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Augusta W Va

31076
DECLARATION OF

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COVENANTS AND RESTRICTIONS

THIS DECLARATION, Made this 3rd day of
December, 1979 by Sunrise Summit Development
Company, Inc., hereinafter called the Developer.

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain
real estate described in Article II of this Declaration,
and desires to create thereon a subdivision to be
known as Sunrise Summit Subdivision with permanent
recreational areas and other common facilities for the
benefit of said subdivision; and,

WHEREAS, Developer desires to provide for the
preservation of the values and amenities in said sub-
division and for the maintenance of said recreational
areas, and streets, storm sewers, and other common
facilities therein; and to this end, desires to
subject the real estate described in Article II to-
gether with such additions as may be hereafter made
thereto to the covenants, restrictions, easements,
charges, and liens hereinafter set forth each and all
of which is and are for the benefit of said property
and each owner thereof; and,

WHEREAS, Developer has deemed it desirable
for the efficient preservation of the values and
amenities in said subdivision to create an agency to
which should be delegated and assigned the powers
of maintaining and administering the common properties
and facilities and administering and enforcing the
covenants and restrictions and collecting and disbursing
the assessments and charges hereinafter created; and,

WHEREAS, Developer has caused to be incorporated under the laws of the State of West Virginia, as a non-profit corporation, the Sunrise Summit Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer declares the real estate described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions" hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Sunrise Summit Association, Inc., a non-profit association organized and existing under the laws of the State of West Virginia.

(b) "The Properties" shall mean and refer to all such existing properties; and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to streets, sewer and drainage systems, lighting systems, as well as parks, playgrounds, swimming pools, golf courses, commons, footways, including buildings, structures, personal properties incident thereto, and any other properties owned and maintained by the Association for common benefit and enjoyment of the members.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties.

(e) "Owner" shall mean any person, combination of persons, or entity holding title to a lot within the Sunrise Summit Subdivision. If several persons or entitites hold partial interests in a single lot, they shall together comprise one "Owner".

(f) "Member", as provided in Article III herein, shall mean and refer to all those owners of lots or lessees of lots used for commercial purposes. It shall also refer to guests and tenants of lot owners who temporarily reside on the premises.

ARTICLE II

Property Subject to this Declaration Additions Thereto

Section 1. Existing property. The real estate which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Gore District, Hampshire County, West Virginia, and is more particularly described as follows:

BEING all the real estate with The Sunrise Summit Subdivision, a plat of which said subdivison is of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Plat Book _____, at page _____, to which said plat so of record reference is here made and had for a more particular description of said real estate.

all of which real property shall hereinafter be referred to as "Existing Property".

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Section 2. Additions to Existing Property.

Additional lands may become subject to this Declaration in the following manner:

(a) Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration with the Existing Property.

ARTICLE III

Membership

Section 1. Every person or entity who is a record owner of a fee or an undivided fee interest in any lot in Sunrise Summit Subdivision shall be a member of the Association provided that any such person or entity which holds such interest, merely as security for the performance of an obligation shall not be a member. Guests and tenants of such lot owners who temporarily reside on the premises shall also be

members of the Association.

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Section 2. Every person or entity who is the lessee of a lot used for commercial purposes shall be a member of the Association provided that such leasehold interest was established pursuant to a written lease executed by the lessee and the owner.

Section 3. Those lots acquired by the United States through either voluntary conveyance or through foreclosure shall be exempt from membership in the Association, and, as such, the United States shall not be obligated for any assessments or fees levied by the Association.

ARTICLE IV

Assessments

Section 1. The Developer for each lot owned by him within the properties hereby covenants and each owner of any lot, or lessee of any lot used for commercial purposes, by acceptance of a deed or lease therefore, shall be deemed to covenant and agree to pay to the Association, in accordance with its By-Laws, such initiation fees, monthly and special assessments as the Board of Directors of the Association may impose on its members.

Section 2. The initiation fees, monthly and special assessments so imposed, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the real estate of each lot owner and upon the personal property located on the leased premises of the owner of a leasehold interest in a lot used for commercial purposes, and shall be a continuing lien upon the property against which each such initiation fee and assessment is made. Each such initiation fee and assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner or lessee of such property at the time when the initiation fee and assessment fell due.

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Section 3. The Developer shall be responsible for the original construction of the streets in the subdivision and for the installation of the water and sewage systems. It shall be the further responsibility of the Developer to maintain the streets, water system, sewage system and all other common properties, as herein defined, until such time as these amenities are dedicated to the Association.

Upon dedication of the common properties, as herein defined, to the Association, the initiation fees and assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and other persons owning and using lots in Sunrise Summit Subdivision and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose. Pursuant to the foregoing, the Association may use and employ initiation fees and assessments to provide for repair, improvement and maintenance of the common properties, payment of taxes and insurance thereon, repaving, improvement, repair and maintenance of streets, alleys, and common ways and for construction, reconstruction, repair, and maintenance and improvement of both sanitary and storm sewers. Any enumeration of specific uses herein, however, shall not be construed to limit the Association to the use of initiation fees and assessments for purposes similar to the foregoing.

