

DEMORY FARM SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by SKYLINE FARMS, LLC, a West Virginia limited liability company, its successors and/or assigns, assignee of Cameron Run, LLC, a West Virginia limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the County of Jefferson, State of West Virginia, which is more particularly described on the legal description attached hereto and made a part hereof as Schedule A-1.

NOW, THEREFORE, Declarant hereby declares that all of the real property described on Schedule A-1 hereto shall be subject to the Declarant's right to unilaterally subject such real property to the covenants, conditions, restrictions and easements set forth in this Declaration and to annex such real property within the jurisdiction of the Association pursuant to Article 10 hereof. The Declarant hereby further declares that, upon recordation of one or more Supplementary Declarations in accordance with Article 10 hereof, all or any portion of the real property described on Schedule A-1 hereto, and any other real property annexed within the jurisdiction of the Association in accordance with Article 10 hereof, shall thereafter be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and be binding on all parties having any right, title or interest in all or any portion of the real property described on Schedule A-1 hereto, and any other real property annexed within the jurisdiction of the Association in accordance with Article 10 hereof, their heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of each Owner thereof.

ARTICLE 1

DEFINITIONS

Section 1.1. "Act" shall mean The Uniform Common Interest Ownership Act, West Virginia Code Section 36B-1-101, et seq., as it may be amended from time to time.

Section 1.2. "Allocated Interests" shall mean the undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Article 9 of this Declaration and shown on Schedule A-2.

Section 1.3. "Administrative Resolutions" are rules, policies and/or procedures, adopted by the Declarant and/or the Board of Directors, for purposes of implementing provisions of this

Declaration, the Bylaws and Articles of Incorporation of the Association, as more fully described in Article 8 of the Bylaws.

Section 1.4. "Annual Assessments" shall mean and refer to the assessments levied against all Lots within the Property to fund the Common Expenses, not including Special Assessments.

Section 1.5. "Application Procedures" shall have the meaning specified in Section 15.9 of this Declaration.

Section 1.6. "Architectural Review Committee" shall have the meaning specified in Section 15.3(b) of this Declaration.

Section 1.7. "Architectural Review Entity" shall have the meaning specified in Section 15.3 of this Declaration.

Section 1.8. "Assessments" shall mean and refer collectively to any Annual Assessment or Special Assessment, and all other fees and charges, including all installments thereof, the Association in accordance with this Declaration may levy as.

Section 1.9. "Association" shall mean and refer to DEMORY FARM HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation organized under West Virginia Code Section 31-1-1, et seq., its successors and assigns. It is the Association of Unit owners pursuant to Section 3-101 of the Act.

Section 1.10. "Common Interest Community" shall mean the real property described in Schedule A-1, subject to the Declaration of Covenants, Conditions and Restrictions of Demory Farm Homeowners Association, Inc.

Section 1.11. "Common Area" shall mean and refer to all portions of the Property and all interests therein, including easements and improvements thereon, owned or leased by the Association for the use and enjoyment of the Members.

Section 1.12. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including, without limitation, a reasonable reserve and expenses for the maintenance of the Common Area in accordance with Article 13 hereof, all as may be found to be necessary or appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

Section 1.13. "Community Facilities" shall mean and refer to any and all improvements and facilities located upon the Common Area including, without limitation, recreational facilities (if any), which are operated and maintained by the Association for the use and enjoyment of the Owners.

Section 1.14. "Community-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Board of Directors.

Section 1.15. "Declarant" shall mean and refer to SKYLINE FARMS, LLC, a West Virginia limited liability company, and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, but only to the extent that all or any portion of the rights, reservations, easements, interests, exemptions,

privileges and/or powers of the Declarant are specifically assigned or transferred to any such successors or assigns by an instrument in writing.

Section 1.16. "Declarant's Rights and Obligations" shall mean and refer to the rights, reservations, easements, interests, exemptions, privileges, powers and/or duties reserved or given to the Declarant pursuant to this Declaration. The Declarant's Rights and Obligations shall extend until the first to occur of (i) the initial conveyance of all Lots included and to be included within the jurisdiction of the Association in accordance with Article 3 of this Declaration to Owners other than the Declarant or any Participating Builders, or (ii) twenty (20) years after the recordation of this Declaration. The Declarant may, however, elect to earlier terminate all or any portion of the Declarant's Rights and Obligations by the recordation of a written instrument among the Land Records expressing the Declarant's express intention to relinquish all or any portion of the Declarant's Rights and Obligations. The term during which the Declarant's Rights and Obligations are in effect is sometimes referred to in this Declaration as the "Declarant's Rights and Obligations Period."

Section 1.17. "Design Guidelines" shall have the meaning specified in Section 15.9 of this Declaration.

Section 1.18. "Development Plan" shall mean and refer collectively to the Final Plat entitled "DEMORY FARM", dated December 2, 2004, revised January 7, 2005, prepared by Huntley, Nyce & Associates, Ltd, and recorded in the office of the Clerk of the County Commission of Jefferson County, West Virginia in Plat Book 21, at page 79, including all amendments, modifications, extensions, additions and supplements thereof as may be made from time to time.

Section 1.19. "Eligible Mortgage Holder" shall mean a holder, insurer or guarantor of a First Mortgage on a Lot who has submitted a written request for notice from the Association of amendments to the Association documents or other significant matters, which would affect the interests of the mortgagee.

Section 1.20. "Equity Resolution" shall mean and refer to those actions of the Declarant and/or the Board of Directors, which create additional covenants, conditions and/or restrictions with respect to the Lots, and the Common Area as more fully described in Article 8 of the Bylaws.

Section 1.21. "Governing Documents" shall mean and refer collectively to this Declaration, the Articles of Incorporation and the Bylaws of the Association, and all Administrative Resolutions, Equity Resolutions and other rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.22. "Improvements" shall have the meaning specified in Section 15.1 of this Declaration.

Section 1.23. "Land Records" shall mean and refer to the Land Records of Jefferson County, West Virginia.

Section 1.24. "Lawn and Garden Area" shall mean and refer to any portion of the front, side or rear (if applicable) yard areas of any Lot that contains grass, shrubs, bushes, trees or other planted material; provided, however, that any portion of a Lot which is enclosed by a wall, fence or other obstruction and which is not readily accessible to the Association, as determined by the Board of Directors in its sole discretion, shall not be considered a Lawn and Garden Area.

Section 1.25. "Live-Work Unit" shall mean and refer to any portion of the Property, whether improved or unimproved, which contains or is intended to contain a structure designed for use and occupancy both as a residential dwelling unit and as a place of business by one or more members of a single household.

Section 1.26. "Living Unit" shall mean and refer to any portion of the Property, whether improved or unimproved, which contains or is intended to contain a dwelling designed for use and occupancy by a single household; provided however, that an accessory structure within a single Lot containing living quarters in addition to the primary dwelling, the ownership of which is held by the same person, shall not be deemed to be a separate Living Unit. Living Units include, without limitation, single-family detached dwelling units, and single-family attached and semi-attached dwelling units.

Section 1.27. "Lot" shall mean and refer to (i) any plot of land designated as a separate subdivided lot of record upon any recorded subdivision plat of the Property upon which the planned or actual improvements are primarily intended for use and occupancy as a residential dwelling unit. No Lot shall be counted twice in any situation where it may fall within more than one of the foregoing descriptions. The term Lot shall not include Common Area or outlots of property dedicated for public use. The term Lot shall be deemed to refer collectively to Single-Family Detached Lots.

Section 1.28. "Member" shall mean and refer to every person, group of persons, corporation, partnership, trust, or other legal entity, or any combination thereof, who holds any class of membership in the Association.

Section 1.29. "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage", as used herein, shall include deeds of trust. "First Mortgage", as used herein, shall mean a mortgage with priority over all other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot. In the event any mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the expressions "mortgagee" and "institutional mortgagee" include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Secretary of Veterans Affairs or through other duly authorized agents.

Section 1.30. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.31. "Participating Builder" shall mean and refer to any person or entity, other than the Declarant or the Declarant's affiliates, that acquires one or more Lots for the purpose of constructing residential dwelling units on such Lots for sale or lease to others.

Section 1.32. "Project" as used in this Declaration shall refer to the Property.

Section 1.33. "Property" shall mean and refer to all real property as may hereafter be brought within the jurisdiction of the Association pursuant to Article 10 of this Declaration.

Section 1.34. "Single-Family Detached Lot" shall mean and refer to any Lot upon which there is construed, or is intended to be constructed, a single-family detached dwelling unit.

Section 1.35. "Special Assessment" shall mean and refer to any assessment levied by the Association in accordance with Section 13.4 of this Declaration.

ARTICLE 2

Name and Type of Common Interest Community and Association

Section 2.1. Common Interest Community. The name of the Common Interest Community is DEMORY FARM SUBDIVISION. Demory Farm Subdivision is a planned community.

Section 2.2. Association. The name of the Association is Demory Farm Homeowners Association, Inc.

ARTICLE 3

Description of Land

The entire Common Interest Community is situated in Jefferson County, West Virginia. A description of the real estate included in Demory Farm is contained in Schedule A-1.

ARTICLE 4

Maximum Number of Units; Boundaries

Section 4.1. Maximum Number of Units. The Common Interest Community upon creation contains seventy-three (73) Units.

Section 4.2. Boundaries. Boundaries of each Unit created by the Declaration are shown on Schedule A-2 as numbered lots. The identifying number of each unit is shown on Schedule A-2.

ARTICLE 5

Common Elements and Limited Common Elements

Section 5.1. The portions of Common Elements on Schedule A-3 are Limited Common Elements and are assigned to the Units as stated therein.

Section 5.2. The real estate, which is or must become Common Elements, is described in Schedule A-4.

ARTICLE 6

Maintenance, Repair and Replacement

Section 6.1. Common Elements. The Association shall maintain, repair and replace all of the portions of the Common Elements that are required by this Declaration or the Act to be maintained, repaired or replaced by the Unit Owners to include recreation facilities and storm water management facilities, if any, are provided, and as further described under Article 13, Sections 13.2 (a) and (b).

Section 6.2. Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof required by the Declarant to be maintained, repaired or replaced by the Association.

Section 6.3. Limited Common Elements. Any common expense associated with the maintenance, repair, or replacement of the Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element is assigned, as shown on Schedule A-3. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Section 6.4. Access. Any person authorized by the Board of Directors shall have the right of access to all portions of the Property 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.

Section 6.5. Repairs Resulting from Intentional Negligence. 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 that results from the emergency and shall hold the Association harmless from any damages resulting therefrom.

