

7. led. May 14/94
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Capon Glen
SECTION II
Dedication of Plat and
Declaration of Protective Covenants
Conditions and Restrictions

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

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

ARTICLE I
DEFINITIONS

1. "Association" shall mean and refer to Capon Glen Property Owners' Association, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.
3. "Property" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Lot" shall mean and refer to any numbered or lettered plat of land shown upon the recorded subdivision plat of the property.
5. "Declarant" shall mean GRANTOR/DEVELOPER and refer to its successors and assigns.

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ARTICLE II
MEMBERSHIP, VOTING RIGHTS, AND OBJECTIVES

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

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

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

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

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

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

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENT

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

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

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

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

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

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

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

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

ARTICLE IV USE RESTRICTIONS

1. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area, (said signs must comply with Hampshire County ordinances relating to erection of signs), except for directional and information signs provided by the Declarant.
2. Resubdivision of the lots is prohibited.
3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot. Consequently, in the construction of a driveway into any lot, a minimum twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to facilitate natural drainage. No parking that obstructs traffic is permitted upon any road within the property, and as part of the development of any lot, the Owner shall provide adequate off-road parking for himself and his guest(s).
4. Due to the unsightliness of junk vehicles, no motor vehicle or trailer which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any lot. Temporary camping trailers may be placed on any lot, provided they are in compliance with Hampshire County and West Virginia laws concerning temporary camping. Temporary camping Trailers may be kept on the property for no more than four months at a time, and no more than six months per year, for the personal use of the owner and his immediate family.
5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building permanent structures, and in such cases, for a period not to exceed twelve (12) months.
6. Not more than one single family residence shall be erected on a lot. Residences built in wooded areas shall contain a minimum of 1000 square feet for a single story or ranch style residence and a minimum of 1400 square feet for a two story residence. Residences built in open areas shall have a minimum of 1200 square feet for a single story or ranch style residence and

a minimum of 1600 square feet for a two story residence. Said square foot minimum is of living area, excluding basement, garage, porch, carport, deck, and overhanging eaves. All exterior construction must be completed and closed in within twelve (12) months of the commencement of construction. No exterior siding of masonry block or cinderblock shall be permitted. Mobile homes are not permitted. Property owner agrees to comply with all government requirements concerning soil and erosion control. This paragraph does not apply to existing structures on the property as of the date of the recordation of this instrument. The declarant may modify the home size requirement for wooded tracts at the initial conveyance from declarant.

7. Each lot shall be used for residential/recreational purposes only, and any garage, barn, or guest house must conform generally in appearance and material with any dwelling on said lot.

Notwithstanding the prior paragraph, the following uses are permitted, subject to applicable state and local laws:

(a) Home occupations conducted by occupant.

(b) Agricultural uses, including incidental use and the construction of accessory buildings connected with agriculture or with the building of a residence, including storage of temporary camping and lawn maintenance equipment. Said accessory buildings may be constructed before construction of the residence. Said accessory buildings shall not be used for temporary sleeping or camping quarters.

(c) Not more than one domesticated animal (excluding dogs and cats) per three acres shall be permitted per lot, unless otherwise approved by the Board of Directors of the Property Owners Association, provided that no pigs or pig pens are allowed within the subdivision. Operation of any laying hen, broiler houses, or other poultry business is prohibited. Pets and domesticated animals must be fenced or otherwise prevented from roaming.

8. The owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any lot owned by him. Owners likewise agree to repair and restore promptly to its prior condition any part of a subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's lot. All lots improved or unimproved must be maintained by Owner in a neat and orderly condition at all times. No garbage, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any lot.

9. No building shall be erected closer than twenty (20) feet from any side property line and twenty-five (25) feet from the front and rear property line, and fifty feet (50) from Dillon's run, with the exception that where two or three tracts are used together for the construction of one dwelling, then said setbacks shall apply only to the outside lines. However, where two or more lots are used together for construction of a dwellinghouse and where the setback rule is thus waived, the two or more lots which comprise the homestead shall thereafter be sold and conveyed as one unit, but voting and membership rights shall not be affected. This paragraph does not apply to structures existing prior to the recordation of this instrument.

10. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia State Health Department, Hampshire County Health Department, and any other governmental agency regulating the installation of sewage disposal systems.

11. No lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All raw materials must be kept from view where possible. In the event any lot owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Property Owners Association, upon two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days written notice to the owners of the property, the Property Owners Association shall have the right, through its agents and employees to enter upon said lot and perform necessary maintenance repairs (including mowing and removal of grass or brush over 24" high), and restoration, or improve any offending material or object. Such action shall not be deemed a trespass, and the cost of same when performed by the Association shall be added to and become a part of the assessment to which such lot is subject.

