

60-20  
mailed: 1-11-10

BOWLES RICE MCDAVID GRAFF & LOVE LLP  
7000 HAMPTON CENTER STE K  
MORGANTOWN, WV 26505-1720

45

75833

BOOK 488 PAGE 49

## DECLARATION OF COMMON INTEREST COMMUNITY

FOR

### SLEEPY KNOLLS SUBDIVISION

a Planned Development form of Common Interest Community  
situate in  
Gore District of Hampshire County, West Virginia

THIS DECLARATION OF COMMON INTEREST COMMUNITY FOR THE SLEEPY KNOLLS SUBDIVISION, is effective the 23<sup>rd</sup> day of December, 2009, and Sleepy Creek Holdings, LLP, a West Virginia limited liability company (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements for itself and its grantees and assigns, hereby makes the following declaration:

1. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP. Declarant does hereby submit, dedicate and declare Sleepy Knolls Subdivision as a Planned Development form of Common Interest Community, in the manner provided for by Chapter 36B of the West Virginia Code ("Act"), as amended to the date hereof ("Subdivision").

2. SUBDIVISION NAME AND LOCATION. The name by which the Subdivision is to be identified is "Sleepy Knolls". The Subdivision is located near West Virginia Route 50 in Gore Tax District, Hampshire County, West Virginia.

3. THE LAND. The Subdivision is a 93.364 acre, more or less, tract of land, comprised of roads, easements, rights-of-way, utility systems, and Common Elements, all as more particularly depicted, shown, set forth and described on that certain map or plat entitled Final Plat of Sleepy Knolls Subdivision Lots 1 - 62, prepared by Moreland's Surveying & Consulting, Inc., dated 2009, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 11 at Page 169 et seq, which said map or plat is contained in eight (8) sheets and is attached hereto and incorporated herein by reference for descriptive and all other pertinent purposes (the map or plat and all amendments thereto are hereinafter individually "Plat" and collectively "Plats"). Notwithstanding the foregoing, there is excepted and reserved, and not hereby dedicated Unit 6 as conveyed to from Declarant to Roger N. Cox by instrument recorded in Deed Book No. 466 at Page No. 561 and Unit 6 is excluded from this Declaration, this dedication and the Subdivision except to the extent that Declarant is vested with an express easement for those portions of Jennifer Drive and Sheila Court situate on Unit 6 and such easements are dedicated as Common Elements of the Subdivision. With the exception of the easements for Jennifer Lane and Sheila Court no easement or set-back reserved over, across or through an Unit is imposed on Unit 6. Unit 6 is not subject to the covenants and restrictions herein and the owners thereof are not members of Association. Unit 6 is depicted and shown on the Plat, and labeled a Unit thereon, exclusively because it was originally intended to be part of the Subdivision but did not become part of the Subdivision due to the fact that it was conveyed by Declarant prior to this instrument. No inference shall be made or drawn by the label "Unit" utilized to identify Unit 6 and it is not a "Unit" under WV Code 36B. All Legal Notes set forth on Plat are incorporated herein by reference.

4. DEFINITIONS. Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless, as used elsewhere, the text or context in which such terms

as used indicates another contrary or more specific definition:

4.1. **"Allocated Interest"** means each Unit's respective share of the votes and expenses of Association.

4.2. **"Articles of Incorporation"** means the organizational instrument which established the structure of Association and is the basis for issuance of Association's corporate charter by the West Virginia Secretary of State. To the extent that there is any conflict between the provisions of the Articles of Incorporation and this instrument, this instrument shall govern.

4.3. **"Association"** means Sleepy Knolls Subdivision Association Inc., a non-profit non-stock corporation, its successors and assigns. Association owns all Common Elements and is the governing body for, among other matters, maintenance, repair, replacement, administration and operation of the Common Elements as more particularly set forth herein below.

4.4. **"Board"** means the Board of Directors of the Association herein designated to act on behalf of the Association. The Board is the "Executive Board" pursuant to the Act.

4.5. **"Building Control Committee" or "BCC"** mean a committee of the Association appointed by its Board to: (a) set and maintain Construction Standards and Construction Guidelines; and (b) to approve or disapprove construction plans and specifications for all changes to the Units and Common Elements. The BCC is delegated authority at the direction of the Board and all BCC actions are subject to appeal to, and oversight and review by, the Board.

4.6. **"Bylaws"** means the bylaws of the Association as the same may be amended from time to time and which govern the daily operation of the Association to the extent not specified in this instrument and the Articles of Incorporation. To the extent that there is any conflict between the provisions of the bylaws and the Articles of Incorporation, the Articles of Incorporation shall govern. To the extent that there is any conflict between the By-Laws and this instrument, this instrument shall govern.

4.7. **"Common Elements"** means all portions of the Subdivision other than the Units, and which are owned in fee, easement or otherwise by the Association., including all improvements thereto made either by the Declarant or Association.