ARTICLE 7

Subsequently Allocated Limited Common Elements

Those portions of the Common Elements shown on Schedule A-5 may be subsequently allocated as Limited Common Elements in accordance with Subsection 8.1(b) of this Declaration, or may be assigned by rule of the Board of Directors, or may be limited by rule to visitors only.

ARTICLE 8

Development Rights and Other Special Declarant Rights

Section 8.1. Reservation of Development Rights. The Declarant reserves the following Development Rights:

(a) The right by amendment to add real estate to the Common Interest Community. The real estate to which this Development right applies is set forth in Schedule A-6.

(b) The right by amendment to create Units, Common Elements, or Limited Common Elements, within the Common Interest Community.

(c) The right by amendment to subdivide and combine Units or convert Units into Common Elements.

(d) The right by amendment to withdraw real estate from the Common Interest Community.

(e) The real estate to which the Development Rights specified in paragraphs (b) and (c) above is set forth in Schedule A-1. The real estate to which the Development Rights specified in Paragraph (d) apply is shown on Schedule A-8.

(f) The right to extend public roadways 1 and 5 to the adjacent property as shown on the Concept plan.

Section 8.2. Limitations on Development Rights. The Development Rights reserved in Section 8.1 must be exercised within 25 years after the recording of the initial Declaration.

Section 8.3. Phasing of Development Rights. Any of the Development Rights set forth in Section 8.1 above may be exercised with respect to different parcels of real estate within the Common Interest Community at different times. However, the Declarant as to the portions makes no assurances 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 8.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere with the Common Interest Community.

- (a) To complete Improvements indicated on Plats and Plans filed with the Declaration;
- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and models;
- (d) To use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate which may be added to the Common Interest Community.
- (e) To appoint or remove an officer of the Association or a Board of Directors member during a period of Declarant control subject to the provisions of Section 8.1 of this Declaration.
- (f) The real estate to which the special Declarant rights specified in Section (a) through (e) above is shown on Schedule A-1.

Section 8.5. Models, including model homes and homesites, Sales Offices and Management offices. As long as the Declarant is a Unit Owner, the Declarant, its assigns and its duly authorized agent; representatives and employees may maintain any Unit owned by the Declarant or any portion of the common Elements as a model Unit or sales office or management office.

Section 8.6. Declarant's Easement. Subject to the provisions of this Declaration, a Declarant and its assigns have an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights.

Section 8.7. Unit Owners' Easement. Unit Owners have an easement in the Common Elements for purpose of access to their Units and to use the Common Elements and all real estate that must become Common elements for all other purposes.

Section 8.8. Signs and Marketing. The Declarant and its assigns reserve the right to post signs and displays in the Common Elements 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 8.9. Declarant's Personal Property. The Declarant and its assigns reserve 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 and its assigns reserve the right to remove from the property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 8.10. Declarant Control of the Association.

- (a) Subject to Subsection 8.9(b): There shall be a period of Declarant control of the Association, during which the Declarant, or person designated by the Declarant, may appoint and

remove the officers and members of the Board of Directors. The period of Declarant control terminates at the first annual meeting of the Association following the sale of all Units.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than the termination of any period of Declarant control, the Unit Owners shall elect a Board of Directors of at least three members, at least a majority of who shall be Unit Owners. The Board of Directors shall elect the officers. The Board members and officers shall take office upon election.

(c) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 3-108 of the Act, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

Section 8.11. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right 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 Elements, (ii) owns any Unit; or (iv) owns any Security Interest in any Units; or (v) for fifteen years after recording this Declaration, whichever is earliest. Earlier termination of certain rights may occur by statute.

Section 8.12. Interference with 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 Special Declarant Right without the prior written consent of the Declarant.

ARTICLE 9

Allocated Interests

Section 9.1. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Schedule A-7. These interests have been allocated in accordance with the formulas set out in this Article 9. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community.

Section 9.2. Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on the following formulas:

(a) **Liability for the Common Expenses.** A percentage of liability for Common Expenses allocated to each Unit is based on the number of Units listed on the most current Schedule A-2. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 6 of this Declaration. The total amount of Common Expenses shall be divided by the number of Units listed in the most current Schedule A-2 to arrive at a proportional share of Common Expenses to be allocated to each Unit. Each Unit shall be allocated one share of Common Expenses so calculated. As Units are added to the Common Interest Community, the allocation of expenses shall be adjusted to reflect the total number of Units shown on the current Schedule A-2.

(b) **Votes.** Each Unit in the Common Interest community shall have one equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the documents, means the specified percentage, portion, or fraction of all the votes as allocated according to the number of Units listed in the most current Schedule A-2. As Units are added to the Common Interest Community, each Unit shall continue to have one equal vote.

Section 9.3. Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 9.1 of this Declaration shall be the date on which the amendment creating the Units is recorded on the Land Records of Jefferson County, West Virginia.

ARTICLE 10

DECLARANT'S RIGHT TO SUBJECT PROPERTY TO DECLARATION

Section 10.1. Property Subject to this Declaration. The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration or in one or more Supplementary Declarations recorded by the Declarant among the Land Records. The Declarant shall have the right to incrementally annex all or any portion of the real property described on Schedule A-1 hereto within the jurisdiction of the Association by executing and recording one or more Supplementary Declarations, regardless of the ownership of the real property described on Schedule A-1 hereto at the time of such annexation and without the need for the execution or filing of any such Supplementary Declarations by any other party; provided, however, that the Declarant's right to unilaterally annex the real property described on Schedule A-1 hereto shall only continue for a period of twenty (20) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Schedule A-1 hereto; provided, further, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty (20)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less.

Section 10.2. Annexation of Property. The real property described on Schedule A-1 hereto, any real property shown on the Development Plan, any real property contiguous to or in the vicinity of the real property shown on the Development Plan and any real property contiguous to or in the vicinity of the real property described on Schedule A-1 hereto, may be annexed within the jurisdiction of the Association by the Declarant without the consent of the Class A or Members of the Association, if any, for a period of twenty (20) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Schedule A-1 hereto; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty (20) year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. The scheme of this Declaration shall not, however, be extended to include any such real property unless and until the same is annexed within the jurisdiction of the Association by the recordation of a Supplementary Declaration as hereinafter provided. Except as otherwise provided above with respect to annexations of real property by the Declarant, annexations of real property within the jurisdiction of the Association shall require the consent of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at any meeting of the Association.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration among the Land Records, which Supplementary Declaration shall extend the scheme of the within Declaration to such annexed property. Any Supplementary Declaration made pursuant to the provisions of this Article may contain such complementary or supplemental additions and/or modifications to the covenants, conditions and/or restrictions set forth in the within Declaration as may be considered necessary or appropriate by the maker of such Supplementary Declaration to reflect the different character or use, if any, of the annexed property, including, without limitation, a partial or complete waiver of all or any portion of such covenants, conditions and/or restrictions with respect to the annexed property.

So long as the FHA insures, or agrees to insure, loans made with respect the initial sales of Lots within the Project, no annexation of real property shall be made pursuant to this Article, or otherwise, except following a determination by the FHA that the annexation conforms to a general plan for the development of the Project previously approved by the FHA, or, if no such general plan was approved by the FHA, except following the prior written approval of the FHA. Failure to obtain such approval may result in the Lots located within the annexed property not being eligible for FHA insured loans, but such failure shall not be deemed to preclude or be a waiver of the Declarant's right to annex real property within the jurisdiction of the Association.

Every Owner of a Lot in property to be annexed as provided herein shall have an easement of enjoyment in and to the Common Area and Community Facilities, and such other rights of use as are provided in Article 3 herein.

Section 10.3. Deannexation. The Declarant may de-annex any property annexed within the jurisdiction of the Association for a period of twenty (20) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Schedule A-1 hereto; provided, however, that (i) the Declarant is the Owner of such property at the time of de-annexation, or (ii) if the Declarant is not the Owner of such property, the Declarant de-annexes such property with the written consent of the Owner thereof; provided, further, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty (20) year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. Such de-annexed property shall no longer be subject to the covenants and restrictions of this Declaration except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to this Declaration which affect the de-annexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such de-annexation. Such de-annexation shall be made by recording a Supplementary Declaration among the Land Records, withdrawing the effect of the covenants and restrictions of this Declaration from the de-annexed property. The Declarant, or any successor, assigns or transferee thereof may utilize such de-annexed property, for any lawful purpose or use.

So long as the FHA insures, or agrees to insure, loans made with respect the initial sales of Lots within the Project, no de-annexation of real property shall be made pursuant to this Article, or otherwise, except following a determination by the FHA that the de-annexation is not contrary to a general plan for the development of the Project previously approved by the FHA, or, if no such general plan was approved by the FHA, except following the prior written approval of the FHA. Failure to obtain such approval may result in the Lots located within the de-annexed property not being eligible for FHA insured loans, but such failure shall not be deemed to preclude or be a waiver of the Declarant's right to de-annex real property from within the jurisdiction of the Association.

Section 10.4. Common Area. All Common Area and completed facilities must be annexed within the Association by the Declarant in accordance with the terms and conditions of any approved regulatory plans, as may be amended from time to time, and must otherwise be in accordance with the terms of any regulatory plan requirements, including a phasing schedule, as may be amended. The Declarant reserves the right to seek an amendment to any regulatory plan for the purpose of modifying the location or amount of real property comprising the Common Area and for the purpose of modifying the improvements to be constructed on the Common Area which amendment shall be

reviewed by the appropriate municipal authorities in accordance with applicable law. Such amendment shall be effective only if approved by the appropriate municipal authorities.