Section 4. Notwithstanding any other provision of this Declaration, the Association shall not be responsible for maintaining the parking areas adjacent to those lots used for commercial and rental purposes.

These parking areas shall be the sole responsibility of Class B members and Class C members, as hereinafter defined in ARTICLE V of this Declaration, and it shall be incumbent upon them to assure compliance with aesthetic and safety standards comparable to other common areas of the subdivision.

Section 5. Beginning January 1, 1980, the monthly assessment shall be \$ 2.50 per lot for a Class A-1 member, as hereinafter defined, and in such proportions for other classes of members as provided for in ARTICLE V of this Declaration. From and after January 1, 1983, the monthly assessment may be increased by vote of the members, as hereinafter provided for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any month at a lesser amount.

Section 6. Subject to the limitations of Section 5 hereof, and for the periods herein specified, the Association may change the maximum and basis of the assessments fixed by Section 5 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of the membership who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

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Section 7. The quorum required for any action authorized under Section 6 hereof shall be as follows:

At the first meeting called, as provided in Section 6 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty (60) percent of all the votes of the memberships shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 6, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. The monthly assessments provided for herein shall become due and payable on the first day of each month. However, at the option of the individual memberships, such monthly assessments may be payable in advance in annual, semi-annual, or quarterly payments.

Section 9. The Board of Directors of the Association shall provide for written notice of the initiation fee and assessment to be sent to every owner subject thereof. The Association shall upon demand at any time furnish to any owner liable for said initiation fee and assessment a certificate in writing signed by an officer of the Association setting forth whether said initiation fee or assessment has been paid. Such certificate shall be conclusive evidence of payment of any initiation fee or assessment therein stated to be paid.

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Section 10. If the initiation fees or assessments are not paid on the date when due, then such initiation fee or assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns.

If the initiation fees or assessments are not paid within thirty (30) days after the delinquency date, the initiation fee and assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property. and there shall be added to the amount of such initiation fee or assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the initiation fee or assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 11. The lien of the initiation fee and assessment provided for herein shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon the properties subject to the initiation fee or assessment provided, however, that such subordination shall apply only to the initiation fees or assessments which have become due

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and payable to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any initiation fees or assessments hereafter becoming due, nor from the lieu of any such subsequent initiation fee or assessment.

Section 12. The membership privileges of any person may be suspended by action of the Directors during the period when the initiation fees or assessments remain unpaid, but, upon payment of such initiation fees or assessments, his privileges shall be automatically restored. If the Directors, pursuant to the By-Laws, have adopted and published rules and regulations governing the use of the common lands and facilities, and the personal conduct of any person thereon, they may, in their discretion, suspend the privileges of any person for violation of such rules and regulations for a period not to exceed thirty (30) days.

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ARTICLE V

Rate of Assessments And Voting Rights

Section 1. The Association shall have seven classes of voting memberships:

Class A-1: Class A-1 members shall be all those owners of lots, with dwellings thereon, containing one-third ($1/3$) of an acre or less. Class A-1 members shall have one vote for each such lot and shall be subject to monthly assessments in proportion to other Class A-1 members for each such lot.

Class A-2: Class A-2 members shall be all those owners of lots, with dwellings thereon, containing more than one-third ($1/3$) of an acre. Class A-2 members shall have one vote for each such lot and shall be subject to monthly assessments in proportion to one and one half ($1\frac{1}{2}$) times that of Class A-1 members for each such lot.

Class A-3: Class A-3 members shall be all those owners of lots, of whatever size, which do not have dwellings thereon at the time of purchase. Class A-3 members shall have one-half ($1/2$) vote for each such lot and shall be subject to monthly assessments in proportion to one-half ($1/2$) that of a Class A-1 member for each such lot. Upon the construction and completion of a dwelling, Class A-3 memberships shall cease and become converted into another class of membership, as herein provided.

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Class B: Class B members shall be all those owners of lots on which are constructed buildings which are divided into units to be used and leased for residential purposes. Class B members shall have one-half (1/2) vote for each unit so designated for lease for residential purposes and shall be subject to monthly assessments in proportion to one-half (1/2) that of Class A-1 members for each such unit.

Class B-1: Class B-1 members shall be guests and tenants of lot owners who temporarily reside on the premises. Class B-1 members shall have all of the privileges as set forth in Article VII of this Declaration, but shall have no voting rights in the Association.

Class C: Class C members shall be all those owners of leasehold interests in lots used for commercial purposes. Class C members shall have two votes for each such leasehold interests in lots used for commercial purposes and shall be subject to monthly assessments in proportion to two (2) times that of Class A-1 members for each leasehold interest in such lot. Upon the cumulation of ten (10) votes of all Class C members, they shall form a committee who shall promulgate rules and regulations for their collective benefit and shall elect representatives who shall vote their combined memberships. However, at no time shall the Class C members aggregate more than eighteen (18) votes, nor shall they collectively be subject to monthly assessments of more than eighteen (18) times that of Class A-1 member.

