

DECLARATION OF  
COMMON INTEREST COMMUNITY  
INCLUDING RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR  
NORTH LAKE I  
CANAAN VALLEY, TUCKER COUNTY, WEST VIRGINIA

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DECLARATION OF COMMON INTEREST COMMUNITY

FOR

North Lake I

THIS DECLARATION, effective this \_\_\_\_\_ day of \_\_\_\_\_, 2002, made by NORTH LAKE, LLC, a West Virginia limited liability company, (hereinafter referred to as "Declarant"), the owner and developer of the real estate described herein and designated on the plats filed of record contemporaneously herewith, which as Declarant, and on behalf of its grantees, successors and assigns, hereby makes the following declaration:

I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP

WHEREAS, Declarant is the owner of certain real estate situate in Tucker County, West Virginia, more particularly described in Article III (hereinafter referred to as "Property"); and

WHEREAS, Declarant intends to develop or cause to be developed on the Property a residential community and to provide for the uniform and orderly development thereof, and for the creation and maintenance of certain common facilities as hereinafter set forth; and

WHEREAS, Declarant desires to subject the Property and the improvements located or to be located thereon to the covenants, conditions and restrictions set forth herein which are for the purpose of protecting the value and desirability of the Property and the improvements, and are for the purpose of distributing the cost of maintaining and operating the common elements and any improvements constructed thereon among the owners; and

WHEREAS, Declarant has caused or will cause a non-profit membership association or corporation known or to be known as "NORTH LAKE I OWNERS ASSOCIATION," (the "Association") to be formed in order to perform certain functions on behalf of the owners of Units within the Property, including, but not limited to, the enforcement of the covenants, conditions and restrictions, and the management of the Common Elements to be owned by the Association.

NOW, THEREFORE, Declarant does by this Declaration submit the real estate described in Article III, together with all roadways, improvements and other permanent fixtures now and later situated thereon and being a part thereof, and all rights and privileges pertaining thereunto to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "West Virginia Uniform Common Interest Ownership Act" or "Act"). Declarant further declares that the Property shall be

held, sold and conveyed subject to the following easements, covenants, conditions and restrictions which shall run with the land and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and the Association.

## II. NAME, LOCATION AND DESIGNATION

The name by which this Common Interest Community is to be identified is "North Lake I." The CIC is a planned community located in Canaan Valley, Dry Fork District, Tucker County, West Virginia.

## III. THE LAND

The real estate submitted by this Declaration to the North Lake I Common Interest Community is described as follows:

All that certain tract, lot or parcel of land and premises situate, lying and being in Canaan Valley, Dry Fork District, Tucker County, West Virginia, and being more particularly described as follows:

Beginning for the same at a 1/2" rebar set on the eastern right-of-way limits of West Virginia State Route No. 32 and marking the southwestern corner of a parcel owned by the United States of America; thence with a line of said parcel

North 88° 09' 07" East 1241.08 feet to a point; thence through the lands of North Lake LLC for the following twenty-one courses

South 25° 00' 00" East 69.30 feet to a point; thence  
South 49° 03' 56" West 10.40 feet to a point; thence  
South 70° 00' 00" West 35.00 feet to a point; thence  
South 22° 33' 47" West 54.19 feet to a point; thence  
South 84° 36' 15" West 58.03 feet to a point; thence  
South 40° 35' 02" West 94.44 feet to a point; thence  
South 22° 26' 02" West 113.77 feet to a point; thence  
South 26° 06' 55" West 144.72 feet to a point; thence  
South 12° 33' 04" West 134.56 feet to a point; thence  
South 30° 31' 28" West 164.96 feet to a point; thence  
South 27° 19' 29" West 166.54 feet to a point; thence  
South 34° 27' 04" West 101.92 feet to a point; thence  
South 15° 33' 32" West 122.93 feet to a point; thence  
South 45° 43' 36" West 102.32 feet to a point; thence  
South 57° 04' 25" West 30.00 feet to a point

With a curve to the left for 46.19 feet having a radius of 100.00 feet and a chord North 46° 09' 27" West 45.78 feet to a point; thence

North 59° 23' 19" West 243.44 feet to a point; thence  
North 63° 53' 29" West 399.50 feet to a point; thence

With a curve to the left for 39.39 feet having a radius  
of 25.00 feet and a chord South 70° 58' 16" West 35.44 feet to a  
point; thence

South 25° 50' 00" West 310.16 feet to a point; thence

North 61° 37' 31" West 216.56 feet to a concrete monument  
set on the eastern right-of-way limits of West Virginia State Route  
32; thence with said limits for the following four courses

North 20° 03' 57" East 170.00 feet to a 1/2" rebar set;  
thence

South 69° 56' 03" East 5.00 feet to a 1/2" rebar set;  
thence

North 20° 03' 57" East 798.90 feet to a point; thence

With a curve to the left for 66.55 feet having a radius  
of 751.3 feet and a chord North 17° 31' 41" East 66.53 feet to the  
beginning containing 25.628 acres more or less.

The above described parcel is shown on a plat dated  
November 18, 2002 and to be recorded among the land records of  
Tucker County, West Virginia.

Being a part of the lands described in a conveyance by  
Monongahela Power Company to North Lake, LLC by deed dated December  
19, 2001 and recorded in the Office of the Clerk of the County  
Commission of Tucker County, West Virginia in Deed Book 170 at page  
281. Also being all the land conveyed by Cortland Properties, Inc.  
to North Lake, LLC by deed dated November 16, 2002, and recorded in  
said Clerk's Office in Deed Book \_\_\_\_ at page \_\_\_\_.

#### IV. DEFINITIONS

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

A. Association: The North Lake I Owners Association, a West  
Virginia not for profit association or corporation, as formed or to  
be formed by Declarant, or its successors and assigns, which  
Association of Unit Owners is organized as and shall be the  
governing body for the maintenance, repair, replacement,  
administration and operation of the CIC.

