, the installation and use of such a receiver within and upon a Unit shall be subject to the following restrictions, to-wit:

A. the dish of the receiver must not exceed 36 inches in diameter; and

B. the receiver must be located within and upon the Unit, or adequately and attractively screened, so that the receiver is not readily visible from any subdivision street; approval and authorization for the installation and placement of any such receiver shall be obtained in accordance with the provisions of Article XI ("Architectural Review") hereof.

Declarant does not warrant or represent that all Units are suitable for satellite television reception.

Article XII, Section 2, Paragraph (z) ("Artificial, Exterior Sculpture, and Similar Items") is hereby amended so as to include the following additional terms and provisions, to-wit:

Nothing herein shall be construed as requiring the owner of a Unit to obtain approval, in accordance with Article XI of this Declaration, to raise or display the flags of the United States or the State of West Virginia on recognized national and state holidays and/or commemorations, provided that the flags so raised or displayed are well maintained, and the presentation of such flags within the Unit is appropriate, fitting, and patriotic.

In all other respects, the terms and provisions of the Deed of Declaration are hereby ratified and affirmed.

It is the intent and purpose of the Declarant that the amendments herein set forth shall apply to Sections 1, 1B, 2, 3, and Phases 1 and 2 of Section 4 of Dry Run Commons Subdivision, and such other future additions to Dry Run Commons Subdivision as may be subjected to the Deed of Declaration, as herein amended.

DEED BOOK NO. 550 — BERKELEY COUNTY, W. VA.

The Declarant hereby designates Phase 2 of Section 4 of Dry Run Commons Subdivision as hereinbefore described as an area designated for single-family detached residences.

The above described amended Easements, Rights-of-way, Covenants, Conditions, Rights, Obligations, Reservations, Liens and Assessments are for the purpose of protecting the values and amenities in this addition to Dry Run Commons Subdivision and for the purpose of preserving certain rights-of-way, easements, and rights and shall run with the real property and be binding on all parties having any right, title or interest in the above described property, or any part thereof, their heirs, devisees, successors, and assigns, and shall inure to the benefit of each owner thereof.

WITNESS the signature of Declarant by its general partner, duly authorized, this 15th day of August, 1995.

ROCK CLIFF PARTNERS LIMITED PARTNERSHIP, a West Virginia limited partnership, by Red Hawk Corporation, a corporation, its General Partner

(CORPORATE SEAL)

By: Joseph Tyszkiewicz
Joseph Tyszkiewicz, President

STATE OF WEST VIRGINIA,
COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this 15th day of August, 1995, by Joseph Tyszkiewicz, President of Red Hawk Corporation, a West Virginia corporation, as General Partner of Rock Cliff Partners Limited Partnership, a West Virginia limited partnership, on behalf of said limited partnership.

[Signature]
Notary Public

My commission expires: ~~May 27~~, ^{April 25} 2000

This instrument was prepared by James D. Steptoe, Attorney, 126 East Burke Street, Martinsburg, WV, 25401.
D:\CLIENT\048840\92801\SECTION4.DEC
File No. 92-RE-014

CAIRO & MANNING INC., SPRINGFIELD, VA. RECORDED AS 1987-A-95

STATE OF WEST VIRGINIA, COUNTY OF BERKELEY SS:
On AUG 15 1995 the foregoing Document was produced in this office & duly admitted to record at 2:05 PM
Teste: John W. Small, Jr., Clerk of said Commission.

6812

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made this 5 day of September, 2001, by DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC., a West Virginia corporation, hereinafter called "Association."

WITNESSETH;

WHEREAS, by a Deed of Declaration of Covenants, Conditions, and Restrictions, dated July 12, 1993, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 514, at page 287, (hereinafter called "Deed of Declaration"), certain real property known as Section 1 of Dry Run Commons Subdivision was subjected to all of the rights, reservations, restrictions, covenants, conditions, easements, rights-of-way, liens, charges and assessments more fully set forth in said Deed of Declaration; and

WHEREAS, said Deed of Declaration provided that authorized amendments shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions; which Supplementary Declarations adding various sections to the Subdivision and changing various covenants have been made in the past; and

WHEREAS, said Deed of Declaration stated in Article XVII, Section 2, that the Association may amend the Declaration by an affirmative vote of 75% of its members; and

WHEREAS, 75% of the membership has agreed in writing to the amendments which follow, and to alter the provisions of the covenants and restrictions related to the installation of small satellite television antennas,