ARTICLE 11

PROPERTY RIGHTS

Section 11.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and Community Facilities, including an easement for the use and enjoyment of the private streets, parking areas, pathways and walkways within the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable and uniform admission and other fees for the use of the Common Area and Community Facilities;

(b) The right of the Association to suspend an Owner's voting rights and right to use the Common Area and/or Community Facilities (i) for any period during which any assessment against such Owner's Lot remains unpaid, and (ii) after notice and an opportunity for a hearing, for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that the obligation of such Owner to pay Assessments shall continue unabated during such period of suspension of voting rights or right to utilize the Common Area and/or Community Facilities;

(c) The right of the Association to dedicate, sell or transfer all or any part of the Common Area and/or Community Facilities to any public agency, authority, or the Members may agree to utility for such purposes and subject to such conditions as. No such dedication, sale or transfer shall be effective without the consent of two-thirds (2/3) of each class of Members and fifty-one percent (51%) of the Eligible Mortgage Holders, its successor or assign, has given its prior written approval thereof, which approval shall not be unreasonably withheld or delayed;

(d) The right of the Association to limit the number of guests of Owners utilizing the Common Area and Community Facilities;

(e) The right of the Declarant and the Association to establish Administrative Resolutions and Equity Resolutions pertaining to the use of the Property, the Common Area and the Community Facilities;

(f) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and Community Facilities;

(g) The right of the Association to provide for the exclusive use by certain Owners and residents of designated parking spaces within the Common Area;

(h) The right of the Association, the Declarant, utility companies and other owners with respect to the easements established by this Declaration;

(i) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and Community

Facilities in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Area and Community Facilities;

(j) The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration;

(k) The right of the Declarant, as more fully set forth in Article 18 of this Declaration, to grant easements, to utilize reserved rights and easements, and to otherwise utilize the Common Area and Community Facilities as it deems appropriate in connection with the development of the Project;

(l) The right of the Association, acting by and through its Board of Directors, to grant easements, licenses or other rights of use of the Common Area and Community Facilities to persons or entities who are not Members of the Association for such consideration and on such terms and conditions as the Board of Directors may from time to time consider appropriate or in the best interest of the Association or the Property;

(m) The right of the Association to be the lessor of any portion or all of the Common Area and the right of the Association to enforce the terms of the lease with respect to such Common Area against such property and the Owners and their guests, lessees and invitees; and

(n) The right of the Association, acting by and through its Board of Directors, to transfer or convey portions of the Common Area for purposes of adjusting the boundary lines of one or more Lots and/or the Common Area; provided, however, that such transfer or conveyance has been approved, as necessary, by applicable local governmental authorities or agencies, or is otherwise in conformance with applicable law, local zoning ordinances, governmental guidelines, or restrictions.

Section 11.2. Limitations.

(a) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use any private streets and roadways located within the Property for both vehicular and pedestrian ingress and egress to and from such Member's Lot. The Common Area will be available for the type of active and passive recreational and open space uses contemplated by the regulatory approvals.

(b) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use the Common Area for necessary, ordinary and reasonable vehicular and pedestrian ingress and egress to and from such Owner's Lot or to suspend any easement over the Common Area for storm water drainage, electrical energy, water, sanitary sewer, natural gas, CATV or similar service, telephone service or similar utilities and services to the Lots.

Section 11.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws and rules and regulations of the Association, such Owner's right of enjoyment to the Common Area and Community Facilities to the members of such Owner's family, such Owner's tenants, social invitees, or contract purchasers who reside within the Property.

ARTICLE 12

MEMBERSHIP AND VOTING RIGHTS

Section 12.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 12.2. Voting Rights. The Association shall initially have two (2) classes of voting membership, Class A and Class B.

Class A. With the exception of the Declarant (until expiration of the Class B memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner of a Single-Family Detached Lot (including any Participating Builder) shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on account of such interest. Each Single-Family Detached Lot shall entitle the Owner of such Lot to cast one (1) vote in the affairs of the Association. When more than one (1) person or entity are the Owners of any Single-Family Detached Lot, all such persons and entities shall be Class A Members. The vote for such Single-Family Detached Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Single-Family Detached Lot owned by a Class A Member. Any Class A Member who leases his or her Single-Family Detached Lot may, in the lease or other written instrument, assign the voting right appurtenant to that Single-Family Detached Lot to the lessee, provided that a copy of such instrument is furnished to the Association.

Class B. The Class B Member shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by specific assignment in writing from the Declarant.

Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) Thirty (30) days following the date on which the Class B members have completed their construction in the subdivision; or

(ii) Twenty-five (25) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Schedule A-1 hereto; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty-five (25)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less.

ARTICLE 13

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 13.1. Creation of the Lien and Personal Obligation for Assessments. There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: Annual Assessments, Special Assessments, and all other Assessments as may be levied by the Association in accordance with this Declaration. All Assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to prior Owner's successors in title unless expressly assumed by such successors.

Section 13.2. Purpose of Assessments.

(a) The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement, maintenance, repair and replacement of the Common Area and Community Facilities, the maintenance and repair of the Lawn and Garden Area (if the Association elects to perform such maintenance and repair), the maintenance, repair and replacement of any rights-of-way, median strips, signage, entry strips and entrance features or improvements that serve and/or benefit the Association, the payment of real estate taxes, assessments and utility services for the Common Area and Community Facilities, management fees, administration expenses, insurance and all other costs and expenses incurred by the Association in the proper conduct of its activities, including, without limitation, reserves for replacements or contingencies, and charges accruing under any cross-easement or other agreement (including, without limitation, any such agreement for the maintenance of any storm water management facility). The Assessments may also be used for the maintenance, repair and replacement of any property or facilities serving or appurtenant to the Property which the Association is obligated or elects to maintain whether or not such property or facilities are owned by the Association or are located within the Property (including, without limitation, any property or facilities which the Association is authorized to maintain pursuant to this Declaration).

(b) The Assessments levied by the Association shall also be used for maintaining and providing reserves for any and all storm water management facilities, including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any, whether such storm water management facilities are located within the Property or not, as long as such storm water management facilities are designed to benefit or serve any portion of the Property and are required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency. The Association shall not refuse to accept the conveyance of any such facilities from the Declarant. Such stormwater management facilities may also benefit property not within the jurisdiction of the Association and the maintenance of such facilities may be set forth in a cross-easement or other agreement in which event the Association shall maintain the facilities pursuant to such agreement.

Section 13.3. Assessments; Budgets. Until January 1 of the year immediately following the first conveyance of a Lot to a Class A Member (not including any Participating Builder), Assessments shall be imposed in amounts established by the Declarant in its sole discretion. Thereafter, the Board of Directors shall from time to time set the Assessments in amounts sufficient to meet the Common Expenses of the Association. Without limiting the generality of the foregoing, the Association shall, at all times, levy and collect Assessments in sufficient amounts to (i) maintain the Common Area and Community Facilities in accordance with sound property management standards, and (ii) establish necessary reserves for the future repair and replacement of any capital improvements within the Common Area. The Board of Directors shall determine the amount of the Assessments before the beginning of each fiscal year in connection with preparation of the Association's annual budget, and may do so at more frequent intervals should circumstances so require.

The Board of Directors shall make a reasonable effort to prepare a budget at least thirty (30) days before the beginning of the fiscal year. The budget shall include the estimated costs of operating the Association during the coming year and shall also include an amount sufficient to establish and maintain a reserve fund in accordance with a reserve fund budget separately prepared by the Board of Directors pursuant to Section 13.9. The budget and the Assessments shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget and the Assessments are disapproved by a vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at such meeting. Notwithstanding the foregoing, however, in the event the membership disapproves the budget or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

The Declarant may establish a working capital fund for the initial and ongoing operation of the Association. Such working capital fund may be funded by a one-time assessment of One Hundred Dollars (\$100.00) per Lot ("capital contribution") and shall be payable, if established, by the Declarant or Participating Builder's grantee upon the earlier of settlement or occupancy of a completed dwelling located on any Lot. Unless the Board of Directors votes otherwise, the capital contribution shall increase by five percent (5%) each year, commencing January 1, 2008.

Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any Class A or Class B Member may prepay one or more installments of any Annual Assessment levied by the Association, without premium or penalty.

Section 13.4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment or Special Assessments applicable to that year for such purposes as the Board of Directors may deem appropriate; provided that any such Special Assessment shall be approved by Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose. The Association may also levy a Special Assessment against any Owner to reimburse the Association for costs incurred in bringing any Owner and his or her Lot into compliance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the rules and regulations of the Association. Such a

Special Assessment may be levied upon the vote of the Board of Directors after notice to the Owner and an opportunity for a hearing before the Board of Directors.

Section 13.5. Notice and Quorum. Written notice of any meeting called for the purpose of establishing a Special Assessment in accordance with Section 13.4 hereof, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 13.6. Variable Annual Assessment Rates.

(a) Any provision of this Declaration to the contrary notwithstanding, for the duration of the Declarant's Rights and Obligations Period the Declarant may establish additional Annual Assessment rates, and/or may increase or decrease the existing Annual Assessment rates otherwise applicable to specific Lots annexed, or to be annexed, within the jurisdiction of the Association to such amount as the Declarant shall deem appropriate, in its sole discretion, in relation to the level of services and benefits available to, or anticipated to be utilized by, the Owners and residents such Lots, and the anticipated cost to the Association of providing such services and benefits. In the event that the Declarant determines to decrease the Annual Assessment rate otherwise applicable to such Lots pursuant to this Section 13.6(b), the Declarant may also limit, in whole or in part as the Declarant shall deem appropriate in relation to the decreased Annual Assessment rate applicable to such Lots, the right of the Owners of such Lots or Living Units to vote on matters arising before the Association. The Declarant's determination under this Section 13.6(b) may be set forth in a Supplementary Declaration recorded by Declarant for purposes of annexing such Lots within the jurisdiction of the Association in accordance with Article 3 of this Declaration. Following termination of the Declarant's Rights and Obligations Period, the Declarant's rights and powers under this Section 13.6(b) shall be deemed to be transferred and assigned to, and shall thereafter be exercised by, the Board of Directors of the Association. Any determination made by the Board of Directors under this Section 13.6(b) shall be reflected in a duly adopted Equity Resolution.

(b) In the event that the actions or activities of any Owner causes or results in increased expenses for the Association, the Board of Directors may assess such increase in expenses against the Owner and such Owner's Lot, after notice to such Owner and an opportunity for a hearing. For example, and for purposes of illustration only, the Board of Directors may assess the amount of any insurance deductible paid by the Association against any Owner and such Owner's Lot if the Association is required to pay such deductible as a result of the misuse or neglect of the Owner. Such Assessment shall be a lien against the Owner's Lot and shall be payable and collectible in the same manner as any other Assessments required to be paid to the Association; provided, however, that neither the Declarant or any Participating Builder shall be subject to any Assessment based on this Section 13.6(c).

Section 13.7. Assessment of Declarant; Assessment of Participating Builders.

(a) Any provision hereof to the contrary notwithstanding, Lots owned by the Declarant shall not at any time be subject to any Assessments levied by the Association, and the Declarant shall have no obligation whatsoever to pay any such Assessments. Lots formerly owned by the Declarant shall cease to be exempt from such Assessments commencing upon transfer or conveyance of any such Lot from the Declarant to any other Owner.