4.8. **"Common Expense(s)"** means expenditures made by, or financial liabilities of, the Association, including but not limited to costs incurred by the Association in its ownership, management, operation, maintenance, and/or upkeep of the Common Elements. Common Expenses also include the cost of insurance, administrative fees, taxes and all other costs reasonably incurred by the Association.

4.9. **"Common Expense Liability"** means the liability apportioned to each Unit by this Declaration for the Common Expenses of the Association.

4.10. **"Common Interest Community" or "CIC"** means 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 described in a declaration.

4.11. **"Construction Guidelines"** means rules and regulations of the Association pertaining to changes, modifications or improvements made to a Unit or a Dwelling. Construction Guidelines differ from Construction Standards set forth herein to the extent that Construction Guidelines will be implemented from time to time by the Association after the recordation of this document for the purpose of supplementing the Construction Standards. This instrument constitutes notice that Construction

Guidelines which are not of public record may govern the Units and all parties are charged with notice to make inquiry as to same.

4.12. **"Construction Standards"** means protective and restrictive covenants governing, limiting and setting the criteria for any change, modification or improvement to a Unit or any Unit improvement as set forth below.

4.13. **"Declarant"** means Sleepy Creek Holdings, LLP, a West Virginia limited liability company, and its successors and assigns, excluding as successors and assigns all purchasers of Units and lien holders of any Unit and their successors and assigns. Provided, however, that a Unit Purchaser may be a successor to Declarant with regard to some or all of Declarant's duties, obligations, Special Declarant's Rights, privileges, easements, rights-of-way, licenses and rights of use if the deed from Declarant so specifies and is executed by the purchaser acknowledging receipt and acceptance of same.

4.14. **"Declaration"** means this instrument and any amendments hereto, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a Planned Community form of Common Interest Community.

4.15. **"Dedicate, Dedication, Dedicated"** means recordation in the office of the Clerk of the County Commission of Hampshire County, West Virginia, of this Declaration or any amendment hereto whereby land is made a part of the Subdivision and by operation of said Declaration or amendment, the real property must be owned, held, transferred, sold, granted, conveyed, leased, and occupied subject to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration or any amendments hereto. No instrument constitutes a dedication unless manifest intent to accomplish the foregoing, or any of the same, is apparent from the four corners of the instrument.

4.16. **"Development Rights"** means any rights or combination of rights which may be reserved by a CIC Declarant in a Declaration to (1) add real estate to the Subdivision; (2) create and complete Units and Common Elements (including Limited Common Elements) within the Subdivision; (3) subdivide Units or convert Units into Common Elements; (4) add real estate to, or withdraw real estate from, the Subdivision, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units. **No Development Rights are reserved to or by Declarant in this Declaration.**

4.17. **"Dwelling"** means any house or dwelling structure which, when completed, will be suitable for occupancy.

4.18. **"Dispose or Disposition"** means a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.

4.19. **"Finished Living Area"** means enclosed above-ground living area exclusive of basements, porches, decks and garages.

4.20. **"Foundation"** means all portions of a Dwelling situate below the Main Floor, as defined below.

4.21. **"Governing Documents"** means, collectively and individually, this Declaration and all exhibits and amendments hereto, the Bylaws, Articles of Incorporation, Construction Guidelines, Construction Standards, and Rules and Regulations, all as may from time to time be amended.

4.22. **"Improvement"** means an item of any variety set, placed or put on any Unit.

- 4.23. **"Limited Common Elements"** means those Common Elements which are expressly or impliedly dedicated for use by less than all Units as set forth, described, delineated and identified herein below.
- 4.24. **"Main Floor"** means the lowest story of a Dwelling which contains the main or primary entrance from the street.
- 4.25. **"Masonry Materials"** means brick, natural stone, cultured stone or such other appropriate materials of similar quality and function which have the appearance of masonry or stone.
- 4.26. **"Member"** means any and every person or entity which is a Unit Owner as hereinafter defined. Ownership of a security interest in, or leasehold interest in, a Unit does not result in membership in the Association.
- 4.27. **"Plats"** means those plats of survey and plans of the Subdivision heretofore described and recorded in the aforesaid Clerk's Office, together with those plats of the Subdivision hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.
- 4.28. **"Procedural Covenant"** means the covenants set forth below which requires that Unit Owners secure BCC and/or Association approval prior to commencing construction of certain improvements to Units.
- 4.29. **"Setback"** means limitations imposed around the perimeter of Units limiting the locations where improvements may be constructed, built, installed or placed on the Units.
- 4.30. **"Special Declarant's Rights"** means rights expressly reserved for the benefit of a Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) appoint or remove any officer of the Association or any Board of Directors' member during any period of Declarant's control; (iii) use easements through the Common Elements for the purpose of making improvements within the Subdivision, and (iv) maintain sales offices, management offices, and signs advertising the Subdivision and model Units and model homes. The statutory definition of Special Declarant's Rights includes the following which are not reserved for the benefit of Declarant because Declarant has not reserved any Development Rights: (i) the right to exercise any Development Right; (ii) the right to use easements through the Common Elements for the purpose of making improvements within real estate that may be added to the Subdivision; and (iii) the right to merge or consolidate the Subdivision with another Common Interest Community of the same form of ownership.
- 4.31. **"Storm Water System"** means the comprehensive storm water management and control system designed by architects and engineers for the Declarant which is intended to collect, distribute and control surface water, storm water and drainage in the Subdivision. The Storm Water System is improvements to Common Elements and to the extent any aspect of the Storm Water System is or was constructed by the Declarant or Association, the same is a Common Element.
- 4.32. **"Substantive Covenant"** means each of the Construction Standards which establish substantive, rather than procedural, requirements governing improvements to Units.
- 4.33. **"Story"** means the space between the floor below, and the floor above, and if there is no floor above then the distance between the floor below and the ceiling above.
- 4.34. **"Substantive Covenant"** means each of the Construction Standards which establish substantive, rather than procedural, requirements governing improvements to Units.