NOW, THEREFORE, the Association declares that Article XII, Section 2, Paragraph (V) "Antennas" of the Declarations of Covenants, Conditions, Restrictions, Easements and Rights of Way (sometimes referred to as "Covenants & Restrictions") set forth in the Declaration of

Covenants, Conditions and Restrictions dated July 12, 1993 and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book No. 514 at page 28, and as previously amended by a prior Supplementary Declaration of Covenants, Conditions and Restrictions, dated August 15, 1995, of record in said Clerk's office in Deed Book No. 550 at page 234 are further amended to include the following additional terms and conditions:

Video "dish" antennas that are less than one meter (39.37") in diameter may be installed within and upon a Unit. No dish or other antenna larger in diameter than one meter may be installed in or upon any Unit. In the event that a Unit owner installs an antenna of less than one meter in diameter, the Unit owner agrees to indemnify and hold harmless the Association and its members from all claims for damages of any kind which may occur as the result of the existence of said antenna upon the Unit. Said indemnification shall include but not be limited to all claims made regarding said antenna whether for personal injury or for any other reason and shall include but not be limited to, all costs, attorneys' fees and other expenses incurred by the Association and its members as a result of any claim made regarding said antenna, its use, or damages caused thereby.

No antenna may be installed on or intruding upon or over the property of other members or upon common areas of Dry Run Commons Subdivision. Antennas to which this amendment applies may not be placed on masts which extend more than twelve (12) feet above the roof line of the Unit on which they are installed without first obtaining the written consent of the Association, which consent may be denied if the installer cannot certify that the installation can be accomplished safely. No consent to such an installation shall, however, be deemed a certification as to the safety of the installation. Safety shall be the sole responsibility of the Unit owner and the indemnification, and hold harmless provisions of this supplemental declaration shall apply to any such installation.

This amendment allows the use of customer-end antennas designed to receive video

programming services through direct broadcast satellite service wireless cable service (MMDS), to transmit or receive fixed wireless signals other than via satellite, or designed to receive local television broadcast signals only. Antennas used to transmit signals to or receive signals from multiple customer locations or to send or receive AM/FM radio, Amateur ("Ham") radio, Citizens Band ("CB") radio, Digital Audio Radio Services ("DARS") signals or other such signals are not permitted.

No antennas may be installed which adversely impact upon the safety of those within the subdivision, nor may they be placed in a location where they impact upon the utilities within the subdivision. No antenna may be placed, for example, in an area where it would overhang another's property or common property or in an area where it would impair the ability of repairmen to reach and work on power lines, power poles, water lines, gas lines or other utility structures within the subdivision.

It is recommended that antennas be installed only by professionals who make the installation of such antennas their business. It is likewise recommended and requested that such antennas be placed where they are not visible from the street, and that they be screened from the view of others.

In all other respects the prior Declarations of Covenants, Conditions and Restrictions applying to Dry Run Commons Subdivision, Inc. are ratified and affirmed.

It is the intent and purpose of the Association that the amendments herein set forth shall apply to all Sections of Dry Run Commons Subdivision and such other future additions to Dry Run Commons Subdivision as may be subjected to the Deeds of Declaration as herein amended.

The above described amended Easements, Rights-of-Way, Covenants, Conditions, Rights, Obligations, Reservations, Liens and Assessments are for the purpose of protecting the values and amenities in this addition to Dry Run Commons Subdivision and for the purpose of preserving

certain rights-of-way, easements, and rights and shall run with the real property and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

WITNESS the corporate name and seal of the said corporation and the signature of its president hereto affixed this 5 day of September, 2001.

DRY RUN COMMONS SUBDIVISION UNIT OWNERS
ASSOCIATION, INC.,
A West Virginia corporation

(CORPORATE SEAL)

By Margaret G. Myers
Association, President

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

I, Carolyn L. Walls, a Notary Public in and for said County and State, do hereby certify that Margaret A. Myers, its Association President, who signed the writing above for DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC., a West Virginia corporation, bearing date the 5 day of September, 2001, has this day acknowledged the same before me in my said County to be the act and deed of said corporation.

Given under my hand this 5 day of September, 2001.