12. The Declarant reserves unto themselves, and their assigns, the right to erect, maintain, operate and replace telephone and electric light poles, conduits and related equipment, and water, gas and sewer lines, and the right to grant easements or rights-of-way therefore, over, on and under a strip of land twenty (20) feet wide along all property lines not serving as the centerline for rights-of-ways, and twenty (20) feet along all the rights-of-ways (and additional width as necessary for guying purposes), in addition to easements reserved by any other instrument duly recorded. Where the centerline of roadways or rights-of-ways serve as the property line of a lot, then the twenty (20) foot wide easement herein otherwise reserved, shall exclude any portion of the lot included in the roadways or rights-of-ways, and extend instead, across the remainder of the lot bounding on said roadways or rights-of-ways. Nothing herein shall be construed as creating any duty on Declarant to install or maintain any utility services, however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners.

13. Each lot owner shall have an unobstructed right-of-way and easement over and across the roads as shown on the subdivision plat as recorded from time to time, for the purpose of ingress and egress to and from the public roads and any common facilities in the development. No part of any lot may be sold or used as a road or right-of-way to any land outside the Property without advance, written permission of Declarant. The lot owners association of Capon Glen shall be solely responsible for the maintenance of the subdivision roads.

14. The Developer has granted easements for utility services, but the all expenses associated with the installation of utilities are the responsibility of the lot owner and not the developer. The utilities along the entire road frontage of Lot (8) are to be installed underground and service to the residence of Lot (8) is to be underground. The developer agrees to incur the incremental expenses associated with the installation of the underground utilities along the road frontage of Lot (8). The Owner of Lot (8) is to incur the entire expense of the underground service to the residence and other structures on Lot (8).

15. Reasonable cutting of wood or timber for land clearing is permitted. However, no cutting of wood for commercial purposes is allowed.

16. The use of any recreational motor vehicles (such as

motorized trail bikes, motorcycles, three and four wheelers, etc.) for recreational purposes is prohibited within the subdivision.

17. Hunting and the discharging of firearms within the Capon Glen Subdivision is prohibited.

18. If any Lot Owner shall violate any of the covenants herein, it shall be lawful for any other person, or persons or legal entities owning real estate situated in said subdivision or the Imperial Properties Owners Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, either to prevent him or them from so doing or to recover damages or other dues for such violation. Failure to enforce any provisions herein contained shall in no way be deemed a waiver of the right to do so hereafter.

19. The Association, by vote of two-thirds (2/3) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which together with the above, may be enforced by monetary penalties or other reasonable means deemed advisable by the Association.

ARTICLE V GENERAL PROVISIONS

1. Declarant reserves the right to replat any unsold lots or lots. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s).

2. In the event state, local government, and utility companies, or Declarant, requires the installation of a public utility system with the area of which this subdivision is a part, the grantee or grantees, by the acceptance of a deed, so hereby agree to pay their proportionate share for the cost of erection, maintenance and operation thereof as determined by the above authority.

3. The Association or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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5. Declarant reserves right to reasonably modify, change or waiver these covenants herein without the consent of any of the owners for a period of one year from date of the sale of the last lot by Declarant in Capon Glen.

ARTICLE VI

1. The covenants, restrictions and other provision of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by not less than seventy-five (75%) percent of the lot owners.

2. Invalidation of any of the covenants, restrictions or other provisions of this Declaration by Judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

3. Whenever in this Declaration the context so required, the masculine gender includes the feminine and neuter singular number includes the plural and the plural number includes the singular.

WITNESS THE FOLLOWING SIGNATURE AND SEAL of John E. Folds, President, Imperial Properties, Inc. who has caused this instrument to be executed and delivered this 23 day of June, 1995.

BY: John E. Folds
John E. Folds, President
Imperial Properties, Inc.

STATE OF WEST VIRGINIA
COUNTY OF Fairfax TO-WIT:

The foregoing instrument was acknowledged before me this 23rd day of June, 1995, by John E. Folds

My commission expires: 8/31/96
Robert L. Pickard
NOTARY PUBLIC

Commission Expires
Robert L. Pickard

STATE OF WEST VIRGINIA, County of Hampshire, to-wit:
Be it remembered that on the 23rd day of August, 1995, at 11:57 A M.,
this Covenants was presented in the Clerk's Office of the County Commission of said County
and with the certificate thereof annexed, admitted to record.

Attest: Nancy C. Zeller Clerk
County Commission, Hampshire County, W. Va.