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Class D: Class D members shall be the Developer, his heirs, and assigns. The Class D member shall have three (3) votes for each lot, of whatever nature, which he owns, provided such lots have not been leased to a Class C member. The Class D member shall not be subject to special or monthly assessments on any such lot, provided that the Class D membership shall cease and become converted into another class of membership, as herein defined, upon the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in all other classes of memberships, as herein defined, equal the total votes outstanding in the Class D membership or,
- (b) On the first day of January, 1982.

From and after the happening of these events, whichever occurs earlier, the Class D member shall be deemed to be a member of one of the other classes, as herein defined, and shall be entitled to vote and shall be assessed accordingly.

ARTICLE VI

Covenants And Restrictions

Section 1. The residential Class A-1 members, Class A-2 members, and Class A-3 members, as herein defined, shall be subject to the following covenants and restrictions:

- (a) No lot shall be divided or subdivided for any reason except to permit nominal boundary line adjustments.

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(b) No house trailer or temporary structure may be stored on any lot; recreational vehicles may be stored on lots but may not be kept on the street side of any lot. This shall not prohibit the placing of a trailer or any other temporary structure upon the premises during, and incidence to, the construction of house upon said premises; such temporary structure shall be removed upon substantial completion of said house; no recreational vehicles or temporary construction structures may be used as a residence.

(c) No more than one dwelling shall be constructed on any one lot.

(d) No more than one garage or car shelter shall be erected upon said premises, nor shall such structure be larger than necessary to contain three (3) automobiles or average-size recreational vehicles.

(e) Each owner shall keep all lots owned by him, and all improvements thereon, in good and reasonably attractive repair, including but not limited to the regular and timely seeding, planting and maintenance of lawns, the pruning and cutting of trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements. All construction work by or on behalf of lot owners shall be conducted in a manner and time which does not cause nuisance to residents of the subdivision.

(f) No signs, billboards, or advertising devices of any kind, except those in any subsequent sale of the property, shall be placed or otherwise

installed on any residential lot or building within the subdivision, except that signs may be used to promote the sale of improved or unimproved lots within the subdivision.

(g) No house shall be constructed on the premises having more than three (3) floors, nor with a floor area of less than 800 square feet. All dwellings shall have exteriors made of appropriate and permanent materials.

(h) Domesticated house pets shall be allowed within the subdivision if contained within a fenced-in area, or secured by a leash, chain or rope, but the property shall not be used for the commercial sale or maintenance of animals.

(i) No resident shall maintain, operate, or permit upon the premises anything obnoxious, dangerous, unsightly or unnecessarily noisy or otherwise offensive to other residents of the subdivision.

(j) Open fires shall not be permitted on any part of the property. Chimneys and outdoor fireplaces shall be equipped with flu screens.

(k) All toilet facilities shall be contained within the dwelling house and shall empty into a public or subdivision sewage sytem. All water and sewage facilities shall be built and maintained in accordance with the requirements of the West Virginia State Department of Health.

(l) No inoperative motor vehicle of any kind shall be parked in the open, and no unregistered motor vehicle shall be driven upon any street of the subdivision.

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(m) No fence shall be permitted within the subdivision except fences erected by the developer or by individual lot owners, provided that the lot owners' fence be along their back property lines, along their side property lines to points opposite their front building line and across their lot from said points to the front corners of their house.

(n) All governmental building codes, health regulations, and zoning restrictions applicable to said property now or as may be hereafter made applicable, shall be observed. In the event of any conflict between any provision of any governmental code, regulation, or restriction and any provision of these covenants, the more restrictive provision shall apply.

(o) No property owner shall discriminate against any person in the sale or leasing of any lot or other parcel of the subdivision on the basis of race, creed, national origin or sex.

ARTICLE VII

Property Rights And Rights Of Enjoyment Of Common Property

Section 1. Each member, unless his member-
privileges
ship ~~rights~~ are temporarily suspended pursuant to the
preceding paragraphs, shall be entitled to the use
and enjoyment of the common properties and facilities
of the Association.

Section 2. Any member may delegate his or
privileges
her ~~rights~~ of enjoyment in the common properties and
facilities to another person, either guest or tenant,
who temporarily resides on the property.

Section 3. The Developer may retain the legal title to the common properties until such time as he has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for himself, his heirs and assigns that he shall convey the common properties to the Association, free and clear of all liens and encumbrances, not later than January 1, 1982.

ARTICLE VIII

General Provisions

Section 1. Duration. The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or any member thereof subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the membership has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every member at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any member violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the real estate or personal property to enforce any lien created by these covenants; and failure by the Association or any member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

In witness whereof Sunrise Development Company, Inc., a corporation, has caused the foregoing to be signed by its President, attested by its Secretary, with its corporate seal affixed, this 3rd day of December, 1979.

ATTEST:

SUNRISE DEVELOPMENT COMPANY, INC.
A CORPORATION


Adrian L. Malick
Secretary

Arthur R. Malick
By President