Notary Public

My Commission expires:

Aug 30, 2005



BERKELEY COUNTY, WV
FILED
March 05, 2002 15:50:39

JOHN W. SMALL JR.
COUNTY CLERK
TRANSACTION NO: 2002006812

BOOK OF DEEDS
Book: 00692 Page: 00344



This instrument was prepared by Wm. Richard McCune, Jr., Attorney at Law, 115 West King Street, Martinsburg, WV 25401.

12591

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made this 15 day of November, 2001, by DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC., a West Virginia corporation, hereinafter called "Association."

W I T N E S S E T H:

WHEREAS, by a Deed of Declaration of Covenants, Conditions, and Restrictions, dated July 12, 1993, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 514, at page 287, (hereinafter called "Deed of Declaration"), certain real property known as Section 1 of Dry Run Commons Subdivision was subjected to all of the rights, reservations, restrictions, covenants, conditions, easements, rights-of-way, liens, charges and assessments more fully set forth in said Deed of Declaration; and

WHEREAS, said Deed of Declaration provided that authorized amendments shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions; which Supplementary Declarations adding various sections to the Subdivision and changing various covenants have been made in the past; and

WHEREAS, said Deed of Declaration stated in Article XVII, Section 2, that the Association may amend the Declaration by an affirmative vote of 75% of its members; and

WHEREAS, 75% of the membership has agreed in writing to the amendments which follow, and to alter the provisions of the covenants and restrictions related to the installation of small satellite television antennas,

NOW, THEREFORE, the Association declares that Article IX, Section 3, "Rules and Regulations" of the Declarations of Covenants, Conditions, Restrictions, Easements and Rights of

Way (sometimes referred to as "Covenants & Restrictions") set forth in the Declaration of Covenants, Conditions and Restrictions dated July 12, 1993 and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book No. 514 at page 28, and as previously amended by a prior Supplementary Declaration of Covenants, Conditions and Restrictions, dated August 15, 1995, of record in said Clerk's office in Deed Book No. 550 at page 234 are further amended to state as follows the following additional terms and conditions:

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. **In the event that such action is taken, all costs associated with that action incurred by the Board or by other members of the Association involved in that litigation, including, but not limited to, attorneys fees and court reporting fees, shall be the legal responsibility of the Owner against whom the relief is sought and shall be assessed as a part of any judgment against the Owner in question.** Any imposition of sanctions shall be as provided in the By-Laws of the Association. Fines shall constitute a lien against Units.

NOW, THEREFORE, the Association also declares that Article XI, Section 9, "Failure to Remedy the Non-Compliance" of the Declarations of Covenants, Conditions, Restrictions, Easements and Rights of Way (sometimes referred to as "Covenants & Restrictions") set forth in the Declaration of Covenants, Conditions and Restrictions dated July 12, 1993 and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book No. 514 at page 28, and as previously amended by a prior Supplementary Declaration of Covenants, Conditions and Restrictions, dated August 15, 1995, of record in said Clerk's office in Deed Book No. 550 at page 234 are further amended to state as follows the following additional terms and

conditions:

Section 9. Failure to Remedy the Non-Compliance. If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner and constitutes a lien upon the involved Unit.

It is understood and agreed that the Board and/or the Home Owners Association may choose to force compliance by injunctive or other proceeding in the Circuit Court of Berkeley County or in other appropriate courts. In the event that such action is taken, all costs associated with that action incurred by the Board, by the Association, or by other members of the Association involved in that litigation, including, but not limited to, attorneys fees and court reporting fees, shall be the legal responsibility of the non-complying Owner. It is understood and agreed that if costs are incurred by the Board, the Association, or other members in forcing compliance those costs likewise shall be the legal responsibility of the non-complying Owner, and shall be awarded against the Owner as a part of any judgment in any such action. It is further understood and agreed that trees are not to be removed from any property without the approval of the Board. In the event that a tree is cut down or removed without Board approval, the Owner removing the tree shall, as to each tree removed, pay to the Association a liquidated damages fee in the sum of \$1,000.00. It is understood and agreed that if the Board or the Association takes legal action to reduce that damages fee to judgment, that all costs, including attorneys' fees and court reporting costs incurred by the Board or by the Association in pursuing the action, shall be the legal responsibility of the Owner subject to suit.