(b) Except to the extent provided otherwise in this Section, Lots owned by the Declarant or Participating Builders shall not at any time be subject to any Assessment levied by the Association, and the Participating Builders shall have no obligation to pay any such Assessment. Any Lot owned by the Declarant shall be subject to the full amount of all Assessments levied by the Association commencing upon the earlier of (i) the transfer or conveyance of such Lot to an Owner other than the Declarant, or (ii) the day upon which the dwelling unit or structure located upon such Lot is first occupied and/or used for residential purposes or as a Live-Work Unit, whether pursuant to a lease of such dwelling unit or structure, or otherwise, by any person or entity other than the Declarant.

Section 13.8. Date of Commencement of Annual Assessments; Due Dates. Unless the Board of Directors establishes an earlier commencement date, the Annual Assessments provided for herein shall commence as to all Lots simultaneously with the conveyance of the first Lot to a Class A Member. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates.

Section 13.9. Reserve Fund Budget and Contribution. The Board of Directors shall annually prepare a reserve fund budget that shall take into account the number and nature of the replaceable assets of the Association, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board of Directors shall set the required reserve fund contribution, if any, in an amount sufficient to meet the projected reserve needs of the Association, as shown on the reserve fund budget, with respect both to amount and timing by the imposition of Annual Assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board of Directors and included within the budget and Assessment, as provided in Section 13.3. Such reserve fund contribution shall be payable as part of the Annual Assessment, applicable to all Lots (except as otherwise provided with respect to Lots owned by the Declarant in Section 13.7), to the extent such reserve fund will be utilized to replace assets which are determined by the Board of Directors to benefit substantially all Owners. Reserves may also be maintained for operating contingencies and insurance deductibles. A copy of the reserve fund budget shall be distributed to each Owner in the same manner as the operating budget. Except where an emergency requires an expenditure to prevent or minimize loss from further damage to, or deterioration of, the Common Area or Community Facilities, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Board of Directors and by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose.

ARTICLE 14

REMEDIES OF ASSOCIATION FOR NON PAYMENT OF ASSESSMENTS

Section 14.1. Non-Payment of Assessments. Any Assessment levied by the Association which is not paid within ten (10) days after the due date established for such Assessment by the

Board of Directors, may, upon resolution of the Board, bear interest from the due date until paid at the rate of interest established by the Board, not to exceed the maximum, if any, rate of interest permitted under the laws of the State of West Virginia. The Board of Directors may also impose a reasonable late fee against any Owner (and such Owner's Lot) for failure to pay any Assessment within ten (10) days after the due date for such Assessment. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment, and/or foreclose on the lien against such Owner's Lot in the manner now or hereafter provided under applicable law. The Owner personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area, or Community Facilities, or by abandonment of such Owner's Lot. This Section shall not be deemed to limit or waive, and shall be without prejudice to, any and all rights, remedies, or recourses as may be available to the Association for the non-payment of Assessments.

Section 14.2. Assessment Certificate. The Association shall, upon demand of any Owner, issue such Owner a written certificate signed by an officer of the Association setting forth whether the Assessments applicable to such Owner's Lot have been paid, and if not paid, the amount of the delinquent Assessments. A properly executed certificate of the Association regarding the status of Assessments on a Lot shall be binding on the Association as of the date of issuance. If permitted by applicable law, the Association may charge a reasonable fee for the issuance of each such certificate.

Section 14.3. Priority of Lien. The lien for Assessments provided for herein shall be subordinate to the lien of any First Mortgage or deed of trust recorded against a Lot. Sale or transfer of any Lot shall not affect the Assessment lien; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. No sale or transfer of a Lot shall exempt such Lot or the Owner thereof from liability for any Assessments thereafter coming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any First Mortgage on a Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

ARTICLE 15

ARCHITECTURAL CONTROL

Section 15.1. Architectural Review and Control. No construction or development activities, including, without limitation, staking, clearing, landscaping, excavation, grading or other site work, shall be commenced, erected or maintained on any Lot or the Common Area, no building, structure or other improvement of any kind, including, without limitation, fences, walls, mailboxes, swimming pools and decks, shall be commenced, erected or maintained within the Property, and no exterior addition, change or alteration of any nature to the Lots or other existing improvements within the Property, including, without limitation, changes in color, changes or additions to driveway or walkway surfaces and landscaping modifications, shall be commenced, erected or maintained (all of the foregoing are referred to herein, individually and collectively, as "Improvements") unless and until complete plans and specifications for such Improvements have been approved, in writing, in accordance with the applicable provisions of this Article.

Section 15.2. Architectural Review Entity. Except for Improvements made by the Declarant, and except for initial Improvements on Lots made by Participating Builders, if any, (which shall be approved by the Declarant in accordance with Section 15.2 above), no other individual or entity, including, without limitation, all Members of the Association, may commence, erect or maintain any Improvements within the Property until complete plans and specifications for such Improvements have been approved, in writing, by the "Architectural Review Entity" (as defined below) in accordance with Sections 15.3 through 15.12 hereof. As used in this Declaration, the term "Architectural Review Entity" shall mean and refer to the entity having jurisdiction at any particular time with respect to the matters described in this Article, and may be, as applicable, the Declarant, the Board of Directors of the Association and/or the Architectural Review Committee.

(a) Declarant as Architectural Review Entity.

The Declarant shall be entitled to exercise all rights and powers of the Architectural Review Entity under this Declaration until the first to occur of (i) the termination of the Declarant's Rights and Obligations Period, or (ii) the recordation by the Declarant of a written instrument among the Land Records expressing the Declarant's express intention to relinquish the rights and powers of the Architectural Review Entity under this Declaration, whereupon, all of the rights and powers of the Architectural Review Entity shall be deemed to be transferred and assigned to, and shall thereafter be exercised by, the Board of Directors of the Association. Each Owner, by acceptance of a deed or other instrument conveying an interest in any portion of the Property, whether or not it shall be so expressed in such deed or other instrument, shall be deemed to covenant and agree that, as the developer and initial owner of the Property, the Declarant has a significant and substantial interest in ensuring that the Improvements within the Property are consistent with the Development Plan, and that such Improvements do not have an adverse impact upon the Declarant's ongoing ability to market, sell, and/or lease all or any portion of the Property. Accordingly, in its exercise of the rights and powers of the Architectural Review Entity under this Declaration, the Declarant shall have the right to approve or disapprove any plans and specification for Improvements submitted to it for review under this Declaration for any reason whatsoever, in the Declarant's sole discretion, and the Owners hereby acknowledge that, in reviewing and acting upon any such plans and specifications the Declarant shall be acting in its own interest and shall owe no duty whatsoever to any other individual or entity, including, without limitation, the Association and its Members. The Declarant may from time to time designate or assign its rights and powers hereunder to the managing agent of the Association.

(b) Association as Architectural Review Entity.

Commencing upon transfer of the rights and powers of the Architectural Review Entity to the Association pursuant to Section 15.3(a) hereof, the rights and powers of the Architectural Review Entity shall thereafter be exercised by the Board of Directors of the Association, or by an architectural review committee appointed by the Board of Directors (the "Architectural Review Committee"). If established by the Board of Directors, the Architectural Review Committee shall consist of an uneven number of at least three (3) but not more than seven (7) members who shall serve at the pleasure of and may be removed and replaced at the discretion of the Board of Directors. The members of such Architectural Review Committee need not be Members of the Association, and may, but need not, include architects, engineers and similar design professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may make a good faith effort, but shall not be required, to employ a Subdivision Architect in accordance with Section 15.12 hereof.

Section 15.3. Review by the Architectural Review Entity. No Improvement of any kind shall be commenced, erected or maintained upon the Property until complete plans and specifications showing the nature, kind, shape, height, materials, grading, drainage and/or plants, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography, and conformity with the design concept for the Property, by the Architectural Review Entity. In the event that the Architectural Review Entity fails to approve or disapprove any Improvements within sixty (60) days after the plans and specifications for such Improvements have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Approval by the Architectural Review Entity shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed, nor shall such approval be substituted in lieu of applicable governmental approvals and permits or be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions. The Architectural Review Entity shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed the costs actually incurred by the Architectural Review Entity. Any Improvement made without application having first been made and approval obtained as provided above shall be deemed to be in violation of this covenant and the Improvement may be required to be removed and the affected Property restored to the original condition at the Owner's cost and expense. In any event, no such Improvement shall be made without approvals and permits therefor having first been obtained by the Owner from the applicable public authorities or agencies. In addition, no Improvements may be constructed which are not in compliance with local zoning ordinances, governmental guidelines or restrictions.

Section 15.4. Initiation and Completion of Improvements. Construction of Improvements in accordance with plans and specifications approved by the Architectural Review Entity pursuant to the provisions of this Article shall be commenced within six (6) months of such approval (whether by affirmative action or by forbearance from action as provided in Section 15.4) and completed within twelve (12) months following the date of commencement, or within such longer period as the Architectural Review Entity may specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Architectural Review Entity without the prior consent in writing of the Architectural Review Entity. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Entity to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Entity may condition its approval of any plans and specifications submitted to it for review upon the Owner's compliance with such limitations or conditions as the Architectural Review Entity may deem appropriate, in its sole discretion.

Section 15.5. Certificate of Compliance. Upon completion of any Improvements in accordance with plans and specifications approved by the Architectural Review Entity in accordance with the provisions of this Article, the Architectural Review Entity shall, at the request of the Owner thereof (which request shall be made within one year of completion), issue a certificate of compliance which shall be prima facie evidence that such Improvements referenced in such certificate have been approved by the Architectural Review Entity in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

Section 15.6. Deviations from Design Guidelines. The Architectural Review Entity, in its sole discretion, shall have the power to permit an Owner to deviate from the standards and restrictions contained in this Declaration and the Design Guidelines. However, the Architectural Review Entity must provide, in writing as part of its decision, the basis of and rationale for allowing such deviation. Generally, but not exclusively, this Section is intended to enable the Architectural Review Entity to appropriately respond to creative and beneficial design solutions that are consistent with the overall design character of the Property and the objectives of this Declaration, but which were not specifically anticipated in this Declaration or the Design Guidelines. However, the Architectural Review Entity may not allow for any deviations if such would result in overriding or otherwise conflicting with this Declaration or Equity Resolution.