4.35. **"Treatment System"** means the private sanitary sewer system situate within the Subdivision which is a Common Element owned by the Association for the benefit of all Units in the Subdivision. Those portions of the Treatment System constructed by Unit Owners after the date of this Declaration such as Unit distribution lines are not Common Elements.

4.36. **"Unit"** means a physical portion of the Subdivision designated for separate ownership or occupancy, the boundaries of which are shown on the Plat excepting and excluding Unit 6 which is not owned by Declarant. Each Unit includes, as an appurtenance thereto: (a) membership in the Association; (b) a share of votes on Association business; (c) a portion of the Common Expenses; and (d) a right to utilize all Common Elements. Unit 6 is not a "Unit" in the Subdivision subject to this Declaration.

4.37. **"Unit Owner"** means any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding an interest merely as security for performance of an obligation and those holding only a leasehold interest or right to occupy a Unit. The owners of Unit 6 which is not part of the Subdivision are not Unit Owners for the purposes of this Declaration.

4.38. **"Use Restrictions"** means the restrictions and limitations below governing the use and occupancy of a Unit.

5. **THE DECLARANT.** Declarant owns all land dedicated as the Subdivision but is conveying the Common Elements to the Association by deed of even date herewith. Beginning at the time of said conveyance, Declarant will be a Unit Owner selling Units in the ordinary course of business but vested with Special Declarant's Rights and certain easements necessary for performance of Declarant's warranty obligations.

5.1. Declarant specifically excepts and reserves the following Special Declarant Rights, to: (a) complete improvements indicated on plats and plans filed with the Declaration; (b) appoint or remove any officer of the Association or any Board of Directors' member during any period of Declarant's control; (c) use easements through the Common Elements for the purpose of making improvements within the Subdivision; and (d) maintain sales offices, management offices, and signs advertising the Subdivision and model Units and model homes in the Subdivision. Provided, that Declarant shall not exercise such right on any Common Element or on any Unit not owned by Declarant.

5.2. Declarant does not except or reserve any Development Rights, Declarant hereby waives and releases the following statutory Special Declarant's Rights: (a) the right to exercise any Development Right; (b) the right to use easements through the Common Elements for the purpose of making improvements within real estate that may be added to the Subdivision; and (c) the right to merge or consolidate the Subdivision with another Common Interest Community of the same form of ownership.

5.3 Declarant excepts and reserves, so far and so far only as may be necessary for exercise of its rights and performance of its duties as Declarant, perpetual, alienable and releasable non-exclusive easements and rights-of-way for Declarant, its licensees, successors and assigns to: (a) make non-exclusive vehicular and pedestrian use of all roads in the Subdivision; (b) utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements, utilities and utility facilities for the conveyance, transportation, distribution and use of electricity, telephone equipment, gas, sewer, water, drainage, and other public or private conveniences or utilities within the rights of way of the roads and Common Elements of the Subdivision; (c) make improvements within the Subdivision; (d) complete, inspect, repair, modify, replace and improve Units and Common Elements, and improvements thereto, and fulfill its warranty obligations and to grant others the right to do so; (e) store construction equipment and materials on or in Common Elements when completing improvements to the Subdivision or fulfilling

its warranty obligations; and(f) enter onto any Common Element and fix, modify and change the grades and elevations of the Common Elements.

5.4 Declarant specifically excepts and reserves the right to appoint or remove any officer of the Association or any Board of Directors' member during any period of Declarant's control.

5.5 Any or all of Declarant's rights and obligations set forth in this Declaration or the Governing Documents may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by Declarant and such transferee wherein the transferee acknowledges acceptance of such rights and obligations. No transferee of any Declarant Right or obligation shall be a successor declarant except in accordance with the Act. In the event of such transfer to any successor Declarant, the transferee, rather than Declarant, shall be liable for all acts and omissions of the transferee and Declarant shall not be liable for any post-transfer act or omission. The transferee shall not be liable for any pre-transfer acts or omissions by Declarant except to the extent the instrument of conveyance expressly states acceptance of such liability.