The Association also declares that Article XII, Section 2, paragraph (r), "Trees" of the Declarations of Covenants, Conditions, Restrictions, Easements and Rights of Way (sometimes referred to as "Covenants & Restrictions") set forth in the Declaration of Covenants, Conditions and Restrictions dated July 12, 1993 and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book No. 514 at page 28, and as previously amended by a prior Supplementary Declaration of Covenants, Conditions and Restrictions, dated August 15, 1995, of record in said Clerk's office in Deed Book No. 550 at page 234 is altered to state as follows:

(r) Trees. An owner may remove a tree only after making written application for and obtaining architectural control review and written approval. For purposes of Article XI, Section 9, and this paragraph a tree is a perennial plant generally recognized as a tree species that is well established and 1 ½ inches or more trunk diameter at a height of 4 ½ feet above the ground level. Only a tree proven to be excessively or dangerously diseased or proven to be a hazard may be removed and then only after architectural control review and after written approval. If a tree is removed, the owner is responsible for planting and maintaining a new tree to replace each tree so removed. (See Article XI, Section 9 for liquidated damages assessed for removal of a tree without architectural control written approval).

In all other respects the prior Declarations of Covenants, Conditions and Restrictions applying to Dry Run Commons Subdivision, Inc. are ratified and affirmed.

It is the intent and purpose of the Association that the amendments herein set forth shall apply to all Sections of Dry Run Commons Subdivision and such other future additions to Dry Run Commons Subdivision as may be subjected to the Deeds of Declaration as herein amended.

The above described Supplementary Declaration is for the purpose of protecting the values and amenities in Dry Run Commons Subdivision and for the purpose of preserving certain rights pursuant to the Uniform Common Interest Ownership Act and shall run with the real property and be binding on all parties having any right, title or interest in the above described property or any part

thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

WITNESS the corporate name and seal of the said corporation and the signature of its president hereto affixed this 15 day of November, 2001.

DRY RUN COMMONS SUBDIVISION UNIT OWNERS
ASSOCIATION, INC.,
A West Virginia corporation

(CORPORATE SEAL)

By Margaret A. Myers
Association, President

STATE OF WEST VIRGINIA,
COUNTY OF BERKELEY, to-wit:

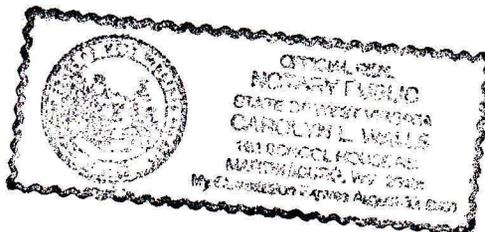
I, Carolyn L. Walls, a Notary Public in and for said County and State, do hereby certify that Margaret A. Myers, its Association President, who signed the writing above for DRY RUN COMMONS SUBDIVISION UNIT OWNERS ASSOCIATION, INC., a West Virginia corporation, bearing date the ___ day of _____, 2001, has this day acknowledged the same before me in my said County to be the act and deed of said corporation.

Given under my hand this 15 day of November, 2001.

Carolyn L. Walls
Notary Public

My Commission expires:

Aug 30, 2005



This instrument was prepared by Wm. Richard McCune, Jr., Attorney at Law, 115 West King Street, Martinsburg, WV 25401.

BERKELEY COUNTY, WV

FILED

April 24, 2002 14:52:51

JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2002012591

BOOK OF DEEDS

Book: 00699 Page: 00187



RESTRICTIONS DATED JULY 12, 1999
of Berkeley County, West Virginia
by a prior Supplementary Declaration of Covenants, Conditions and Restrictions, dated August 15, 1995, of record in said Clerk's office in Deed Book No. 580 at page 234

(i) Trees. An owner may remove a tree only after cutting
State of West Virginia
County of Berkeley
I, John W. Small Jr.
President, who signed the writing above for Dry Run Commons
Owners Association, Inc., a West Virginia corporation, bearing date this ___ day of ___
2001 and this day acknowledged the same before me in my said County to
be the act and deed of said corporation.

In all other respects, the Covenants, Conditions and Restrictions
applying to Dry Run Commons Subdivision, Inc. are ratified and affirmed.

It is the intent and purpose of the Association that the amendments herein set forth shall
apply to all lots in Dry Run Commons Subdivision and such other future additions to Dry Run
Commons Subdivision as may be subject to the Deeds of Declaration as herein amended.