Section 15.7. Appeal. The decisions of the Declarant and the Board of Directors when acting as the Architectural Review Entity shall be final and shall not be subject to appeal, except that any Member who is aggrieved by any action or forbearance from action by the Architectural Review Committee (if established) when acting as the Architectural Review Entity may appeal the decision of the Architectural Review Committee to the Board of Directors within such period as may be provided in the Association's rules and regulations or resolutions and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors. A vote of two thirds (2/3) of the Board of Directors shall be required to reverse or modify the decision of the Architectural Review Committee (if established).

Section 15.8. Design Guidelines and Application Procedures.

(a) The Architectural Review Entity may from time to time adopt and promulgate design guidelines, policy statements, rules and regulations, and amendments thereto (the "Design Guidelines") which shall establish criteria for the review of applications for Improvements, and which may include, without limitation, guidelines for the architectural design and placement of buildings, structures and other improvements within the Property, and guidelines for permissible color schemes, materials, exterior finishes and similar features; provided, however, that the Design Guidelines shall not contravene any specific standards or use restrictions established by this Declaration. The Design Guidelines shall not be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. Design Guidelines adopted and promulgated by the Architectural Review Committee (if established) when acting as the Architectural Review Entity shall be subject to review and approval by the Board of Directors.

(b) The Architectural Review Entity may from time to time adopt and promulgate procedures and requirements for the submission of applications to the Architectural Review Entity and amendments thereto (the "Application Procedures"), including, without limitation, requirements regarding the number of copies, the content, scale and detail of the plans and specifications to be included with such applications, and the identification of any required supporting materials; provided, however, that the Application Procedures shall not contravene any specific requirement established by this Declaration. The Application Procedures shall not be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. Application Procedures adopted and promulgated by the Architectural Review Committee (if established) when acting as the Architectural Review Entity shall be subject to review and approval by the Board of Directors.

Section 15.9. Limited Scope of Approval. The Architectural Review Entity shall not be presumed to be expert in, nor shall it be held responsible for, integrity of engineering or architectural design, quality of construction, or compliance with local zoning ordinances, governmental guidelines or

restrictions. The Architectural Review Entity shall not be responsible or liable for any architectural, engineering or construction defect, public code violation or the consequences of such defects or violations with regard to any Improvements. Approval by the Architectural Review Entity shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the Improvements being reviewed, nor shall such approval be substituted in lieu of applicable governmental approvals and permits or be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions.

Section 15.10. Covenant Committee Liaison. The Architectural Review Entity shall assist the Covenant Committee in monitoring the Lots for compliance with this Declaration and the Design Guidelines, and for compliance with plans and specifications for Improvements to such Lots approved by the Architectural Review Entity.

Section 15.11. Exemption. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article 15 shall not be applicable to the Declarant to any part of the Property owned by the Declarant, nor to Improvements constructed by the Declarant. Further, Sections 15.3 through Section 15.10, inclusive, shall not be applicable to the construction of initial Improvements on a Lot by a Participating Builder except that Declarant shall have the right to approve all said initial improvements.

ARTICLE 16

USE RESTRICTIONS

In addition to all other covenants, conditions and restrictions contained herein, and in addition to other covenants, conditions and restrictions adopted by Equity Resolutions, the use of the Property and each Lot therein is subject to the following:

Section 16.1. Permitted Uses. The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a dwelling, except that the use of a dwelling unit for a "no-impact home-based business", as defined in §11B-111.1 of the West Virginia Homeowners Association Act, as amended (the "Act"), shall be permitted, provided that: (i) before any dwelling unit may be used for a no-impact home-based business the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the no-impact home-based business; and (ii) in no event shall the Common Area be used by or in connection with any permitted no-impact home-based business. The foregoing or any other provision of this Declaration to the contrary notwithstanding, the use of any portion of the Property intended to serve as a Live-Work Unit shall be permitted, provided that such use is in strict conformity with all applicable zoning laws, ordinances and regulations (and all other applicable laws), and is otherwise in strict conformity with the Governing Documents. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any Lot or dwelling, or the improvements thereon, for promotional or display purposes, or as "model homes", a sales and/or construction office, or for any other lawful purpose.

Section 16.2. Prohibited Uses and Nuisances. Except for the activities of the Declarant and any Participating Builders during the construction and development of the Property, or except with the prior written approval of the Declarant or the Board of Directors, or as may be necessary in

connection with reasonable and necessary repairs or maintenance to any dwelling or the Common Area:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling or any other part of the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling, or other part of the Property, except that this shall not prohibit the keeping of a reasonable number of dogs, cats, caged birds or other small domestic animals as pets provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; and (iii) such pets are maintained in strict conformance to all laws and ordinances. The Board of Directors and the Covenant Committee shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Area unless accompanied by a responsible person and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets, as it may from time to time consider necessary or appropriate, including, without limitation, rules prohibiting pets within the Community Facilities.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on the Common Area or Community Facilities.

(d) Except for parking within garages, and except as herein elsewhere provided, no junk vehicle, commercial vehicle (including vans used for commercial use and vehicles displaying commercial signage), truck (as defined by the West Virginia Department of Motor Vehicles and/or by common usage and practice except for light pick-up trucks of three-quarter (3/4) ton capacity or less used for non-commercial purposes), unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, camp truck, house trailer, recreational vehicle, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Area) shall be kept upon the Property or upon the public or private streets within or adjacent to the Property, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Board of Directors or the Covenant Committee, provide and maintain a suitable area designated for the parking of such vehicles. No vehicle may be parked on the front, side or rear yard of any Lot (excluding driveways or other approved parking areas) for more than forty-eight hours.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection and the evening prior to such days of trash collection. Garbage and trash containers shall be screened from public view at all other times.

(f) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant or the Participating Builders and, further, the provisions hereof shall not be construed to (i) prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Declarant, any Participating Builders or any other person for any purpose, or (ii) prohibit minor boundary line adjustments between adjoining Lot Owners if done in accordance with applicable local zoning ordinances, governmental guidelines and restrictions. The provisions of this subsection shall not be deemed to preclude any Owner from granting an easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, to serve necessary public purposes, or from dedicating or conveying a portion of such Owner's Lot for such purposes.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location that obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the Project.

(h) No decorative lawn ornament, no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, or other similar structure shall be erected, used or maintained on any Lot at any time. A storage shed may be erected, constructed or placed on a Lot provided that such shed (i) is approved, in writing, with respect to design (including, but not limited to color and materials), location and construction by the Architectural Review Entity, and (ii) any shed must be properly maintained at all times by the Owner of the Lot upon which it is located.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such promotional sign or signs as may be maintained by the Declarant, the Participating Builders or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or dwelling, provided, however, that one temporary real estate sign not exceeding six (6) square feet in area may be erected upon any Lot or attached to any dwelling placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any Lot who comes into possession of the Lot by reason of any remedies provided by law or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure. The Declarant and the Board may, through the adoption of an Equity Resolution, adopt additional covenants, conditions and restrictions regarding signage.

(j) No water pipe, sewer pipe, gas pipe, drainage pipe, cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot; provided, however, that such transmission lines, wires or cables providing utility services to

any Lot or dwelling (including, but not limited to, electricity, telephone, gas, water and cable television) shall be permitted. All propane tanks shall be underground.

(k) No play equipment, including, without limitation, basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be erected or attached in any manner to the exterior of any dwelling without the prior written approval of the Architectural Review Entity pursuant to Article 15 hereof. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.

(l) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels.

(m) Except as specifically permitted by applicable federal governmental regulations, no exterior aerials or antennas of any type, including, but not limited to, satellite dishes for reception or transmission, may be erected or maintained within the Property without the prior written approval of the Architectural Review Entity pursuant to Article 15 hereof; provided, however, that satellite dishes not in excess of eighteen (18) inches in diameter are permitted. The Architectural Review Entity may impose reasonable rules and regulations regarding the location and screening of any such satellite dish, subject to applicable federal governmental regulations. Aerials and antennas situated entirely within a dwelling unit, and not visible from the exterior, are permitted.

(n) Vegetable gardens shall be maintained only within the rear yard of any Lot that is enclosed by a fence, and shall be maintained in a neat and attractive manner.

(o) Lawn furniture shall be used and maintained in rear yards or decks only and shall be maintained in a neat and attractive manner.

(p) No equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard of any dwelling.

(q) No Member shall make any private, exclusive or proprietary use of any of the Common Area or Community Facilities except with the specific approval of the Board of Directors and then only on a temporary basis, and no Member shall engage or direct any employee or agent of the Association on any private business of the Member during the hours such employee or agent is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee or agent of the Association.

(r) All fences constructed within the Property shall be in accordance with the Design Guidelines. No fences are permitted in front yards or on corner lots. No fence may extend into the required set backs for any street or lot.

(s) Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window of any dwelling within the Property.

(t) Children's play and similar equipment shall not be allowed to remain overnight within any front yard of any dwelling or within the Common Area.

(u) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted within the Property in accordance with the Design Guidelines and with the prior written approval of the Architectural Review Entity pursuant to Article 15 hereof. Such equipment, playhouse(s) and/or apparatus shall be properly maintained at all times.

(v) No drying or airing of any clothing or bedding shall be permitted outdoors at any time. Clothes-hanging devices such as lines, reels, poles and frames are prohibited.

(w) No garage or outbuilding properly erected on a Single-Family Detached Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. No garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without the prior written approval of the Architectural Review Entity pursuant to Article 15 of this Declaration. Notwithstanding the foregoing, any Single-Family Detached Lot owned by the Declarant or any Participating Builders upon which is situated a dwelling unit in which the garage has been modified to serve as living area shall be exempt from this paragraph and any grantee of the Declarant or a Participating Builder, and such grantee's successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such Single-Family Detached Lot.

(x) Except for parking within designated parking spaces, parking of vehicles within the Common Area is prohibited.

Section 16.3. Parking. Parking within the Property shall be subject to the following restrictions:

(a) The Association shall be entitled to establish supplemental rules concerning parking and traffic control on all or any portion of the Common Area and Lots, including, without limitation, providing for the involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules.

(b) Each Owner shall comply in all respects with such supplemental rules that are not inconsistent with the provisions of this Declaration that the Board of Directors may from time to time adopt and promulgate with respect to parking and traffic control within the Property, and the Board of Directors is hereby authorized to adopt such rules.

(c) The Declarant, its successors and assigns, and its nominee or nominees and any agents, servants and/or employees thereof shall be exempt from the provisions of this Section 16.3.

Section 16.4. Leasing and Transfers.