B. Common Elements: Those parcels of land, together with any  
Improvements situate thereon, within the CIC shown on the plats

which are recorded among the records of the Office of the Clerk of the County Commission of Tucker County, West Virginia, save and except for the Units. The Common Elements consist of all common open space including but not limited to, the lake area, streets and parking areas within the CIC as shown on said Plats, unless the same are dedicated to the County or State for public use. Declarant shall have the right but not the obligation to dedicate the roads within the Property to the County or State for public use.

C. Common Expenses: Expenditures made by or financial liabilities of the Association, together with any allocations to reserves, a portion of which shall be assessed to individual Unit Owners as set forth hereinafter.

D. Common Interest Community ("CIC"): The real estate with respect to which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate (Common Elements) described in this Declaration.

E. Declarant: The Declarant is North Lake, LLC, a West Virginia limited liability company, 3000 Thayer Center, Oakland, MD 21550, and its successors and assigns, which (1) as part of a common promotional plan, offers to dispose of its interest in a Unit not previously disposed of or (2) reserves or succeeds to any special Declarant right.

F. Declaration: This document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Tucker County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC.

G. Development Rights: Any rights or combination of rights reserved by Declarant in the Declaration to (1) add real estate to a common interest community; (2) create Units or Common Elements within a CIC; (3) sub-divide Units, combine Units or convert Units into common elements; and (4) withdraw real estate from the CIC.

H. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.

I. Improvement: Any thing or device the placement of which upon the Property may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, covered or uncovered porch, swimming pool, clothesline, radio, television or other antenna, fence, sign, curbing, paving, wall, walkway, exterior light, landscape, hedge, trees, shrubbery, planting,

signboard or any temporary or permanent living quarters or any other temporary or permanent improvement made to the Property or any part thereof. Improvement shall also mean and include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six (6) inches from that existing at the time of purchase by each Owner other than Declarant.

J. Lot: A parcel of land within the CIC designated for separate ownership or occupancy as shown upon the subdivision plat prepared by or for the Declarant and recorded or hereafter recorded among the records of the aforesaid Clerk's Office. As used herein, "Lot" shall not include the Common Elements.

K. Master Association: The Canaan Mountain Resort Master Association, a West Virginia not for profit association or corporation, as formed or to be formed by Declarant or its successors and assigns, which shall exercise certain powers granted to it herein, on behalf of one or more common interest communities or for the benefit of one or more common interest communities.

L. Member: An Owner who holds membership in the Association by virtue of his/her/its ownership in a Unit as provided in this Declaration.

M. Owner: The record owner, whether one or more persons or entities, of the title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

N. Planned community: A common interest community that is not a condominium.

O. Special Declarant Rights: Rights which may be reserved for the benefit of a Declarant to (1) complete improvements indicated on plats and plans filed with the Declaration; (2) exercise any development rights; (3) maintain sales offices, management offices, signs advertising the CIC, and models; (4) use easements through the Common Elements for the purpose of making improvements within the CIC; (5) make the CIC subject to a Master Association; (6) merge or consolidate the CIC with another CIC of the same form of ownership; or (7) appoint or remove any Executive Board member or officer of the Association or of the Master Association during the period of Declarant control.

P. Unit: Unit means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described in this Declaration or the

plats recorded herewith. In this Declaration, "Unit" is synonymous with "Lot."

**V. THE UNITS - USE, TRANSFER, EASEMENTS, ETC.**

**A. Number of Units and Allocated Interest.**

1. THE TOTAL NUMBER OF UNITS DEDICATED TO ALL CICS COMPRISING THE CANAAN MOUNTAIN RESORT HAS NOT BEEN CONCLUSIVELY DETERMINED, BUT MAY NOT EXCEED NINETY-NINE.

2. THE ORIGINAL NUMBER OF UNITS DEDICATED TO THIS CIC IS seventeen (17). Since Lots within the CIC may be merged into single ownership, and Declarant may create or eliminate Lots, the Unit Owners' allocated interests will vary depending upon the ultimate number of Units in the CIC. In such event, the Unit Owner's allocated interest in the CIC and, hence, responsibility for the common expenses of the Association and the portion of the votes in the Association will vary accordingly. Unit Owners can determine their allocated interests by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is the number equal to the total number of Units within all dedicated phases. Each Unit Owner may have his/her allocated interest increased or reduced by an amount equal to the number of Units added or subtracted from the projections listed. The denominator of each fraction is subject to change due to the rights reserved in Declarant to subdivide, merge or create the Units.

B. Legal Description. The legal description of each Unit is generally designated by the identifying number of such Unit as shown on the Plats of the CIC which have been recorded herewith and as may be amended hereafter.

C. Sub-division or Combining of Units. No Unit Owner shall, by deed, plat, court decree or otherwise, sub-divide or in any manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat. Nothing in this paragraph, however, shall prevent the Declarant or any Lot owner from combining two or more adjoining lots into a single ownership. During the period of such multiple ownership of adjoining Lots, the number of Lots in the Subdivision shall be reduced and the owner of such Lots shall pay only one assessment and shall have only one vote in the Association. The formula for determination of ownership interest is set forth in section A of this Article.

D. Easements, Rights of Way, Restrictions and Limitations to which CIC is Subject. The CIC is subject to certain easements, rights of way, restrictions and limitations which run with the land and which are set forth and shown upon the plat of North Lake I filed of record contemporaneously herewith.



E. Easements Reserved by Association and Declarant. There is reserved for the Association, its successors and assigns, and for the use of the Declarant, the following easements and rights of way incident to the development of this CIC:

1. A right of way of ingress, egress and connection of utility services to the Property has been granted to Declarant.

2. A ten (10) foot wide easement along each side of all road rights of way and along all other property boundaries for the purpose of altering, adding, installing, operating and maintaining sewage disposal lift stations, utility lines, drainways, culverts, electric lines, cable television, water and sewer mains, as well as other services; reserving also the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to trim, cut and remove any trees and brush located in said rights of way.