My Commission expires
The above attested Declaration is for the purpose of protecting the values
and amenities in Dry Run Commons Subdivision and for the purpose of preserving certain rights
pursuant to the Uniform Common Interest Ownership Act and shall run with the real property and
be binding on all parties having any right, title or interest in the above described property or any part
thereof. Witness my hand and the seal of the County of Berkeley, West Virginia, this 24th day of April, 2002.

DRY RUN COMMONS HOMEOWNERS ASSOCIATION

POLICY RESOLUTION NO. 15-1

ASSESSMENT COLLECTION POLICIES AND PROCEDURES

WHEREAS, Article III, Section C of the Association's Bylaws provide that the Association's Board of Directors ("Board") shall have all powers necessary for the conduct of the affairs of the Association to the extent not specifically reserved to the Association's members by the Declaration, Bylaws or the Articles of Incorporation, including the Board's power to adopt, publish and enforce rules and regulations;

WHEREAS, Article X, Section 1 of the Declaration provides the Board (acting on behalf of the Association) with the responsibility for making assessments against Owners and enforcing the assessment obligations of Owners;

WHEREAS, Article X, Section 1 of the Declaration provide that assessments, including interest, late fees and collection costs (including attorney's fees), are a lien on the responsible Owner's Lot and the personal obligation of that Owner; and

WHEREAS, Article X, Section 1 of the Declaration provides authority to charge late fees and interest, and to accelerate delinquent accounts, and to suspend Owners' privileges as a result of becoming delinquent in the payment of assessments;

WHEREAS, the Board has determined that there is a need to establish amended policies and procedures for the collection of assessments.

NOW, THEREFORE, BE IT RESOLVED THAT the Board hereby adopts the following assessment collection policies and procedures, which hereby supersede and replace any previously adopted policies or procedures related to the collection of assessments:

ARTICLE I **Routine Collections**

- A. **Due Dates**. Each fiscal year's Annual Assessment shall be due and payable in advance, in annual installments, on or before the March 1st of each year. All Special Assessments shall be due and payable as specified in the assessment noticed mailed to Owners. Unless otherwise specified by written notice from the Association, all other amounts assessed against an Owner are due and payable immediately upon assessment.
- B. **Owners' Mailing Addresses**. All documents, correspondence and notices from the Association or the Association's management agent ("Managing Agent") relating to assessments or other charges shall be mailed or delivered to the Owner's "address of record" that appears on the books of the Association, which is the Owner's Lot address unless otherwise notified in writing by the Owner to change his/her address of record to a different mailing address. Owners have the responsibility of promptly informing the Association's Managing Agent, in writing, of changes to their "address of record."

- C. **Invoices and Other Notices.** Non-receipt of an invoice, payment coupon or other notice shall in no way relieve the Owner of the obligation to pay the amount due by the due date. If an Owner does not receive a notice within the expected or required time period, it is the Owner's responsibility to contact the Association's Managing Agent immediately to obtain a copy of the notice and to confirm the Owner's correct mailing address.

ARTICLE II
Remedies For Nonpayment Of Assessment

- A. **Late Fees.** If payment of an assessment, or assessment installment, is not paid by the applicable due date a late fee of \$50.00 shall be assessed and added to the Owner's assessment account as part of the balance owed and shall be immediately due. An assessment (or installment) is deemed to be paid on the date that the Association actually receives payment of that amount.
- B. **Returned Checks.** If a check (or electronic debit, if applicable) is returned or rejected for insufficient funds or stop payment, the Owner's account is assessed a returned check/debit processing charge of not more than Fifty Dollars (\$50.00), plus the bad check/debit return fee, if any, charged to the Association by the bank. These charges shall be added to the Owner's assessment account as part of the balance owed and shall be immediately due. If the Association receives from any Owner, in any fiscal year, two or more returned checks or rejected electronic debits, the Association may require all future payments for the remainder of that fiscal year to be made by certified check, cashier's check, or money order.
- C. **Late Notice.** A "Late Notice" or other delinquency notice may be sent by the Association to Owners who have not paid an assessment (or installment thereof) or other charges in full by the applicable due date. Non-receipt of such notice does not relieve the Owner of his or her obligation to pay the assessment or the resulting late fees, costs, attorneys' fees or other applicable charges assessed against the Owner's account as a result of the delinquency. Additional late notices or reminder notices may be sent to a delinquent Owner, at the Board or Managing Agent's discretion, prior to referral of an account for collection.
- D. **Notice of Intent to File Lien.** If payment in full of an assessment (or applicable installment), including late fees and other charges, is not received by the Managing Agent by the 60th day after the applicable due date, the delinquent Owner may be mailed (by certified mail, return receipt requested) a notice of intent to file a Memorandum of Lien.