6. STRUCTURE OF THE SUBDIVISION.

6.1 The Subdivision is comprised of Units and Common Elements which are owned by the Association or which are to be granted to the Association. Declarant has completed all Units and Common Elements in accordance with its development plan and does not intend to make any additional or future improvements to same.

6.2 Because Declarant has not reserved any Development Rights and Declarant has granted all Common Elements to the Association or will grant all Common Elements to the Association, the Association is responsible for maintenance, repair, and replacement of the Common Elements. The Association's costs and expenses are allocated to and payable by the Unit Owners as Common Expenses.

6.3 Each Unit Owner is responsible for maintenance, repair, and replacement of their respective Unit. At the execution hereof, Declarant owns all Units but the obligation for maintenance, repair and replacement of Units runs with the land and transfers with the deed thereto.

6.4 Each Unit Owner shall afford to the Association and the other Unit Owners, and to their agents or employees, access through his Unit reasonably necessary for the foregoing maintenance, repair and replacement purposes. If damage is inflicted on the Common Elements or on any Unit through which access is taken, the Unit Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof.

6.5 Each Unit includes an appurtenant: (a) non-exclusive easement for ingress, egress, regress and access over and across all Common Element roadways in the Subdivision, namely Sheila Court, Jennifer Lane, Ashley Court and Emily Court; (b) non-exclusive license and right to utilize all Common Elements of the Subdivision subject to reasonable rules of, and regulation by, the Association; (c) voting right in the Association; and (d) fractional share of, and liability for, the Common Expenses of the Association. Bucklew Drive is not a Common Element road and is a non-exclusive easement which may be used by the owner of the estate benefitted thereby and to the extent not inconsistent with such use, by the Owner of Unit 3.

6.6 There are no express Limited Common Elements in the Subdivision. To the extent that there are any implied Limited Common Elements in the Subdivision there are no Limited Common Expenses and there is no Limited Common Expense liability. All costs and expenses of all Common Elements and

Limited Common Elements are Common Expenses allocated to all Units regardless of whether any Unit is benefitted by any Common Element or the improvements thereon.

6.7 All Units, regardless of ownership, are subject to the restrictions set forth herein and may not be occupied, improved, owned or utilized in any manner inconsistent with this instrument.

## 7. EASEMENTS AND RIGHTS-OF-WAY.

7.1. The Units and Common Elements in the Subdivision are also affected, burdened, benefitted and encumbered by the various rights-of-way and easements set forth on the Plat which include, but are not limited to, rights granted to public utility providers for provision of public utility service to the Units.

7.2. Declarant hereby grants and conveys to the Association, the following non-exclusive, perpetual rights-of-way and easements to be utilized by the Association appurtenant to its ownership of the Common Elements for the collective welfare of the Units and the owners thereof, and in fulfilling the purposes for which the Association was formed:

- a. All easements over, across and through all Units as depicted and shown on the Plats;
- b. Easements over and across all Units as follows:
  - 20 feet as measured along the front of each Unit and any boundaries of the Unit which are also a common boundary of a Common Element;
  - 20 feet as measured along the rear of each Unit which is not also a common boundary with a Common Element;
  - 10 feet as measured along the sides of each Unit which are not also a common boundary with a Common Element; and
  - Otherwise as depicted or shown on the Plat.
- c. An easement six (6) feet in width as measured three (3) feet on each side of the center of the following, if installed within a Unit by Declarant in any location outside of one of the above easements:
  - (i) all utility systems, utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, and sewage; and
  - (ii) all drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and disbursing surface water, storm water and drainage within the Subdivision.
- d. An easement six (6) feet in width as measured three (3) feet on each side of the center of any drainway, utility or other improvement, or component thereof, shown on any Plat but not included within any of the above easements.

7.3 Declarant reserves unto Declarant, its successors and assigns as Declarant, the right to utilize all rights-of-way or easements granted, excepted or reserved to the Association herein, provided, however,

that such right shall be terminable and is expressly limited to use for the purpose of exercising Declarant's rights, and fulfilling Declarant's duties, as Declarant.

7.4. Notwithstanding any provisions herein to the contrary, construction approval by the Association of any Dwelling shall constitute an express waiver of any easement encumbering the approved footprint of the Dwelling, whether such easement benefits the Association or Declarant.

7.5. All rights-of-way and easements reserved and granted to Association in this Article are for:

a. installation, erection, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of:

i. utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewage, and other common utilities and infrastructure, whether by current technology or technology hereafter developed; and

ii. lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision; and

iii. traffic and directional and other signage and devices; and

iv. lighting, safety precautions and postal delivery; and

v. such other purposes as may be reasonable or necessary for the Association's ownership of the Common Elements or regulation of the Common Elements and/or Units.

b. cutting and installing mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance, or otherwise as may be required by law.

c. exercising any and all powers, rights, and authority granted to or reserved to the Association herein or otherwise afforded the Association by law.

