

Filed: May 12, 1994  
Attorney at Law  
P.O. Drawer 1419  
Martinsburg, WV

57756

Capon Glen  
SECTION II  
Dedication of Plat and  
Declaration of Protective Covenants  
Conditions and Restrictions

521

Pursuant to Article V, Paragraph 4 of the Declaration of Protective Covenants, Conditions and Restrictions of Capon Glen, Section I, (The "Declaration"), dated November 8, 1994, of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 357, Page 681, Imperial Properties, Inc., (The "Declarant"), hereby annexes to Capon Glen that certain parcel of real estate known as Capon Glen, Section II, a plat thereof being of record in the aforesaid County Clerk's Office in Map Book 8, Page 2.

All lots in Capon Glen Subdivision SECTION II shall be subject to the following protective covenants, conditions and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners of the lots:

ARTICLE I  
DEFINITIONS

1. "Association" shall mean and refer to Capon Glen Property Owners' Association, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the 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.
3. "Property" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Lot" shall mean and refer to any numbered or lettered plat of land shown upon the recorded subdivision plat of the property.
5. "Declarant" shall mean GRANTOR/DEVELOPER and refer to its successors and assigns.

C 522

ARTICLE II  
MEMBERSHIP, VOTING RIGHTS, AND OBJECTIVES

1. Every owner of a lot, including resubdivided lots, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

2. The Capon Glen Property Owners' Association is required to secure and maintain a third party liability insurance policy in the principal amount as may be required by either State or Federal law from time to time.

3. On or before December 31, 1995 or when three/fourths (3/4) of the lots have been sold, whichever occurs first, a Property Owners Association shall be established with membership consisting of the Owners (and only the owners) of each lot in Capon Glen who shall have one (1) vote per lot owned. A Board of Directors of three (3) to five (5) members shall be elected by the lot owners, except for the initial Board.

The initial Directors of the Association consisting of one to five members shall be appointed by the Declarant or their assigns and thereafter the Board of Directors shall be elected by the lot owners. The initial Directors shall be responsible for calling the first meeting of the Property Owners Association on or before January 31, 1996, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable on February 28, 1996. The meeting shall be held in Hampshire County, West Virginia, at a suitable place to be designated by the initial Board of Directors. At said meeting, the said owners shall, by a majority vote, determine whether or not the Association should be a corporation, an unincorporated association, or other legal entity, and shall elect a Board of Directors and such officers as they may determine necessary, depending upon the legal entity settled upon.

4. The duties and responsibilities of the Property Owners' Association shall include, but not be limited to the following:

- (a) Maintain Property Owner's Association, periodically elect officers and directors, and establish and collect fees and dues.
- (b) Maintain financial records
- (c) Administer the upkeep and improvements to the Capon Glen Subdivision

ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENT

1. Each owner of a Tract within Capon Glen shall pay an assessment for the reasonable construction, use, maintenance, and expansion of the roads. All assessments, including any pro-rata share of said assessments, shall be collected by and paid beginning the calendar year of January 1, 1996 through December 31, 1996. The assessment for the year beginning January 1, 1995 shall be One hundred dollars (\$100) per Tract. In no event shall the annual average common expense liability of any Tract, exclusive of optional user fees and any insurance premiums, exceed the sum of one hundred dollars (\$100) as adjusted, pursuant to the Provisions of the West Virginia Code Section 36B-1-114. All assessments shall be due and owing on the first day of January of each year and if unpaid shall be a lien upon the property against which each assessment is made. Imperial Properties, Inc. and its assigns shall have the right to sue for and collect any assessment, together with interest, properly assessed under this contract.

2. Any assessment made on a property pursuant to this paragraph, including a late fee of Five Dollars (\$5.00), interest at the rate of ten percent (10%) per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on this property until paid. The lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. The owner of each lot, by acceptance of a deed thereto, automatically becomes a member of the Capon Glen Property Owners' Association to be created as herein set forth, and agrees to pay an amount determined by the positive vote of Owners of at least two-thirds (2/3) of the Lots in said subdivision as deemed necessary for the purpose of maintaining

(including the removal of snow and the repairs and improvements of said roadways) the right-of-ways and roadways shown on the subdivision plat. During December of each year, beginning December, 1995, said Association shall notify each lot owner, in writing, as to the amount of the lot assessment which shall be due and payable by January 31 of each year. In the event of a resale or transfer of one or more parcels in said subdivision, this obligation shall run with the land and become the obligation of the new owner(s) even though it may have been assessed to a prior owner.

3. If the owner of any lot is in default in the payment of any assessments, including interest and costs of collection, in addition to any other means of collection, the Property Owners' Association may bring an action at law against the owner personally obligated to pay same.

4. In exchange for Declarant's agreement to install and maintain said roadways and rights-of-way until three quarters of the lots have been completely conveyed the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance fees as to all lots now owned or later reacquired by the Declarant. In the event Declarant should reacquire real estate through purchase at a foreclosure sale or through settlement of Owner's default in any contract, note or deed of trust that Owner should be obliged to pay the Declarant, Declarant shall not be required to pay any past due Assessment that the previous Owner may have owed the Association, nor shall Declarant be required in the future to contribute to the maintenance of the roadways.

5. If any one owner owns two or more adjoining lots, only one assessment shall be payable so long as only one house is built by said owner of said lots. If any of said lots is thereafter sold or conveyed or improved by an additional dwelling, it shall be subject to the payment of the applicable assessment as otherwise provided herein, and shall be fully subject to these covenants. Nothing herein shall be deemed to alter the "one vote per one lot owned" rule which is established in Article II, Paragraph 3, above.

6. Each Lot Owner, by acceptance of a deed thereto, acknowledges that the roads and rights-of-ways in the Capon Glen Subdivision are private in nature and shall not be maintained by the West Virginia Department of Transportation or other public agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision abutting said roads and that such private roads and rights-of-ways shall not

be taken into the State Secondary System unless the roads and rights are accepted in the state highway system by the West Virginia Department of Highways.

#### ARTICLE IV USE RESTRICTIONS

1. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area, (said signs must comply with Hampshire County ordinances relating to erection of signs), except for directional and information signs provided by the Declarant.

2. Resubdivision of the lots is prohibited.

3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot. Consequently, in the construction of a driveway into any lot, a minimum twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to facilitate natural drainage. No parking that obstructs traffic is permitted upon any road within the property, and as part of the development of any lot, the Owner shall provide adequate off-road parking for himself and his guest(s).

4. Due to the unsightliness of junk vehicles, no motor vehicle or trailer which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any lot. Temporary camping trailers may be placed on any lot, provided they are in compliance with Hampshire County and West Virginia laws concerning temporary camping. Temporary camping Trailers may be kept on the property for no more than four months at a time, and no more than six months per year, for the personal use of the owner and his immediate family.

5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building permanent structures, and in such cases, for a period not to exceed twelve (12) months.

6. Not more than one single family residence shall be erected on a lot. Residences built in wooded areas shall contain a minimum of 1000 square feet for a single story or ranch style residence and a minimum of 1400 square feet for a two story residence. Residences built in open areas shall have a minimum of 1200 square feet for a single story or ranch style residence and