Notwithstanding anything to the contrary in this Resolution, once an account has been forwarded to the Association's legal counsel for collection, no further late notices or other delinquency-related notices will be sent by the Managing Agent until the account is closed with legal counsel.

- E. **Collection Costs / Attorney's Fees.** All costs of collection incurred by the Association as a result of the failure of an Owner to timely pay assessments or other charges shall be assessed against that Owner as they are incurred or as collection action is taken, without the need for a case-by-case vote by the Board. These costs shall be added to the Owner's assessment account as part of the balance owed and shall be immediately due. These expenses may include, for example, management administrative fees and mailing costs for delinquency notices, the cost of filing a lien and/or civil suit and other court costs, attorneys' fees, and any other collection-related costs. All such collection costs shall be added to the Owner's assessment account and become part of the lien against the Owner's Lot and the personal obligation of the Owner.

- F. **Acceleration.** If an Owner fails to pay a delinquent assessment installment within 30 days after the applicable due date, then the remaining balance of the applicable Annual or Special Assessment may be accelerated by the Board, making the entire balance of that assessment immediately due and payable in full. In addition, for accounts not already accelerated when the Owner's delinquent account is forwarded to the Association's legal counsel for collection, then if that Owner has failed or subsequently fails to pay an assessment installment so that it is received by the Association within 30 days after its due date, then the remaining installments of the delinquent assessment shall be accelerated for the remainder of the applicable fiscal year, without the need for specific case-by-case vote from the Board, and is immediately due and payable in full upon notice. The Association's legal counsel is authorized to include such accelerated amounts in the balance being collected.
- G. **Referral of Account for Collection.** If an Owner's account remains past due for more than 90 days, then the Managing Agent is authorized to forward the Owner's delinquent account to the Association's legal counsel (or other collection agent designated by the Board) for collection, subject to any Board guidance regarding the minimum account balance to forward. Once a delinquent Owner's account is forwarded to the Association's legal counsel for collection, all payments and other account-related communications from that Owner must be sent to the Association's legal counsel unless otherwise advised in writing by such legal counsel.
- H. **Lien.** When an Annual Assessment, Special Assessment or other charge is assessed against a Lot, the Association (acting through its legal counsel) may record a Memorandum of Lien in the county's land records after the Owner is mailed at least 10-days written notice (by certified mail, return-receipt requested) that a lien may be filed. Past due and accelerated installments, late fees, interest, and collection costs, including attorney's fees and costs associated with filing and releasing the Memorandum of Lien shall be included as part of the lien and added to the Owner's account. The 10-day notice referenced above shall be sent by the Managing Agent or the Association's legal counsel to the Owner's last known address, whether that be the Lot address, address of record (if different than the Lot address), or such other last known address.
- I. **Further Legal Action.** The Association's legal counsel is authorized to take appropriate action to collect the amounts due, except as provided in Section K below or unless directed otherwise by the Board. Once a judgment is entered against an Owner, further actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.
- J. **Foreclosure.** If one or more liens remain unpaid, the Board may authorize a foreclosure proceeding against the Owner's Lot within thirty-six (36) months of the date the lien was recorded (or within such other time period as may be authorized by the Act or other applicable law from time to time).
- K. **Waivers.** The Board may, in its sole discretion, grant a waiver of any provision herein, except filing of Memoranda of Lien beyond the statutory deadline, upon written request by an Owner alleging a significant personal hardship or as otherwise determined to be in the best interests of the Association. Any such relief granted to an Owner shall be appropriately documented in the Association's files with the name of the person or persons representing the Board who granted the relief and the conditions of the relief, if any. The Board may designate the Managing Agent, the president or other officer of the Association, or the Association's legal counsel as having the

authority to accept settlement offers or payment plans on behalf of the Association between Board meetings, subject to any Board-established guidelines. If a payment plan request is granted for delinquent amounts, a condition of the payment plan may require, among other things, that those amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note.