No portion of a dwelling unit, other than an entire dwelling unit, may be leased or rented unless the prior written approval of the Covenant Committee or the Board of Directors is obtained. All leases shall be on forms approved by the Association and shall (i) contain provisions advising the tenant of his or her obligation to comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association, and (ii) provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Bylaws or rules and regulations of the Association, or of any other document, agreement or instrument governing the dwelling units and/or the Property. The Owner(s) of a leased Lot shall notify the Association in writing of the Owners' current address. The Owner(s) of a leased or rented dwelling unit shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit may be rented or leased shall be thirty (30) days, and in no event may a transient tenant be accommodated in any dwelling unit.

Prior to the sale, conveyance or transfer of any Lot or dwelling unit to any person, the Owner shall notify the Board of Directors in writing of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made and provide to it such other information as the Board of Directors may reasonably require. Failure to comply with the provisions of this Section shall not void, prohibit or otherwise invalidate the sale, conveyance or transfer of any Lot or dwelling unit nor may it have any affect upon any mortgage or deed of trust thereon.

Section 16.5. House Rules, Etc. There shall be no violation of any reasonable rules for the use of the Common Area or Community Facilities, or "house rules" or other community rules and regulations not inconsistent with the provisions of this Declaration, including, without limitation, rules providing for the involuntary removal of any vehicle violating the provisions of this Declaration, which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by the Board in writing, and the Board of Directors is hereby authorized to adopt such rules and regulations. To adopt such rules and regulations, the Board of Directors must provide a copy of the proposed rule(s) or regulation(s) to each Owner not less than ten (10) days prior to the Board of Directors meeting at which such rule(s) or regulation(s) are scheduled to be discussed and/or adopted. If a majority of the Owners, in person or by proxy, appear at the meeting and disapprove the proposed rule(s) or regulation(s), such rule(s) or regulation(s) shall not be adopted or be effective. In order to be effective, the proposed rule(s) or regulation(s) must be adopted by a resolution of the Board of Directors at the aforesaid meeting and a copy of the same provided to each Owner. Each Owner is responsible to provide the tenants or other occupants of such Owner's Lot, if applicable, with a copy of such rule(s) and regulation(s).

Section 16.6. Exemptions. None of the foregoing restrictions shall be applicable to (i) improvements constructed by or to the activities of the Declarant and any Participating Builders, and their respective officers, employees, agents and assigns, in their development, marketing, leasing and sales activities within the Property, or (ii) to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Area and Community Facilities.

Section 16.7. Participating Builders. The Declarant may, in its sole discretion, assign its rights and exemptions, or any part thereof, under this Declaration to one or more designated Participating Builders, subject to such conditions and limitations as may be deemed necessary or desirable by the Declarant, including, without limitation, the requirement that any assigned rights be exercised only during certain times, and limitations on the duration of any such assignment. Any such assignment need not be recorded to be effective, and may be revoked by the Declarant at any time, without cause, in the Declarant's sole discretion.

ARTICLE 17

DECLARATION OF EASEMENTS AND RIGHTS

Section 17.1. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved:

(a) For a period of fifteen (15) years from the recordation of this Declaration, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Area and Community Facilities.

(b) Each Single-Family Detached Lot within the Property is hereby declared to have an easement, not exceeding three feet (3') in width, over all adjoining Single-Family Detached Lots and Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof over-hangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Single-Family Detached Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Single-Family Detached Lot agree that minor encroachments over adjoining Single-Family Detached Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(c) There is hereby reserved unto the Declarant (and its successors and assigns to whom such easement has been specifically assigned in writing), for the benefit of the real property shown on the Development Plan, and for the benefit of the Declarant and its agents, a non-exclusive perpetual blanket easement upon, across and under the Property (provided such easement does not encroach upon any building within the Property or unreasonably interfere with the use and enjoyment of the Property), for vehicular and pedestrian ingress and egress, curb cuts, slope, and grading easements, as well as for the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines and other equipment on the Property, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Property, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property. There is further reserved unto

the Declarant the right to erect entry features, promotional and other similar items within the Property provided they do not unreasonably interfere with the use, operation and enjoyment of the Property. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this subsection. Further, without limiting the generality of the foregoing, the Declarant reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property; provided, however, that if requested by the Declarant, any party having an interest in the Property shall promptly join in and execute such confirmatory easements and other agreements.

(d) The Property shall be subject to a non-exclusive, perpetual easement and right of passage, for the benefit of the Association membership, for ordinary and reasonable pedestrian ingress and egress over, across and upon any sidewalk, trail or pathway (or the replacement thereof) constructed within the Property by the Declarant or any Participating Builder that may reasonably be deemed to have been constructed or intended for pedestrian use.

(e) An easement is hereby reserved to Declarant to enter the Common Area and Community Facilities during the period of construction and sale within the Property, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of residences, including, without limitation, a business office, sales/leasing office, storage area, construction yards, signs, displays and model units.

(f) Declarant also reserves the right to enter into the Common Area and Community Facilities for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property or the improvements thereon. There is further reserved unto the Declarant and its agent(s) a non-exclusive easement over, across and through all of the Common Area and Community Facilities for the purpose of access, the storage of building supplies and materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction, rehabilitation and repair of the Property.

(g) For a period of fifteen (15) years from the date of conveyance of the first Lot, the Declarant reserves a blanket easement and right on, over and under the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action as may be reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this subsection.

(h) The rights and duties of the Association and the Owners with respect to all public and/or private utilities serving and/or benefiting all or any portion of the Property, including, without limitation, water, sewer, gas, electricity, cable television, telephones, storm drains, down

spouts, yard drains, and all pipes, wires, cables, conduits, transmission lines and other related facilities and equipment (collectively, the "Utilities") shall be governed by the following:

(i) Each Lot is hereby subject to a non-exclusive perpetual easement and right of passage upon, across and under such Lot, for the benefit of the Association and the Owners of all other Lots, for the installation, maintenance, repair, replacement, inspection, operation and use of all Utilities. The Owner of any Lot and the Association shall have the right, and they are hereby granted an easement and right of passage to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Property in which the Utilities lie, to inspect, repair, replace and generally maintain such Utilities.

(ii) The right granted in subsection (i) above shall be only to the extent necessary to entitle the property of the Owner or Association serviced by the Utilities to their full and reasonable use and enjoyment, and provided further that anyone exercising such right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(iii) In the event of a dispute between Owners with respect to the repair or rebuilding of any Utilities, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Covenant Committee, the matter shall be submitted to the Covenant Committee, who shall decide the dispute.

(iv) Each Lot is hereby subject to an easement and right of passage upon, across and under such Lot for the drainage and discharge of water from any storm drain, down spout or yard drain situated on another Lot and the Owner of such Lot may not alter or obstruct such drainage or flow of water to the detriment of any Lot or the Common Area.

(i) The Association shall have an easement to enter any portion of the Property for the performance of its duties hereunder; provided that such easement shall not entitle the entry within the interior portion of any dwelling located on the Property, but (by way of illustration only and not in limitation of the rights granted herein) shall permit the entry into fenced, or other similar areas of the Property.

(j) With respect to any step, patio, deck, down spout or yard drain or other similar structure that may benefit any Lot and is constructed by the Declarant or a Participating Builder and which may encroach upon any portion of the Common Area, there is hereby reserved for the benefit of the Lot that such step, patio, deck, down spout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Area, but only to the extent that the Declarant's or a Participating Builder's original construction thereof encroaches within the Common Area. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

(k) There is hereby created for the benefit of each Lot, which is enclosed, in whole or in part, by any wooden, brick, stone or other similar fence and/or wall constructed by the Declarant or a Participating Builder, a perpetual easement to use any portion of the Common Area that may be located between such fence and/or wall and the record platted lot line for such benefited Lot; and the obligation to maintain such portion of the Common Area shall be that of the Owner of the benefited Lot and the obligation to maintain the wooden, brick, stone, or other similar fencing

located within the Common Area, which encloses the benefited Lot, shall be that of the Owner of the benefited Lot. The Owner of any Lot benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement rights provided for herein.

(l) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Property. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Property, then the Owner of such Lot shall promptly, at his expense, repair any damage to such utilities caused by the Owner, or such Owner's tenants, lessees, agents, guests, invitees, licensees or family members.

(m) The Declarant reserves the right to modify or alter the size, number and location of the Common Area, Community Facilities and Lots, as well as the improvements thereon, as it deems necessary or desirable in conjunction with the development of the Project. Without limiting the generality of the foregoing, the Declarant reserves the right to re-subdivide all or a portion of the Project, to convey Common Area, to modify the site plans, to construct improvements on the Common Area, and to take whatever other action with respect to the Common Area, Community Facilities and the Lots as the Declarant may deem necessary or desirable.

(n) The Association is hereby granted a non-exclusive easement and right of passage on, through, over, under and across the real property shown on the development plan to maintain, repair and replace any entrance features and improvements (and the property upon which such entrance features and improvements are located) that are constructed or installed by the Declarant or a Participating Builder and that are situated within or appurtenant to and serving the Project.

Section 17.2. Association Easements. The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses and similar interests over any part of the Common Area for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association.

ARTICLE 18

MAINTENANCE

Section 18.1. Owners' Maintenance. Except as otherwise specifically provided in this Declaration, each Owner shall keep each Lot owned by such Owner, and all improvements therein or thereon, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management and the Community-Wide Standard. In the event an Owner of any Lot in the Property shall fail to maintain the Lot and the improvements situated thereon, the Association or its agent shall have the right to enter upon said Lot to repair, maintain and restore the Lot and any improvements erected thereon. The Association shall also have the right to enter the Lots to correct drainage. Whenever entry is not required in an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration should be collectible from the Owner of such Lot in the same manner as Assessments as provided in this Declaration.

Section 18.2. Association Maintenance. The Association shall maintain, repair and replace the Common Area and Community Facilities and shall keep the Common Area and Community Facilities in good order at all times. This obligation shall include, without limitation, (i) the maintenance, repair and, as necessary, replacement of any private streets and parking areas within the Common Area, (ii) the maintenance, repair and, as necessary, replacement of any pathways, sidewalks and walkways that are constructed or installed by, or on behalf of, the Declarant or the Participating Builders within the Common Area, Single-Family Detached Lots, provided that the Association shall not be obligated to maintain, repair or replace any pathway, sidewalk or walkway leader, or portion thereof, within any Single-Family Detached Lot that may reasonably be deemed to serve or benefit only that Single-Family Detached Lot, and (iii) the removal of accumulated snow and ice from within all private streets and parking areas within the Common Area and from all pathways, sidewalks, walkways, or portions thereof, required to be maintained by the Association pursuant to this Section. Further, the Association shall maintain, repair and replace (i) any rights-of-way, entry strips, signage, and entrance features or improvements that are situated within or that are appurtenant to and serve the Project, including, without limitation, any landscaping and other flora and improvements situated thereon, and (ii) any other real and personal property, facilities and equipment as the Association is obligated or elects to maintain pursuant to this Declaration, or any lease, easement or agreement, or the direction of any governmental authority or agency. The expenses of all such maintenance, repair and replacement shall be a Common Expense of the Association, including, but not limited to, reserves for the maintenance, repair and replacement of any such property or improvements. The Association shall also maintain any portion of any Lot that it is obligated to maintain pursuant to any easement or other agreement.