3. The Lots shall be burdened by such additional rights of way and easements as may be shown on the recorded maps or plats of said Subdivision, or as may be placed in any deeds of conveyance of each individual Lot.

4. Each of the streets in the Subdivision and the recreational facilities are dedicated to the use of and by members of the Association and, subject to the Declarant's right of use, shall be under the control and supervision of the Association. An easement for the use and enjoyment of each of said streets and areas designated as recreational is reserved to the Association, its successors and assigns; to the persons who are, from time to time, members of the Association, as provided for in the Bylaws of said Association; to the residents, tenants, and occupants of any residential dwelling and to the invitees of all of the aforementioned persons, the use of which shall be subject to such rules and regulations as may be hereinafter set forth and may, from time to time, be prescribed by the Association.

5. Declarant reserves the right to fix grades and elevations of all streets within the Subdivision. Any top soil or other soil removed from any Lot within the Subdivision shall be deposited by that Lot Owner in such area of said Subdivision as may be determined by Declarant. In the event that Declarant does not desire said soil, it may then be deposited by the Lot Owner elsewhere.

6. Each Lot Owner shall be responsible for placing culverts, as recommended and approved by Declarant, under sidewalks and/or driveways in order to facilitate the proper drainage of storm sewers along the streets of the Subdivision.

7. Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right

to use the roads in the subdivision, and the right on, over and under the roads and on such other reserved areas as are shown on the recorded plans of the Subdivision to install, repair and alter the cables, conduits, gas lines, sewerage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewage, water and other public conveniences or utilities. Declarant may also cut drainways for surface water whenever and wherever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee but this reservation shall not be considered an obligation of Declarant to provide general maintenance or to maintain any utility or service.

F. Association's Right to Perform Unit Maintenance. The Owner of each Unit shall keep his Unit, and all improvements thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns and yards, keeping all sidewalks neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and Structures on a Lot, and the individually owned portion of a townhouse condominium, all in a manner and with such frequency as is consistent with good property management and maintenance.

In the event any owner of any Unit shall fail to maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Executive Board and the Association, notice shall be provided by the Board, in writing, to the Unit Owner to correct the condition and, if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees to enter upon said Unit and repair, maintain and restore the Unit and any improvements erected thereon to the extent authorized by law. Such right shall not be exercised unless two-thirds (2/3) of such Executive Board and sixty percent (60%) of the members at a duly called meeting for that purpose shall have voted in favor of its being exercised. The cost of such exterior maintenance and maintenance of the Unit shall be a binding personal obligation of such Unit Owner which shall be added to and become part of the assessment to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon.

## VI. RESTRICTIVE AND PROTECTIVE COVENANTS

1. Each Unit shall be used solely for single family residential or rental purposes, non-commercial recreational use, or

forest and wildlife management purposes, except for certain rights reserved unto Declarant.

2. No Unit shall be subdivided. Lots may be combined as set forth in Section C of Article V.

3. Once the plans of a residential home have been approved by the Architectural Control Committee, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Lot, the improvements must be substantially completed, including the exterior work and grading and landscaping, in accordance with the plans and specifications approved, within twelve (12) months, subject to weather conditions only.

4. The minimum square foot area requirement for finished living space of single family dwellings constructed upon Lots shall be not less than One Thousand Five Hundred (1,500) square feet of living space, exclusive of basements, porches, decks and garages. Areas with ceilings under 6'0" shall not be considered as living space.

5. No residence shall be occupied until the same has been substantially completed.

6. All structures constructed or placed on any Lot shall be built of new or reconditioned material.

7. The Architectural Committee of Northlake Owners Association shall designate the situs of each dwelling to be constructed on a Lot.

8. Each Lot shall either have sufficient off-street parking to serve the dwelling, or in certain cul-de-sac areas, designated areas will be available for on street parking. When possible, driveways shall be shared with neighboring Lots. Carports are prohibited.

9. The fuel used in the dwelling or other structures shall be of the smokeless type; however, fireplaces and wood stoves, in which wood is used as a fuel shall be excepted from this provision. All firewood shall be kept stacked in a sightly manner and in a location to be designated by the Architectural Control Committee for the North Lake I Owners Association. No above ground fuel tanks are permitted. In the event that rock or site conditions prevent underground tank placement, the Architectural Committee may waive this requirement with appropriate location and screening conditions.

10. No animals may be kept, maintained or bred on any Lot, except that no more than a total of two (2) dogs, cats or similar domestic household pets may be kept on a Lot provided they are not kept, bred or maintained for any commercial purpose. All

household pets must be kept in such a manner as to avoid becoming a nuisance to neighbors.

11. No Unit shall be used at any time for the purpose of carrying on any business, commercial or professional enterprise which attracts customers, patrons or clients to the Unit, and no noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

12. No commercial signs, including "For Rent" or "For Sale", billboards or advertising structure of any kind shall be placed or erected on any Unit except for those placed by the Developer or as may be required by legal proceedings. Signs with the Owner's name and a house name may be permitted subject to review and approval by the Architectural Committee provided that such signs shall not be more than two square feet in size. Any sign erected by the Declarant shall not be subject to the provisions set forth herein.

13. All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained. No lumber, metals, bulk materials, garbage, refuse or trash shall be kept, stored or allowed to accumulate on any Lot except in sanitary containers or approved structures. Declarant, initially, and the Association, thereafter, shall provide a central garbage collection facility for use by Unit owners. Maintenance of any trash container outside of a home is strictly prohibited. During construction of any Improvement, the Owner shall keep the construction site free of unsightly accumulations of rubbish and scrap materials, and construction materials, trailers, shacks and the like employed in connection with such construction, and shall keep the Lot neat and orderly.

14. The exterior walls of all buildings, if of masonry construction, shall be of brick or stone, unless otherwise approved hereunder; plywood siding board is not permitted. No building shall have concrete or cinder blocks or concrete masonry exposed in any manner unless otherwise approved. Any exposed portion of a foundation that is visible from a roadway, adjoining Lot or other adjoining Property, shall be covered with an approved material or treatment.