7.6 Each easement, right-of-way and right set forth in this Article expressly includes the right to cut any trees, tree roots, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to maintain the Subdivision and its infrastructure or provide economical and safe utility installations, surface water control and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by Declarant or the Association or their authorized employees, agents, licensees, contractors, officers, directors, or committee members.

7.7 Each easement set forth in this Article (for this provision a "Primary Easement") also includes a secondary easement right of ingress and egress to such Primary Easement together with the right to remove any improvement located therein or thereon whenever and wherever such action may appear to Declarant or Association to be reasonably and necessary and justified.

7.8. Subject to the provisions of Section 7.9, all Unit Owners, by acceptance of a deed conveying a

Unit in the Subdivision, release Declarant and the Association from liability for damage resulting from the reasonable exercise of the rights reserved in this Article. To the extent that any trees, tree roots, bushes, foliage, brush, shrubbery or other flora are situate or located partially, but not entirely, within any of the aforesaid easements, the same shall be deemed to be entirely within said easement for the purposes of this paragraph and may be removed by Declarant or the Association, without liability to the Unit Owner.

7.9. All work associated with the exercise of the right to use or employ the easements described in this Article shall be performed in such a manner as to reasonably minimize interference with the use and enjoyment of the property burdened by the easement. Except as provided in Section 7.8, upon completion of the work, the individual or entity utilizing the easement shall reasonably restore the property to its condition prior to the commencement of the work. For the purpose of this provision, reasonable restoration shall mean: (a) with regard to grass or lawns, seeding and strawing, with necessary watering of the seed to be provided by the Unit Owner; and (b) with regard to any asphalt surface, patching with the same grade of asphalt.

7.10. An easement is reserved to the Association whereby the Association shall have the right, but not the obligation, to enter upon any Unit (but not into any Dwelling) for emergency, security, and safety reasons, to perform maintenance approved under Article 17.7, and to inspect the Unit for the purpose of ensuring compliance with this Declaration. This easement is not released as to the exterior surface of any Dwelling by the Association's approval of the Dwelling.

7.11 Unit 3 is subject to an easement for Bucklew Drive and adjoining properties not part of the Subdivision as set forth in Deed Book No. 447 at Page No. 309. Said easement is not dedicated hereby as a Common Element and Association has no duty to maintain same.

#### 8.0 COMMON ELEMENTS and LIMITED COMMON ELEMENTS.

8.1. All Common Elements are owned by the Association. The Common Elements of the Subdivision are: (a) all portions of the Subdivision (land and improvements thereon) other than the Units; (b) all rights-of-way and easements within the perimeter of one or more Units reserved or granted to the Association; and (c) the non-exclusive rights-of-way, easements and rights-of-use vested in the Association to use the roadway easements which burden and benefit all Units as shown on the plat. The Association does not own a fee interest in the roadways. Rather, Association owns a non-exclusive easement for the roadways and all roadway improvements therein.

8.2. All Unit Owners are entitled to the use and benefit of the Common Elements subject to the Governing Instruments and such Rules and Regulations as may be, from time to time, promulgated by the Association. With the exception of roadway easements, the Association may, after notice and right to be heard, suspend any Unit Owner's right to utilize any Common Element: (a) at any time which the Unit Owner's financial obligations to the Association are delinquent or past due; (b) as a result of violations of the permitted uses of the Common Element; or (c) otherwise for good cause. Absent prior written consent of the Association, no Unit Owner(s) shall utilize any portion of any Common Element to the exclusion of any other Unit Owner(s).

8.3. Limited Common Elements are a subvariety of Common Elements which benefit fewer than all Units. There are two classes of Limited Common Elements, namely express Limited Common Elements and implied Limited Common Elements. Express Limited Common Elements are identified in a declaration and allocated in that declaration to fewer than all of the Units. Implied Limited Common Elements are improvements: (a) partially within and partially outside the designated boundaries of a Unit in which case only the portion thereof serving only that Unit is a Limited Common Element allocated

solely to the Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements; and (b) designed to serve a single Unit, but located outside the Unit's boundaries.

8.4 There are no express Limited Common Elements in the Subdivision. To the extent that there are, or there may be hereafter, implied Limited Common Elements in the Subdivision, there are no Limited Common Expenses and all costs of all Common Elements, including Limited Common Elements, are Common Expenses allocated to all Units. All Units have Common Expense Liability and no Units have Limited Common Expense Liability. Provided, however, that any expense incurred by the Association as a result of misuse of a Common Element by a Unit Owner or their guests, or caused by a Unit Owner or their guests, may be assessed exclusively to that owner's Unit as a fine or penalty.

8.5 Notwithstanding any provision herein to the contrary, no improvement is, or will be, a Limited Common Element unless the same was installed, constructed, placed or erected by, or on behalf of Declarant. A Limited Common Element cannot be created by any party other than Declarant prior to dedication of the Subdivision or the Association thereafter. Any improvement made by a Unit Owner is not, and cannot be, a Limited Common Element even if it fulfills the requirements for express or implied Limited Common Elements. Because there are no partially constructed or completed Dwellings in the Subdivision, no portion of any Dwelling which is constructed partially within multiple Units is a Limited Common Element.