The Association shall be responsible for the maintenance, repair and replacement of any storm water management area or facilities situated within the Common Area, including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any. The Association shall also be responsible for the maintenance, repair and replacement of any such storm water management area or facilities which serve and/or benefit the Property whether or not located within the Common Area if the Association is responsible therefor pursuant to any easement, agreement or the direction of any governmental authority or agency. Such responsibility may be in the form of contributing the Association's share of the maintenance costs of any storm water management area, facility or equipment pursuant to an easement or agreement that shall be a

Common Expense of the Association. The Board of Directors may enter into any such easements and/or other agreements as the Board may deem necessary or desirable for purposes of allocating and/or sharing the costs associated with the maintenance of any storm water management areas, facilities and/or equipment which serve and/or benefit the Property. The Association shall not refuse to accept the conveyance of any such storm water management area, facilities or equipment from the Declarant.

Section 18.3. Lawn and Garden Area Maintenance.

(a) The Board of Directors may elect, in its sole discretion, to have the Association assume such maintenance responsibilities with respect to all or a portion of the Lawn and Garden Area located within any Lot, group of Lots or all of the Lots as the Board may deem necessary or appropriate, including, without limitation, responsibility for mowing, fertilizing, trimming, pruning and/or otherwise maintaining all or any portion of the grass, shrubs, bushes, trees, and other planted materials, and any replacements thereof, as may be located within the Lawn and Garden Area. Maintenance of the Lawn and Garden Area by the Association shall be with such frequency and in conformity with such standards as may be established by the Board of Directors from time to time. In the event the Board of Directors elects to assume such maintenance responsibilities, all costs of such maintenance shall be assessed only against the Owners of Lots that contain Lawn and Garden Area maintained by the Association.

(b) Any Owner may request that the Association refrain from performing all or a part of the Lawn and Garden Area maintenance described above. Such a request must be made to the Association at least thirty (30) days prior to the date the Owner desires the Association to refrain from such maintenance. The Association shall not unreasonably withhold approval of such request, provided the Owner has demonstrated to the satisfaction of the Association his or her intention to maintain the Lawn and Garden Area, as applicable, in a manner acceptable to the Association. In the event an Owner elects to maintain the Lawn and Garden Area situated on his or her Lot pursuant to the terms hereof, such Owner shall not be entitled to any reimbursement from the Association or reduction in the Assessments levied against such Lot.

Section 18.4. Additional Maintenance Responsibilities. The Board of Directors may elect, in its sole discretion, to have the Association assume additional maintenance responsibilities upon all or any portion of the Property. In such event, all costs of such maintenance shall be assessed only against those Owners residing within the portion of the Property receiving the additional services. This assumption of responsibility may take place either by contract (including, but not limited to a contract between the Association and any Lot Owner or Sub-association within the Property), or because, in the opinion of the Board, the level and quality of maintenance or service then being provided is not consistent with the Community-Wide Standard of the Project.

ARTICLE 19

INSURANCE

Section 19.1. Individual Coverage. By virtue of taking title to a Single-Family Detached Lot each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all risk casualty insurance on the dwelling and all structures located upon the Single-Family Detached Lot. At a minimum, such coverage shall provide coverage

against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board of Directors of the Association, or its duly authorized agent, shall have the authority to obtain insurance for all or any of the dwellings located on the Property, unless the Owners thereof have supplied proof of adequate coverage to the Board of Directors' satisfaction. The Board of Directors and the Association shall incur no liability to any Owner or mortgagee in the event that the Board of Directors or the Association shall elect not to exercise their authority to obtain such insurance for all or any of the dwellings located on the Property. In the event the Board of Directors obtains insurance for any Single-Family Detached Lot or dwelling unit pursuant to this Section, the cost thereof shall be assessed against the Single-Family Detached Lot benefiting from such insurance and shall be collectible in the same manner as any other Assessment under this Declaration. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the dwelling and other structures constructed on the Single-Family Detached Lot, the Owner shall proceed promptly to repair or to reconstruct the dwelling and other damaged structures in a manner consistent with the original construction. Each Owner of a Single-Family Detached Lot covenants and agrees that in the event that such dwelling is totally destroyed, the Owner shall proceed promptly to repair or to reconstruct the dwelling in a manner consistent with the original construction, unless approval to do otherwise is obtained from the Covenant Committee or the Board of Directors.

Section 19.2. Required Coverage. The Board of Directors of the Association, or its duly authorized agent, shall be required to obtain, maintain and pay the premiums, as a Common Expense, upon a policy of hazard insurance covering the Common Area and any property required to be insured by the Association pursuant to any easement or lease agreement (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Area or Community Facilities of the Association or such other property which the Association may insure, as well as common personal property and supplies.

The hazard insurance policy shall afford, as a minimum, protection against loss or damage by fire and all other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, and shall name the Association as a named insured. The insurance should cover one hundred percent (100%) of the current replacement cost (less a reasonable deductible) of the insured property. Coverage need not include land, foundations, excavations or other items that are usually excluded from insurance coverage. Unless a higher maximum amount is required pursuant to the law of the State of West Virginia, the maximum deductible amount for coverage of the Common Area and Community Facilities is the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by the Best's Key Rating Guide of B/III or better (or its equivalent). Each insurer must be specifically licensed or authorized by law to transact business within the State of West Virginia. The policy contract shall provide that no assessment may be made against the mortgagee, and that any assessment made against others may not become a lien on the mortgaged Lot superior to the First Mortgage.

The hazard insurance policy must provide that the insurance carrier shall notify the Association and each mortgagee named in the mortgagee clause in writing at least ten (10) days before it cancels or substantially changes the Association's coverage. In addition, each Eligible Mortgage Holder shall receive timely written notice of any lapse, material modification or cancellation of any insurance policy covering the Common Area and Community Facilities.

All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly acceded by private institutions as mortgage investors in the area in which the mortgaged premises are located. The following endorsements are also required: (i) an Inflation Guard Endorsement (if reasonably available); (ii) a Construction Code Endorsement if the Common Area or Community Facilities are subject to a construction code provision which would become operative and require changes to undamaged portions of any structures, even when only part of a structure is destroyed by an insured hazard or peril, and (iii) a Steam Boiler and Machinery Coverage Endorsement if any structure within the Common Area or Community Facilities has central heating or cooling, which should provide for the insurer's minimum liability per accident per location to be at least equal to the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the structure(s) housing the boiler or machinery.

If the Common Area or Community Facilities are located in a Special Flood Hazard Area designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map, the Association must maintain a "master" or "blanket" policy of flood insurance on the Common Area and Community Facilities. The amount of flood insurance shall be at least equal to the lesser of one hundred percent (100%) of the insurable value of all structures and improvements situated in such Special Flood Hazard Area or the maximum coverage available under the applicable National Flood Insurance Administration program. Unless a higher deductible amount is required under the laws of the State of West Virginia, the maximum deductible amount for flood insurance policies shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy's face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

The Association shall obtain and maintain a comprehensive general liability policy of insurance covering all of the Common Area, Community Facilities, public ways and any other areas that are under the Association's supervision. The policy shall also cover any commercial space owned by the Association, even if such space is leased to others. The policy should provide coverage for bodily injury (including death) and property damage that results from the operation, maintenance or use of the Common Area and Community Facilities, and any legal liability that results from law suits related to employment contracts in which the Association is a party. Supplemental coverage to protect against additional risks should also be obtained, if required by a mortgagee. Such insurance policy shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Liability coverage shall be at least Three Million Dollars (\$3,000,000.00) per occurrence, for bodily injury and property damage, unless a mortgagee requires higher amounts of coverage. The liability policy must provide that the insurance carrier shall notify the Association in writing at least ten (10) days before it cancels or substantially modifies the Association's coverage.

Section 19.3. Fidelity Coverage. To the extent reasonably available, blanket fidelity insurance may be maintained by the Board of Directors for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds

held or administered by the Association, whether or not they receive compensation for their services. Where the Board of Directors has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board of Directors. Except for fidelity insurance that a management agent obtains for its personnel, all other fidelity insurance policies should name the Association as the insured and should have their premiums paid as a Common Expense by the Association. Fidelity insurance obtained by a management agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or management agent at any time while the fidelity policy is in force, and should be at least equal the sum of three (3) months aggregate Assessments on all Lots within the Association, plus any reserves. Fidelity insurance policies should contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The fidelity insurance policies should provide that they could not be canceled or materially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association.

Section 19.4. Repair and Reconstruction of Common Area and Community Facilities After Fire or Other Casualty. In the event of damage to or destruction of any portion of the Common Area or Community Facilities covered by insurance payable to the Association as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration thereof, and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate. Promptly after a casualty causing damage or destruction of any portion of the Common Area or Community Facilities for which the Association has the responsibility of maintenance, repair, and/or replacement, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Common Area or Community Facilities in as good a condition as existed prior to the casualty. Such costs may include, without limitation, professional fees and premiums for such bonds as the Board of Directors may desire.

ARTICLE 20

MANAGMENT

Section 20.1. Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, including, but not limited to, the following:

(a) To establish (with the approval of the Board of Directors of the Association) and provide for the collection of the Assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with the law and the provisions of this Declaration; and

(b) To provide for the care, upkeep, maintenance and surveillance of the Common Area and Community Facilities; and

(c) To designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Area and Community Facilities; and

(d) To promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Area and Community Facilities; and

(e) To provide such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Section 20.2. Duration of Management Agreement. Any management agreement entered into by the Association shall provide, inter alia, that either party upon thirty (30) days' written notice thereof to the other party may terminate such agreement for cause. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1)-year periods.

Any Management Agreement entered into while the Declarant is in control of the Association must be terminable, without cause, neither any time after transfer of control, on not less than thirty (30) nor more than ninety (90) days' notice, and no charge or penalty may be associated with such termination.