15. No outside toilets or individual water wells shall be constructed on any Lot. All plumbing fixtures, including dishwashers and toilets shall be connected to the sewage system. Storm water shall not be allowed to flow into the sewage system.

16. Declarant shall provide appropriate easements for water, gas and electric services, if available, to each Lot Owner within ninety (90) days of application for same. Declarant reserves an easement over, upon, across and under each Lot for the

construction, installation, maintenance, repair and use of the roadways and utilities.

17. The utility services serving the Lots are to be constructed underground from the street rights of way to the residential dwelling.

18. Exterior antennas and satellite dishes shall not be permitted on any Unit, except that DSS dishes, 18" in diameter or smaller, may be permitted with Architectural Committee approval as to location.

19. There shall be no driveway access from West Virginia State Route 32 directly to any Lot.

20. In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to allow all insurance proceeds to be utilized to the extent necessary to return the Unit to grade. If the Owner of a Lot chooses to reconstruct, the Owner shall restore all buildings and landscaping to substantially the same or better condition in which they existed prior to the fire, casualty or other disaster.

21. No motor vehicle of any nature, except a duly licensed vehicle, shall be operated on any street and no such vehicle shall be operated except by a duly licensed operator. All boats, trailers, recreational vehicles, campers, non-passenger vehicles and the like may be parked only in designated parking areas or in private driveways. No unlicensed automobiles, junk vehicles, or any trucks rated more than 1 ton, may be parked or stored within the CIC unless parked or stored in an enclosed garage.

22. Open fires are prohibited.

23. Hunting and the discharge of any weapon is prohibited. All guns, bows and crossbows shall be cased at all times.

24. No alarm system may be installed without the owner contracting with a local service firm which has 24-hour service and the ability to enter the dwelling and shut off the alarm. Any owner who equips his dwelling with an automatic burglar alarm shall keep on file with the Declarant or the Association at all times, the alarm system firm name and the local representative's 24-hour service telephone number in case any alarm is tripped and no Owner is present to shut off the alarm.

25. Exterior lighting shall be installed on a Lot and operated in such a manner as to prevent offensive glare or illumination beyond the boundaries of the Lot. Lighting shall be consistent with residential types. No reflecting lettering or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

31. No restriction or covenant herein is intended to be used by anyone to discriminate or attempt to discriminate against any person, whether a Unit Owner or a prospective purchaser upon resale by a Unit Owner, upon the basis of race, creed, religion, color, national origin or any other basis.

#### XIII. PROJECTED BUDGET OF CIC

It is the best estimate of the Declarant that the owner of an unimproved Unit in North Lake I will pay a monthly assessment to the North Lake I Owners Association in the amount of ~~Five Hundred~~ <sup>Two Hundred Fifty</sup> Dollars (\$250.00) per year during the first year. On an annual basis for the seventeen (17) Units in the CIC, the total annual budget of the Owners Association would be Four Thousand, Two Hundred Fifty Dollars (\$4250.00). It is estimated that this sum would be sufficient to make payment of the following categories of expenditures of the Association in the following ~~monthly~~ <sup>annual</sup> amounts:

Snow Removal:	\$1,000
Road Maintenance & Mowing:	\$1,000
Insurance:	\$1,000
Utilities:	\$ 250
Legal & Accounting:	\$ 500
Reserve for repairs/replacement:	\$ 500
Total	\$4,250 per year

At the time of closing, each purchaser shall, upon delivery of the deed, evidence his membership in the Owners Association by payment of the first year's annual assessment in the total amount of ~~Five Hundred~~ <sup>Two Hundred Fifty</sup> Dollars (\$250.00), pro rated as of the date of purchase. *ADN*

#### XIV. WARRANTY OF QUALITY

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

All purchasers shall execute a Purchase Agreement which waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal actions by Purchaser for breach of warranty within two (2) years of the date the Purchaser enters into possession.

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

31. No restriction or covenant herein is intended to be used by anyone to discriminate or attempt to discriminate against any person, whether a Unit Owner or a prospective purchaser upon resale by a Unit Owner, upon the basis of race, creed, religion, color, national origin or any other basis.

## VII. UTILITY SERVICES

### A. Water, Sewage, Trash Removal and Snow Removal Services.

1. The Association shall be responsible for obtaining water, sewage, trash removal and snow removal services for all portions of the CIC.

2. Common Expenses incurred by the Association for water, sewage, trash removal and snow removal services shall be allocated among the Units in accordance with the Units' respective Shares of Common Expenses, without regard to individual Unit usage.

3. Sewage services shall be provided by Declarant, its successors and assigns, through an off-site sewage treatment plant presently owned and operated by Declarant. Water services shall be provided by the Association from a facility owned by the Association. Lot Owners shall provide their own grinder pumps to service their homes. If a public service district is formed and operated in Canaan Valley, such services shall be provided by it and Lot Owners shall be individually billed.

B. Electric, Propane Gas, Cable Television and Telephone Services. The Owner of a Unit shall be responsible for obtaining electric, propane gas, cable television, and telephone services for its Unit and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith directly to the utility company providing the same.

C. Ownership: Ownership of the water and sewer systems shall at the termination of Declarant Control be transferred to the Association.

## VIII. THE ASSOCIATION

A. Membership. Every Unit Owner, shall, by reason of ownership, automatically be a Member of North Lake I Owners Association and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Bylaws of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment. Ownership of a Unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any

person or entity having an interest in such a Unit merely as security for performance of any obligation.