8.6 The Treatment System and Storm Water System and all improvements, connections and portions thereof constructed by the Declarant or Association are either fee or non-exclusive easement Common Elements. The Association has an affirmative duty to manage, maintain, administer and operate these Common Elements in accordance with law. To the extent that the improvements to these Common Elements are governed by regulatory permits or other governmental filings, the Declarant reserves the right to unilaterally assign such permits and filings to Association, as the legal owner of the improvements, at any time when the permits or filings are in good standing. The permits and approvals include, but are not limited to, NPDES permits and permits issued by the West Virginia Bureau of Public Health and other state, local or federal agencies.

8.7 The Treatment System's primary component is the "Sewage Treatment Plant" depicted on a 1.972 acre Common Element on the Plat, and which is owned in fee by the Association by this private dedication and the deed from Declarant to Association to follow.

8.8 "Common Area 1" as depicted and shown on the Plat is a non-exclusive easement dedicated by this instrument and to be conveyed by deed from Declarant to Association as a Common Element. The Association is charged with maintaining "Common Area 1" in behalf of all Unit Owners notwithstanding the rights of third parties to utilize same.

8.9 An express non-exclusive easement is reserved to and hereby dedicated to Association as a Common Element to utilize all portions of Unit 3 on the east of Bucklew Drive for the purposes of signage, postal deliver via mailbox or cluster boxes, lighting and other similar amenities benefitting all Units and appropriately situate at the entrance of the Subdivision.

8.10 "Common Area 2" as depicted and shown on the Plat is hereby dedicated to, and will hereafter be conveyed by deed to, the Association as a Common Element and is the primary site of a pond which is part of the Storm Water System.

8.11 0.076 acres of Unit 43 is encumbered by a non-exclusive easement Common Element depicted and shown on the Plat as "Drainage Easement". Said 0.076 acre easement is hereby dedicated to, and

will hereafter be conveyed by deed to, the Association as part of the Storm Water System including a secondary easement for access to said area and construction of surface water controls necessary for beneficial use of the easement for its intended purposes.

8.12 0.334 acres of Unit 42 is encumbered by a non-exclusive easement Common Element depicted and shown on the Plat as "Drainage Easement". Said 0.334 acre easement is hereby dedicated to, and will hereafter be conveyed by deed to, the Association as part of the Storm Water System including a secondary easement for access to said area and construction of surface water controls necessary for beneficial use of the easement for its intended purposes.

8.13 0.035 acres of Unit 34 is encumbered by a non-exclusive easement Common Element depicted and shown on the Plat as "Drainage Easement". Said 0.035 acre easement is hereby dedicated to, and will hereafter be conveyed by deed to, the Association as part of the Storm Water System including a secondary easement for access to said area and construction of surface water controls necessary for beneficial use of the easement for its intended purposes

8.14 The 1.972 acre parcel identified as "Sewage Treatment Plant Lot" as depicted and shown on the Plat is hereby dedicated to, and will hereafter be conveyed by deed to, the Association as a Common Element and is the primary site of a drainage pond which is part of the Storm Water System.

## 9. ALLOCATION OF COMMON EXPENSE LIABILITY AND ASSOCIATION VOTES.

9.1. Voting rights in the Association are allocated on the basis of one vote per Unit, regardless of the number of owners of the Unit.

9.2. Common Expense Liability is allocated on the basis on one fractional share of the Association's Common Expenses per Unit.

9.3. Each Unit's fractional share of the Association's votes shall always be equal to its fractional share of Common Expense Liability. The fractional share of votes and Common Expense Liability allocated to each Unit may be determined as a fraction wherein the numerator is one (1) representing the Unit, and the denominator is the total number of Units. For example: If there are 61 Units in the Subdivision then each Unit will be allocated 1/61 of the votes and 1/61 of the Common Expense Liability of the Association.

9.4 Notwithstanding the fact that 62 Units are depicted and shown on the Plat, Unit 6 was conveyed to Roger N. Cox by instrument recorded in Deed Book No. 466 at Page No. 561 and is not owned by Declarant at the time of this dedication or made subject to this Declaration. As a result, Unit 6 is excluded from the Subdivision and not allocated any votes in the Association nor share of the Common Expenses and there are 61 Units in the Subdivision at the date of this Declaration.