ARTICLE 21

General provisions

Section 21.1. Common Area Responsibility. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, Community Facilities and any property, real or personal, which the Association is delegated the responsibility for pursuant to any easement or lease agreement, and all improvements thereon (including, without limitation, furnishings and equipment related thereto, private drainage facilities and common landscaped areas), and shall keep the Common Area, Community Facilities and such other property in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall accept title to any real estate or personal property offered to the Association by the Declarant. The Association shall be responsible for monitoring compliance with the requirements of any conservation easements and other restrictions imposed on the Common Area by the governmental authorities, and for periodically reminding the Lot Owners of these restrictions.

Section 21.2. Personal Property and Real Property for Common Use. The Association may acquire, lease, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 21.3. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws or any lease, easement or other agreement or document affecting the Association, 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 21.4. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to persons or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Area or Community Facilities or other property within the control or supervision of the Association, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area, Community Facilities or other property within the control or supervision of the Association. No diminution or abatement of Assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area, Community Facilities or other property within the control or supervision of the Association, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

Section 21.5. Enforcement. Declarant, the Association, or any Owner, or any Mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or Bylaws of the Association or any rule or regulation promulgated by the Association pursuant to its authority as provided in this Declaration, the Articles of Incorporation or Bylaws. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenants or restrictions herein contained or any provision of the Bylaws, Articles of Incorporation or rules and regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the Bylaws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Association, or any Owner or Mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable notice, in writing, provided to the Owner, may enter any Lot to remedy any violation of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations of the Association provided, however, that the Association may not enter the interior of any dwelling unit except in an emergency. The costs of such action shall become a binding, personal obligation of the Owner otherwise responsible for such violation and shall also be a lien upon the Lot of such Owner.

Section 21.6. Fines. In addition to the means for enforcement provided elsewhere herein, the Association shall have the right to levy fines against an Owner and such Owner's guests, relatives, lessees and invitees, in the manner set forth herein, and such fines shall be collectible in the same manner as any other Assessment such that the Association shall have a lien against the Lot of such Owner as provided in this Declaration, the Bylaws and the Articles of Incorporation, and such fine(s) shall also become the binding personal obligation of such Owner.

(a) The Board of Directors or the Covenant Committee shall be charged with determining if there is probable cause that any of the provisions of this Declaration, the Bylaws, Articles of Incorporation or the rules and regulations of the Association, regarding the use of the dwelling units, Lots, Common Area, Community Facilities or other Association property, are being or have been violated. In the event that the Board of Directors or the Covenant Committee determines an instance of such probable cause, the Board or the Covenant Committee shall provide written notice to the person alleged to be in violation, and the Owner of the Lot which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors or the Covenant Committee upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed a reasonable amount established by the Board for each offense. The amount of the fine shall be based upon the costs and inconvenience caused to the Association and shall not be a penalty. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that the violation will henceforth cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

(b) If a hearing is requested by the alleged violator or Owner within the five (5) day period specified in paragraph 21.6(a) above, the Board of Directors or the Covenant Committee shall hold the same, and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner, the Board of Directors or the Covenant Committee may produce. Counsel may represent any party at the hearing.

(c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board of Directors or the Covenant Committee shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board of Directors or the Covenant Committee determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.

(d) A fine pursuant to this Section shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot, and shall be collectible in the same manner as any other Assessment, including by the Association's lien rights as provided in this Declaration and the Bylaws. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting such Owner's Lot payment of the amount of any fine(s) assessed against that Lot.

(e) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations, including, but not limited to, legal action for damages or injunctive relief.

Section 21.7. 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 21.8. Duration and Amendment. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by, or the affirmative vote of, Owners entitled to cast not less than sixty-seven percent (67%) of the total authorized votes of all Owners. Any amendment must be recorded in the Land Records.

Section 21.9. Changes and Modifications by Declarant. The Declarant shall have the right, for a period of fifteen (15) years following the date of recordation of this Declaration, without the consent of the Members of the Association or any other party, to (i) modify, amend or change any of the provisions of this Declaration as the Declarant may deem necessary or desirable to correct errors or omissions herein, and (ii) amend this Declaration, the Articles of Incorporation and the Bylaws of the Association, as the Declarant may deem necessary or desirable, to change the name of the Association; provided, however, that so long as a Lot is encumbered by a deed of trust or mortgage which is insured by FHA, then FHA shall have the right to approve any material amendment, modification or change to this Declaration.

Section 21.10. FHA Approvals. Provided that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is insured by FHA, and further provided that there are then Class B memberships of the Association outstanding, neither the Members, the Board of Directors, nor the Association shall by act or omission, take any of the following actions without the prior written consent or approval of the FHA, as circumstances may require:

- (a) Change the basic organization of the Association including the merger, consolidation, or dissolution of the Association; or
- (b) Dedicate, convey, or mortgage the Common Area; or
- (c) Annex additional properties (other than an annexation by the Declarant as provided in this Declaration); or
- (d) Otherwise materially modify or amend any provision of this Declaration, the Bylaws or the Articles of Incorporation of the Association.

Section 21.11. Casualty Losses. In the event of substantial damage or destruction to any of the Common Area or Community Facilities, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his or her Lot with respect to the distribution to such Member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Area or Community Facilities.

Section 21.12. Condemnation or Eminent Domain. In the event any part of the Common Area or Community Facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No

provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his or her Lot with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of any of the Common Area or Community Facilities.

Section 21.13. Notice to Eligible Mortgage Holders; Deemed Consent. The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

(a) Any condemnation loss or any casualty loss, which affects a material portion of the Common Area, Community Facilities, or any Lot subject to a First Mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.

(b) Any delinquency in the payment of Common Expense Assessments or charges owed by an Owner whose Lot is subject to a First Mortgage or security interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity insurance maintained by the Association.

(d) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.

To be entitled to receive notice of the foregoing, the Eligible Mortgage Holder must send a written request to the Association, stating both its name and address and the Lot and Block designation or address of the Lot on which it has (or insures or guarantees) the mortgage. Any Eligible Mortgage Holder or mortgagee who is notified of any matter for which it is entitled to notice as provided herein (such notice to be delivered by certified or registered mail, return receipt requested), and which fails to respond within thirty (30) days of receipt of such notice, shall be deemed to have consented, if applicable, to the matter of which the Eligible Mortgage Holder or mortgagee was provided notice.

Section 21.14. Declarant's Power of Attorney. Notwithstanding any provision to the contrary contained in the Articles of Incorporation or Bylaws of the Association or this Declaration, the Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of fifteen (15) years from the date of recordation of the first Supplementary Declaration annexing all or any portion of the real property described on Schedule A-1 hereto, or until it conveys title to the last Lot, whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in any Lot, Common Area or Community Facilities, any such agreements, documents, amendments or supplements to this Declaration, the Articles of Incorporation and Bylaws of the Association which may be required by FNMA, FHA, VA, FHLMC, GNMA, or by Jefferson County, West Virginia, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Association, any public or private utility company designated by the Declarant, any institutional lender or title insurance company designated by the Declarant, or as may be required to comply with the Fair Housing Amendments Act of 1988, as amended, to comply with the Act, or to comply with other applicable federal, state and local laws or regulations.

(a) By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Lots, Common Area or Community Facilities, each and every such contract purchaser, Owner, Eligible Mortgage Holder, mortgagee or other lienholder or party having a legal or equitable interest in any Lot, Common Area or Community Facilities does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.

(b) No such agreement, document, amendment, supplement or other instrument which adversely affects the value of a Lot, or substantially increases the financial obligations of an Owner, or reserves any additional or special privileges for the Declarant not previously reserved, shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering the Lots owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Lot, Common Area or Community Facilities shall not be made without the prior written consent of the owners of all such mortgages.

(c) The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots, Common Area and Community Facilities and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant, its successors, transferees and assigns until the initial conveyance of all Lots, Common Area and Community Facilities planned to be annexed within the jurisdiction of the Association or the expiration of same.

Section 21.15. Taxes and Assessments. It is the intent of this Declaration that inasmuch as the interests of each Owner to use and enjoy the Common Area (and any other property to which such Owner may have a right of use and enjoyment) is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Common Area (or other property) shall be included in the assessment for each such Lot and as a result, any assessment directly against such Common Area (or other property if the Association is responsible for the real estate taxes levied thereon) should be of a nominal nature reflecting that the full value of the same should be included in the several assessments of the various Lots.

Section 21.16. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by an instrument, in writing, without notice to the Association.

Section 21.17. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area or Community Facilities by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area or Community Facilities.

Section 21.18. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 21.19. Declarant Reserved Rights. No amendment to this Declaration, the Bylaws or the Articles of Incorporation may remove, revoke, or modify any right, reservation or privilege of the Declarant without the prior written consent of the Declarant or any successors or assignees (pursuant to Section 16.17) of the Declarant.

Section 21.20. Perpetuities. If any of the covenants, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 21.21. Declarant Development. As long as the Declarant has an interest in developing the Property or the Project, the Association may not use its financial resources, directly or indirectly, to defray the costs of opposing any development activities reasonably consistent with the general intention of the Development Plan, as amended. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or other groups.

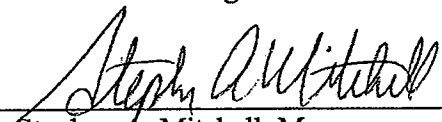
Section 21.22. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has executed this instrument this 5th day of April, 2005.

WITNESS/ATTEST:

DECLARANT:

SKYLINE FARMS, LLC,
a West Virginia limited liability company,
its successors and/or assigns

By: 
Stephen A. Mitchell, Manager

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

I HEREBY CERTIFY that on this 5th day of April, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared Stephen A. Mitchell known to be the Manager of SKYLINE FARMS, LLC, a West Virginia limited liability company, and who is authorized to do so, executed the foregoing instrument on behalf of such limited liability company for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Rhonda E. Kisner
Notary Public

My Commission Expires: March 20, 2006

[NOTARIAL SEAL]



JEFFERSON COUNTY, WV

FILED

April 06, 2005 15:18:52

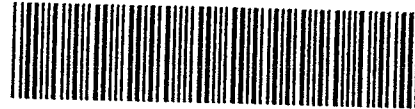
JENNIFER S. MAGHAN

COUNTY CLERK

TRANSACTION NO: 2005008552

BOOK OF DEEDS

Book: 1006 Page: 00416



This instrument was prepared by Kenneth J. Barton, Jr., Attorney at Law, 126 East Burke Street, Martinsburg, West Virginia 25401.