- L. **Management Waiver.** The Association's Managing Agent is authorized to waive the imposition of late fees and/or interest if the delinquent Owner had owned the Lot for three or fewer months at the time of the delinquency and, in the judgment of the Managing Agent, the delinquency was the result of a misunderstanding of the correct procedures relative to payment of the assessment. This type of waiver may be granted only once to any Owner.
- M. **Application of payments.** Payments received from an Owner shall be credited in the following order:
1. Any collection costs posted to the delinquent account, including, for example, administrative fees, certified mailing costs, lien filing/releasing costs, returned check charges, court costs and attorney's fees;
 2. Any late fees and interest;
 3. Any other charges assessed against the Owner's account arising from enforcement of the provisions of the Declaration or the Association's rules and regulations; and
 4. Other assessments against the Owner's account (e.g., Annual Assessments and Special Assessments), applied to the oldest outstanding amounts first.
- N. **Suspension of Rights.**
1. **Right to Vote as Member of the Association/Eligibility to Serve on Board.** Pursuant to Article V, Section 10 of the Declaration and Article IV, Section 1 of the Bylaws, if an Owner's assessment account becomes more than 30 days' past due, then that Owner's right to vote on Association matters and eligibility to be a director on the Board shall be automatically suspended without further notice other than this Resolution, with such suspensions continuing until that Owner's assessment account is brought current.
 2. **Use of Services and Facilities.** In addition, pursuant to Article IV, Section 1 of the Declaration and Section 55-513.B of the Act, if an assessment is more than 60 days past due, the Board may suspend the right of the Owner to use the Association's recreational facilities and other Association-provided nonessential services (including, e.g., use of Common Area parking spaces), after first giving the delinquent Owner prior written notice, an opportunity to cure, and an opportunity for a hearing pursuant to any related procedures that may be adopted by the Board from time to time. The suspension applies not only to the Owner but also to all occupants of, and visitors to, the Owner's Lot. Suspensions remain in place until the account is paid in full, unless a different arrangement is agreed to by the Board as part of an approved payment plan to settle the debt.

The remedies stated herein shall not constitute an election of remedies and all remedies shall be deemed cumulative.

EFFECTIVE DATE OF RESOLUTION

The effective date of this Resolution shall be _____, 2015.

DRY RUN COMMONS HOMEOWNERS ASSOCIATION, INC.

REGULATORY RESOLUTION NO. 15-2

Rule Violations: Complaint and Due Process Procedures

WHEREAS, Article II, Section 2.01, para (a) of the Declaration and Article VI, Section 4.01 of the Bylaws of the Dry Run Commons Homeowners Association, Inc. ("Association") grant the Board of Directors the power to make and amend Rules and Regulations respecting the use of Common Areas of the Association and the personal conduct of the owners and their tenants and guests thereon and to establish the penalties for the infractions thereof; and

WHEREAS, Section 55-515 of the Virginia Property Owners' Association Act ("Act") and Articles VI and IX of the Amended Declaration charge all owners and their tenants, licensees, invitees, servants, agents, and employees with compliance with the Declaration, the Bylaws, and the Rules and Regulations of the Association, as amended; and

WHEREAS, Section 55-513 of the Act provides the Association, through its Board of Directors, with the power to assess charges against owners for violations of the Declaration or the Rules and Regulations adopted pursuant thereto (together, the "Governing Documents") for which the owner or his family members, tenants, guests, or other invitees are responsible; and

WHEREAS, Section 55-513 of the Act further provides that certain procedures must be followed before such charges may be assessed; and

WHEREAS, it is the intent of the Board of Directors, pursuant to Section 55-513 of the Act, to adopt by Resolution the authority to suspend privileges for nonpayment of assessments and to assess charges for violations of the Act and the Governing Documents of the Association; and

WHEREAS, it is the intent of the Board of Directors to enforce the Governing Documents for the benefit and protection of the Association's owners and residents by establishing procedures that ensure due process and consistency of enforcement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board of Directors by the Act, the Governing Documents, and this resolution are adopting the ability to suspend members' privileges to use facilities or services for assessments that are past due for more than sixty (60) days as well as assess charges for any violation of the Act or the Governing Documents and are hereby further empowered to suspend such privileges and assess such charges pursuant to Section 55-513 of the Act, which will be done only after the following procedures have been followed:

I. Complaint.

A. Any owner, tenant, employee, or Board member who requests that the Board take action to enforce the Governing Documents shall submit a written complaint that includes the date, specific complaint, and signature of complainant.

B. The complaint shall be submitted to the Management Agent for a determination as to whether it is likely that a provision of the Governing Documents has been violated based upon the allegations.