## 10. STATED PURPOSE OF THE CONSTRUCTION STANDARDS.

10.1. The Construction Standards are covenants, restrictions, limitations, conditions, easements, rights-of-way, servitudes and other requirements of this Declaration which govern and limit improvements which a Unit Owner may make or cause to a Unit. The stated and intended purpose of the Construction Standards is to: (a) assure that Dwellings may be constructed on all Units regardless of size, shape, location, topography, elevation, soil conditions or any other factors unique to atypical Units; and (b) encourage and promote general continuity and reasonable uniformity of size, color, spacing, quality and character of Dwellings and Unit improvements within the Subdivision to the extent that all Dwellings and Unit improvements shall generally be harmonious both to the surrounding Units and also within the

context of the totality of the Subdivision. The intended litmus test for approvability of Dwellings and Unit improvements is whether a stranger to the Subdivision would as a matter of first impression conclude that each Dwelling and improvement to a Unit generally fits in with, and reasonably belongs in, the Subdivision. To the extent that the Construction Standards are listed as bright line rules, the same are subject to the granting of variances by the Association as may be reasonable, and necessary, to accomplish, achieve and promote this Stated Purpose of the Construction Standards.

10.2 Because West Virginia law recognizes that acquiescence as to a minor violation of a restrictive covenant will not necessarily later bar enforcement of a covenant when subsequent violations become consequential, the Construction Standards are to be enforced in accordance with their Stated Purpose which is to afford the ultimate benefit of each standard rather than require strict adherence, particularly in circumstances where the violation is minor, does not result in material and quantifiable harm, or is reasonably necessary for the over-all purposes of this Declaration.

#### 11 CONSTRUCTION APPROVAL and BUILDING CONTROL COMMITTEE.

11.1. The BCC is a standing committee of the Association created for the purposes of: (a) monitoring Units to assure compliance with the Unit maintenance requirements of the Association; (b) reviewing all plans for all improvements to Units for general compliance with the Construction Standards set forth in this Declaration, and the Construction Guidelines which may from time to time be promulgated by the Association; and (c) administering the Construction Standards in accordance with their Stated Purpose.

11.2. The BCC shall be appointed by the Board and shall be composed of an odd number of members not less than three (3) in number. At least two members of the BCC shall be Unit Owners, or representatives of a Unit Owner which is not a natural person. At least one member of the BCC shall also be a Board member. No two (2) members may serve on the BCC if they are collectively the owners of only one (1) Unit in the Subdivision. The qualifications of the BCC members not required hereby, shall from time to time, be set by the Board. In the event of any tie vote between the members of the BCC (due to absence, vacancy or abstention) the Board of Directors shall cast a deciding vote on that issue.

11.3. All powers and authority of the BCC derive from the Board and the Board may, from time to time, increase or decrease the powers and authority delegated by it to the BCC. The BCC may not exercise any power, authority, or apparent authority, not expressly delegated to it by the Board, or required by this instrument, the Articles of Incorporation, Bylaws, and minutes of the Association. The Board shall, upon reasonable request of any Unit Owner, furnish a list of powers and authorities delegated to the BCC by the Board. The BCC shall, in exercise of powers and authority derived from the Board, comply with all meeting, notice, quorum and voting requirements applicable to the Board. The BCC does not have the right to enforce the Governing Documents.

11.4 Any Unit Owner denied plan approval by the BCC may appeal the BCC decision to the Board for review and reconsideration. Any Unit Owner denied plan approval by the Board after appeal from the BCC, may demand a special meeting of the Association's members and present the matter for review and reconsideration by the Association's members by submitting a written demand to the Board. The Board shall, after receiving a written demand, call a special meeting of the Association's membership in accordance with the provisions of this Declaration and the Bylaws. Any action by a majority of the membership at such special meeting shall be binding on the Unit Owner, the Board and the BCC and not subject to appeal or reconsideration by any of them to any legal authority.

11.5. Procedural Covenant. No improvement to any Unit may be undertaken, commenced, caused or permitted by any Unit Owner until plans and specifications for the improvement or modification have been approved in writing by the BCC. Provided, however, that no such approval is required with regard

to: (a) any aspect of the interior of any Dwelling; (b) the replacement, repair or restoration of any existing improvement which does not result in a change to a BCC approved location, color, size, material or appearance of an existing and previously approved improvement; or (c) any improvement not visible from another Unit or Common Element in the Subdivision.

11.6. In determining whether to approve the plans or specifications for any improvement or modification, the BCC may require Unit Owners to submit any plans, material lists, details, color or material samples, landscape designs, supporting data, studies, architect's renderings, surveys and/or reports as may be reasonably necessary for the BCC to adequately determine whether to grant or deny approval for the proposed improvement or modification ("Plans"). The BCC may, if reasonable and necessary, require the Unit Owner to submit Plans prepared by licensed engineers, land surveyors and other professionals with regard to any pertinent issue including, but not limited to, impact of the improvements on or to other Units or Common Elements.

11.7. BCC review of Plans shall be limited to matters of compliance with this Declaration, the Construction Guidelines, the Construction Standards, the Association's Rules and Regulations, the other Governing Documents, and applicable law.

11.8. Within thirty (30) days after its receipt of any Plans, the BCC shall issue to the Unit Owner written approval or rejection of the Plans. Any rejection of the Plans shall include a reasonably detailed statement of the basis for rejection and the changes or modifications required for approval. If any Plans cannot be approved because the same are incomplete, inadequate or the BCC requires additional information or materials in order to grant approval, the BCC shall reject the Plans and notify the Unit Owner of all information and materials reasonably required for BCC approval.