B. Powers of the Association. Subject to other provisions of the Declaration, the Association may:

1. Adopt and amend Bylaws and rules and regulations;
2. Adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;
3. Hire and discharge managing agents and other employees, agents and independent contractors;
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Lot Owners on matters affecting the CIC;
5. Make contracts and incur liabilities;
6. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
7. Cause additional improvements to be made as a part of the Common Elements;
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;
9. Grant easements, leases, licenses or concessions through or over the Common Elements;
10. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Unit Owners;
11. Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, rules and regulations of the Association;
12. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration, resale certificates or statements of unpaid Assessments;
13. Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance as desired;



14. Assign its right to future income, including the right to receive Common Expense assessments, but only to the extent the Declaration expressly so provides;

15. Exercise any other powers conferred by the Declaration or Bylaws;

16. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

17. Exercise any other powers necessary and proper for the governance and operation of the Association; and

18. Employ and retain such professionals and other experts whose services may reasonably be required to effectively perform these duties.

C. Executive Board. Subject to other provisions of the Declaration and the Bylaws of the Association, the Executive Board ("Board") shall be appointed by Declarant or elected by the Members, as follows:

1. Except as otherwise provided in this Declaration, not later than the termination of any period of Declarant control, the Unit Owners shall elect a Board of at least three (3) members, the majority of whom must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election.

2. Except as otherwise provided in the Declaration or the Bylaws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise (i) if appointed by the Declarant, the care required of fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.

3. Notwithstanding any provision of the Declaration or the Bylaws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

4. The Board may not act on behalf of the Association to amend the Declaration, to terminate the CIC or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

D. Declarant Control of Association.

1. Subject to the phase-in of Member representation on the Executive Board as described below, there shall be an initial period of Declarant control of the Association during which Declarant or persons designated by it, may appoint and remove Association officers and members of the Board. The period of Declarant control terminates not later than the earlier of: (i) sixty days after conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than Declarant; or (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove members of the Board before termination of that period, but in that event, Declarant may require for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before becoming effective.

2. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Unit Owners other than the Declarant.

E. Budget. Within thirty (30) days after adoption of any proposed budget for the CIC, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

F. CIC Upkeep. Except to the extent otherwise provided by the Declaration, the Association is responsible for maintenance, repair, replacement and upkeep of the Common Elements. The Declarant alone is liable for all expenses in connection with real estate subject to the development rights. No other Unit Owner and no other portion of the CIC is subject to a claim for payment of those expenses.

G. Association Meetings. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Board, or by Unit Owners having at least fifty percent (50%) of the

votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove an officer or member of the Board.

H. Association Meeting, Quorum and Voting. A quorum is present throughout any meeting of the Association if persons entitled to cast fifty percent (50%) of the votes that may be cast for election of the Board are present in person or by proxy at the beginning of the meeting. Votes at a meeting where a quorum is present shall be cast as follows:

1. Members of the Association, including the Declarant, shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated as the principle, "one vote for one Unit."

2. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the Owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

3. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly-executed proxy. A Unit Owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy terminates one year after the date thereof, unless it specifies a shorter term.

4. Any Unit owned by the Association shall not be entitled to a vote.

5. Only members in good standing shall be entitled to vote. A member shall lose his good standing status should any Association assessment or fine remain delinquent for a period of more than thirty (30) days after payment was due.

6. Voting rights of Members, as set forth in the Bylaws may not be inconsistent with the provisions of this Article.

I. Association Conveyance or Encumbrance of Common Elements.

1. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by Declarant agree to that action.

2. An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners.

3. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements, but the contract is not enforceable against the Association until approved pursuant to subsections (1) and (2). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

4. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the CIC is void.

5. A conveyance of or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access and support.

6. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

L. Insurance.

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

a. Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles must not be less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

b. Liability insurance, including medical payments insurance, in an amount determined by the Board, so as to cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

2. If the insurance described in subsection (1) is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

3. Insurance policies carried pursuant to subsection (1) must provide that:

a. Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association.

b. The insurer waives its right to subrogation under the policy against any Unit Owner or member of the household;

c. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

d. If, at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

4. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of subsection (7), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the CIC is terminated.

5. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

6. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after

notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

7. Any portion of the CIC for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the CIC is terminated; (ii) repair or replacement would be illegal under any State or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Unit Owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire CIC is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the CIC. The remainder of the proceeds must be distributed to all the Unit Owners or lienholders as their interests may appear, in proportion to the common expense liability of all of the Units.

#### IX. THE MASTER ASSOCIATION

A. Formation. This CIC and all CICs within the North Lake development shall be a part of a Master Association known or to be known as Canaan Mountain Resort Master Association. The Master Association may be either a nonprofit corporation or an unincorporated association and may be formed before or contemporaneously with the filing of a Declaration for a second CIC, if any, within the Canaan Mountain Resort Development.

B. Election of Executive Board. Following the period of Declarant Control, the Executive Board of each CIC which is subject to the Master Association shall elect one (1) member of the Executive Board of the Master Association.

C. Powers of the Master Association. The Master Association may act on behalf of and for the benefit of the Unit Owners of all the CICs comprising the Canaan Mountain Resort in all matters which affect all Unit Owners. The Master Association shall specifically oversee the operation of the Architectural Committee. Matters affecting the Common Elements of an individual CIC are reserved only unto the Owner's Association of that particular CIC.

D. Expenses of the Master Association. Expenses of the Master Association shall be an expense of the CIC, subject to the Master Association, the costs of which shall be paid for through assessments.

E. Completion of the Canaan Mountain Resort Development. At such time as the Declarant shall notify the Master Association that the Canaan Mountain Resort Development is substantially completed, the Unit Owners of the individual CICs may, pursuant to §36B-2-121

of the Act, merge the CICs into one Association possessing all powers on behalf of and for the benefit of all Unit Owners which are set forth herein and in the Act.

#### **X. ASSESSMENT FOR COMMON EXPENSES; LIENS; RECORDS**

A. Creation of Lien and Personal Obligations for Assessments. The Declarant, until a common expense assessment is made by the Association, shall pay all common expenses. Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association (i) annual assessments or charges, (ii) special assessments for capital improvements, and (iii) additional assessments, all such assessments to be established and collected as hereafter provided. The annual, special and additional assessments, together with interest at the rate of eighteen percent (18%) per annum, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to a successor in title unless expressly assumed by the successor in title.

B. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of Units within the Property and for the improvement and maintenance of the Common Elements and as is otherwise consistent with the rights and responsibilities of the Association hereunder and for the benefit of the Members.

C. Annual Assessment. Assessments must be made at least annually, based on a budget adopted at least annually by the Association.

D. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, and/or to meet any other emergency or unforeseen expenses of the Association. Assessments to pay a judgment against the Association may be made only against the Units in the CIC at the time the judgment was entered, and in proportion to their Common Expense liability.

E. Reserve Fund. The annual assessment may include an amount adequate to establish a reserve fund for replacement of capital improvements in the Common Areas.

F. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis, or other periodic basis not more often than monthly, or less often than annually, as provided by the Board of Directors; provided, however, that Declarant shall not be required to pay any assessment for any Unit owned by Declarant or its agent until construction of improvements for a home on the Unit has been completed and the improvements have been occupied.

G. Additional Assessments. Additional assessments may be fixed against any Unit only as provided for in this Declaration. Any assessment upon less than all of the Units shall be due only as provided by the Board of Directors in making any such assessment:

1. To the extent reasonably determinable, any Common Expense or portion thereof benefitting fewer than all of the Unit Owners must be assessed exclusively against the Units benefitted.

2. If any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against his Unit.

H. Surplus Receipts. Any surplus of receipts over expenses of the Association for any fiscal year shall be either applied to reduce the assessment necessary to meet the budget adopted by the Association for the next fiscal year or paid into a reserve fund of the Association, as determined by resolution of the Board of Directors.

I. Date of Commencement of Annual Assessments; Due Dates.

The annual assessments provided for herein shall commence as to all Units on the first day of January of each year. The first annual assessment shall be fixed by the Board of Directors and shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the Association shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

J. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum and shall be subject to a late charge of Five Dollars (\$5.00), and the Board of Directors shall have the right to declare the entire balance of the annual assessment and accrued interest thereon to be immediately due and payable. In addition, the Owner shall be liable for all costs of collecting any such assessment, including reasonable attorney's fees and court costs. All such interest, late charges and costs of



collection shall be deemed to be an additional assessment hereunder. The Association may bring an action at law against the Owner personally obligated to pay the same and/or, without waiving any other right, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of his Unit.

K. Lien for Assessments. The total annual assessment for each Unit Owner for Common Expenses or any special assessment, or any other sum duly levied (including without limitation, fines, interest, late charges, etc.), made pursuant to the Bylaws, is a lien levied against the Unit of such Unit Owner as provided in Section 36B-3-115 of the Uniform Common Interest Ownership Act, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the CIC and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than seven days after delivery to the Unit Owner of notice of such special assessment or levy. The Executive Board may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien.

L. Association Records. The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing CIC assets and to permit the Association to provide, upon request and for a Fifty Dollar (\$50.00) fee relative to each Unit, a Unit Resale Certificate setting forth information required by a Unit Owner selling to lawfully reconvey his Unit pursuant to West Virginia Code, §36B-4-109, or as such requirements may, from time to time, be amended. All financial and other records must be made reasonably available for examination by any Unit Owner and his authorized agents.

## XI. ARCHITECTURAL COMMITTEE

A. Formation. The Architectural Committee shall be appointed by the Executive Board and comprised of three (3) or more individuals so designated from time to time by (1) Declarant until date of relinquishment of Declarant control to the Association and (2) by the Board of Directors thereafter.

B. Building Restrictions. No Improvement shall be commenced, erected or maintained on any Unit nor shall the exterior appearance of any Improvement be changed or altered, nor shall the natural state of any area of any Lot be disturbed or altered after completion of construction, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Improvement, until the plans and specifications showing the nature, kind, shape, dimensions, materials, floor plans, color schemes, location, exterior plans and details, paving plans and location, landscaping details, proposed topographical changes,

together with the estimated cost of said work, the Owner's proposed construction schedule, and a designation of the party or parties to perform the work have been submitted to and approved in writing by the Architectural Committee. In the event the Architectural Committee fails to approve or disapprove such design and location in writing within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

C. Committee Criteria. The Architectural Committee shall consider such plans and specifications for approval upon the basis of among other things, the harmony of exterior design and location in relation to surrounding Improvements and topography, the nature and durability of the materials, quality of workmanship, choice of colors and materials, grade elevations and/or drainage, the ability of the party or parties designated by the Owner to complete the work proposed in accordance with the plans and specifications submitted, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability, etc. In reviewing the plans, the Architectural Committee may also consider factors of public health and safety, the affect the proposed work will have on the use, enjoyment and value of surrounding properties, and/or the outlook or view of other neighboring properties and the suitability of the proposed improvements or alterations considering the general aesthetic values of the surrounding area.

D. Approval of Plans. The applicant shall submit for approval two sets of plans and specifications. Upon approval by the Architectural Committee, one copy of such plans and specifications shall be retained by the Committee, and the other bearing the approval of the Committee in writing shall be returned to the applicant.

E. Disapproval of Plans. In any case where the Architectural Committee shall disapprove the plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement in writing of the grounds upon which such action was based. In any such case, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. The decision of the Architectural Committee shall be subject to appeal to and review by the Executive Board.

F. Variances. The Architectural Committee may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and

purpose of the general development scheme and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

G. Non-Approved Structures. If any structure shall be altered, erected, placed or maintained upon any Unit, or any new use commenced on any Unit, in violation of the provisions hereof, such structure or new use shall be removed, and such use shall be terminated so as to extinguish such violation. If within fifteen (15) days after notice from the Board of Directors of such violation, the Owner of the Unit upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association, through its agents and employees, shall have the right to enter upon the Unit and to take such steps as it deems necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of the Owner of the Unit, and an additional assessment upon the Unit.

H. Landscaping. All areas of a Lot which have been exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times. The Lot shall be returned to grade and all landscaping shall be completed within six (6) months of the completion of construction.

I. Completion of Construction. Upon completion of construction of any Improvement in accordance with the provisions hereof, the Architectural Committee, upon request of the applicant shall issue a Certificate of Compliance in form suitable for recordation among the records of the aforesaid Clerk's Office, identifying such Improvement and the Lot on which it is placed, and stating that the Improvement has been completed pursuant to the terms hereof. Preparation and recording of such Certificate shall be at the expense of the applicant. Any Certificate of Completion issued pursuant hereto shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith, and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Improvements on the Lot noted in such certificate comply with the provisions hereof.

J. Examination Fee. The Architectural Committee may charge and collect a reasonable fee for the examination of the plans and specifications submitted for approval. Such payment shall be made at the time such plans and specifications are submitted, provided that such charge shall not exceed the amount chargeable by the appropriate governmental authority for the application and processing of building permits for Structures. Such fee shall be retained by the Association, and not by the Architectural Committee. The members of the Architectural Committee shall serve without compensation unless specifically approved by the Association.

K. Architectural Committee Rules. The Architectural Committee to the extent of its functions hereunder and rights specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration.

L. Declarant Exemptions. The provisions of this Article shall not apply to any Improvements commenced, erected or maintained by Declarant on any Lot, or within the Property.

## XII. DESCRIPTION OF DEVELOPMENT RIGHTS

A. Reservation of Development Rights. Declarant reserves the following development rights:

1. To develop common interest communities upon real estate contiguous hereto or contiguous to another tract of real estate already developed by Declarant.

2. To create a maximum of ninety-nine (99) Units within the property and upon real estate as aforesaid;

3. To have the Association of each CIC become a member of a Master Association.

4. To sub-divide Lots, combine Lots or convert Lots into common elements, to create additional elements and/or limited common elements within the aforesaid real estate which may be merged with other properties within the Canaan Mountain Resort Development.

5. Declarant reserves unto itself, its successors or assigns, the right to vacate or to modify in size or location any or all of the streets or utility easements or drainage rights of way now designated on the recorded plat of the Subdivision.

6. Declarant reserves unto itself, its successors or assigns, the right to extend or enlarge existing roadways, utilities or easements within the Subdivision and into areas outside the CIC to increase or provide access for purposes of ingress and egress from the CIC or to permit others to use the utility rights of way for acquiring services.

7. Declarant may use any Unit as a model home and for sales, management and/or construction offices during the Development Period.

## XIII. THE PLATS

The Plats are surveys which set forth the measurements, locations and other required data with respect to (1) the parcel of land dedicated to the CIC and its exterior boundaries, (2) the

Units and (3) the Common Elements. Such plats have been recorded in the Office of the Clerk of the County Commission of Tucker County, West Virginia, contemporaneously with the recordation of this Declaration. Declarant reserves the right to and may cause to be recorded in the aforesaid Clerk's Office from time to time amended plats or plans showing the locations and dimensions of the boundaries of the CIC or Units contained therein, for which amended plats or plans are completed after the date hereof. In this Declaration, whenever the terms "plats" or "plans" appear, they shall be deemed to include such amended plats or plans as may hereafter be recorded pursuant to this paragraph.

#### **XIV. REMEDIES**

In the event of any violation of the provisions of the Declaration, Bylaws or Rules and Regulations of the Board or Association by any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit), the Association or its successors or assigns, or the Board or its agent, shall have each and all of the rights and remedies which may be provided for in the Uniform Common Interest Ownership Act to which the CIC is submitted, the Declaration, Bylaws or Rules and Regulations, or other like sources which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Unit Owner for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages, injunctions or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at a rate of no more than that permitted by law until paid, and shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expense. The Board shall have a lien for all of the same, as well as for non-payment of his respective share of the Common Expenses upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of the additions and improvements thereto and all of the personalty in, upon or located elsewhere on the property.

#### **XV. NO WARRANTY OF QUALITY**

North Lake Subdivision is a Common Interest Community created and designed for use as a residential community. It is understood that by purchasing a Lot, any and all Purchasers/Owners agree that all implied warranties of quality are excluded. Lots are being offered for sale by Declarant upon an "AS IS" basis. All Lot Owners, their heirs, successors and assigns, by their acceptance

and recordation of the deed of their individual Lot, acknowledge the conditions of the Lot and accept the same as it is, and fully understand that the Declarant has made no representations whatsoever, either directly or impliedly, as to the fitness of the Lot for its use in any manner whatsoever.

#### **XVI. TERMINATION AND EMINENT DOMAIN**

A. Termination. Subject to the rights of Mortgagees, the Owners may terminate the Condominium and this Declaration, by the vote of 80 percent of the votes allocated to all Memberships. If the necessary votes are obtained, the agreement of the Owners to terminate the Condominium and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the Tucker County Records, the Condominium shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Condominium during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

B. Eminent Domain. If a Unit is acquired by eminent domain or any part of any Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Lot and its allocated interests, whether or not any Common Elements or Limited Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

#### **XVII. AMENDMENT**

A. The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission by vote or agreement of Unit Owners owning Units to which not less than sixty-seven percent (67%) of the votes in the Association are allocated, and which is prepared, executed, acknowledged and properly recorded for the Association by its Secretary; provided, however, no change, modification or rescission may increase or create special Declarant rights, increase or limit the number of Units, alter Unit boundaries, the allocated interests of a Unit or the uses to which any Unit is restricted. Any instrument changing, modifying or rescinding any provision of this Declaration with respect to permitted amendments shall be signed by all the Unit Owners.

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

#### XVIII. SEVERABILITY

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

#### XIX. NOTICES

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

## XX. SEPARATE TITLES AND TAXATION

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

## XXI. RIGHTS AND OBLIGATIONS OF GRANTEES

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

## XXII. HEADINGS

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

THEREFORE

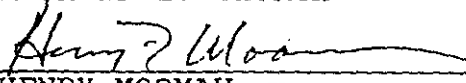
IN EXECUTION AND SUBMISSION OF THE WITHIN DECLARATION, NOW WITNESSETH THE NAME, SEAL AND SIGNATURE OF THE DECLARANT.

NORTH LAKE, LLC, a  
West Virginia limited  
liability company,

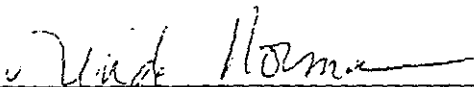
By: Its Managing Members

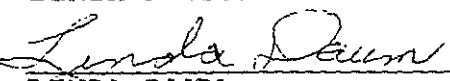
  
STEVEN W. RICHARDS

  
RAYMOND E. CHURCH

  
HENRY MOOMAU

  
GARY DAUM

  
LINDA NORMAN

  
LINDA DAUM

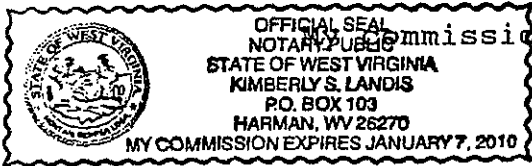


STATE OF WEST VIRGINIA

COUNTY OF Tucker, TO-WIT:

I, Kimberly Sue Landis, a Notary Public in and for the county and State aforesaid, do hereby certify that Steven W. Richards, who signed the writing above, bearing date 11/20, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.

Given under my hand this 20<sup>th</sup> day of November, 2002.



Kimberly Sue Landis  
NOTARY PUBLIC

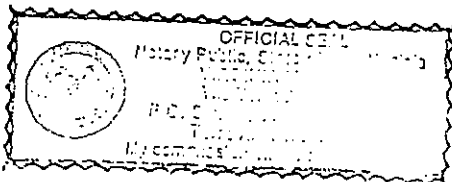
STATE OF WEST VIRGINIA

COUNTY OF Putnam, TO-WIT:

I, Virginia M. Dutton, a Notary Public in and for the county and State aforesaid, do hereby certify that Raymond E. Church, who signed the writing above, bearing date Nov 22, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.

Given under my hand this 22 day of Nov, 2002.

My commission expires: June 28, 2006.

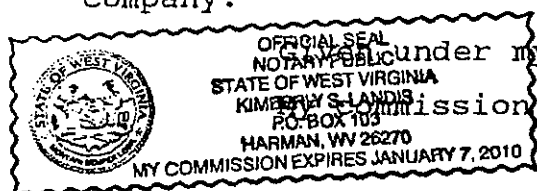


Virginia M. Dutton  
NOTARY PUBLIC

STATE OF WEST VIRGINIA

COUNTY OF Tucker, TO-WIT:

I, Kimberly Sue Landis, a Notary Public in and for the county and State aforesaid, do hereby certify that Henry Moomau, who signed the writing above, bearing date 11/20, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.



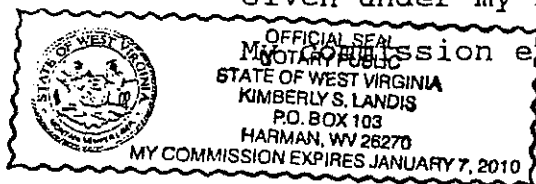
Given under my hand this 20<sup>th</sup> day of November, 2002. My Commission expires: January 7<sup>th</sup> 2010.

Kimberly Sue Landis  
NOTARY PUBLIC

STATE OF WEST VIRGINIA

COUNTY OF Tucker, TO-WIT:

I, Kimberly Sue Landis, a Notary Public in and for the county and State aforesaid, do hereby certify that Gary Daum, who signed the writing above, bearing date 11/20, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.



Given under my hand this 20<sup>th</sup> day of November, 2002.

My Commission expires: January 7<sup>th</sup> 2010.

Kimberly Sue Landis  
NOTARY PUBLIC

Prepared by:

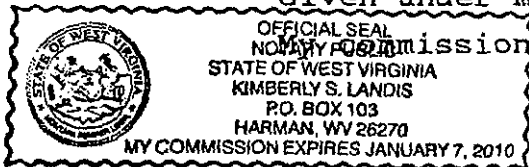
STEPHEN G. JORY  
Jory & Smith, L.C.  
P.O. Box 1909  
One Randolph Avenue  
Elkins, WV 26241

STATE OF WEST VIRGINIA

COUNTY OF Tucker, TO-WIT:

I, Kimberly Sue Landis, a Notary Public in and for the county and State aforesaid, do hereby certify that Linda Norman, who signed the writing above, bearing date 11/20, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.

Given under my hand this 20<sup>th</sup> day of November, 2002.



My commission expires: January 7, 2010.

Kimberly Sue Landis

NOTARY PUBLIC

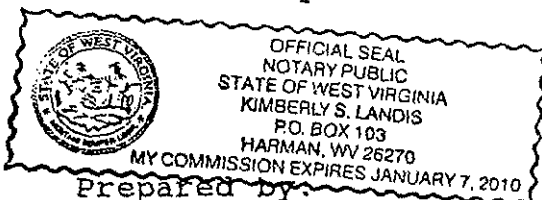
STATE OF WEST VIRGINIA

COUNTY OF Tucker, TO-WIT:

I, Kimberly Sue Landis, a Notary Public in and for the county and State aforesaid, do hereby certify that Linda Daum, who signed the writing above, bearing date 11/20, 2002, as a Member/Manager of NORTH LAKE, LLC, a West Virginia limited liability company, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said company.

Given under my hand this 20<sup>th</sup> day of November, 2002.

My commission expires: January 7, 2010.



Prepared by:

Kimberly Sue Landis

NOTARY PUBLIC

STEPHEN G. JORY  
Jory & Smith, L.C.  
P.O. Box 1909  
One Randolph Avenue  
Elkins, WV 26241