11.9. The BCC may reject any Plans submitted to it if the same are incomplete, not in accordance with any of the provision of this Declaration, the Construction Guidelines, the Construction Standards, the Association's Rules and Regulations, the other Governing Documents, or applicable law. The BCC may also reject Plans if it reasonably, and in good faith, concludes that the improvement subject of the Plans is contrary to the interest of the Association, the welfare of the Community, or the Stated Purpose of the Construction Standards.

11.10. The BCC in reviewing Plans, and the Board in hearing appeals of BCC rulings on Plans, shall at all times act and rule in the manner which their respective members in good faith believe that fifty-one (51%) percent of the members of the Association would act and rule if the matter were presented for determination at a meeting of the members of the Association.

11.11. All approvals made or given by the BCC, Board or members of the Association on behalf of the Association will be expressly made conditioned on the following requirements, which each Unit Owner accepts and agrees to by commencing construction of the approved improvement. The Unit Owner: (a) acknowledges and agrees that review and approval of Plans is for the exclusive purpose of the Construction Standards and in no manner implies, guarantees or assures fitness or suitability of the Plans or contemplated improvements for any purposes; (b) acknowledges and agrees that the BCC, Board and the Association have no duty to monitor, supervise or oversee implementation of the Plans or assure compliance with the approved Plans; (c) is solely liable for any and all damages caused or sustained as a result of approval of, or implementation of, the Plans by the Unit Owner or any party on behalf of the Unit Owner; (d) the Unit Owner will indemnify, hold harmless, and defend (without counsel chosen by Association) the Association from any and all claims, causes of action, injury and damage resulting from implementation by the Unit Owner of the approved Plans; and (e) unconditionally covenants and agrees to remedy, repair and restore any damage caused to any Unit, Common Element, or improvement thereto, arising as a result of implementation by the Unit Owner of the approved Plans.

11.11. Once the Plans for any improvement have been approved by the BCC, the Board, or the Association's members, as hereinafter set forth in detail, the improvements must be substantially completed in accordance with the Plans approved, within the time period specified by the BCC, the Board, or the Association's members, which said time period shall be reasonable and shall not exceed nine (9) months without good cause. To the extent that construction shall be audible from or impact any portion of the Subdivision outside the Unit, the same shall be conducted between 6:00 a.m. and 9:00 p.m. Monday through Saturday and the BCC may require reasonable safe guards to assure minimalization of impact on peaceful occupancy of other Units.

11.12. The Association and the BCC shall not under any circumstances be liable to any Unit Owner for damage or injury resulting from the approval of Plans whether said Plans be for the injured party's Unit or another Unit in the Subdivision. All Unit Owners by acceptance of a deed for a Unit release the Association and the BCC from liability for injury and damage directly or indirectly resulting from such Plan approval. Each Unit Owner in improving his/her own Unit bears all liability for injury to persons or property resulting from such improvement and is charged with developing, maintaining, owning and improving their property in a reasonable and prudent manner so as to avoid injury or damage to persons, property, other Units and Common Elements.

11.13. The standards established for Plan approval are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision and do not create any duty to any present or future Unit Owner. Review and approval of any application by the BCC shall be made on the basis of aesthetic considerations only and the BCC and the Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor of the impact of such improvements, including drainage systems and excavations on other Units.

11.14. The Procedural Covenants of this Article 11 are procedural restrictions which govern the process for securing Association approval of improvements in accordance with the Substantive Covenants set forth in Article 13, known as Construction Standards. The purpose of the Procedural Covenants is to increase the likelihood of compliance with the Substantive Covenants. The exclusive remedy for violation of the Procedural Covenants in the construction of any Unit improvement which otherwise substantially and materially complies with the Substantive Covenants of the Construction Standards is levy by the Association, after notice and opportunity to be heard, of reasonable fines and penalties. Such fines shall be in an amount reasonably calculated to prevent future violations of the Procedural Covenants. The Association shall not maintain any action for injunctive relief and removal of any improvement constructed in violation of the Procedural Covenants if the improvement otherwise complies with all provisions of the Construction Standards and the only violation of this Declaration is failure to secure advance BCC approval prior to constructing or implementing the improvement.

## 12 CONSTRUCTION STANDARDS - SCOPE.

12.1 The Construction Standards set forth in Article 13 are substantive limitations or Substantive Covenants governing the improvements which must or may be caused or made to Units and they are imposed on all Units for the benefit of the Association and all other Units. The Construction Standards may be supplemented, explained or expanded by Construction Guidelines. Construction Guidelines are Rules and Regulations of the Association which may from time to time be promulgated by the Association and which may not be of public record. All potential grantees and Unit purchasers are hereby placed on inquiry notice to secure a copy of the Construction Guidelines, if any, prior to purchasing or otherwise receiving title to a Unit.

13 CONSTRUCTION STANDARDS APPLICABLE TO ALL UNITS:

13.1 No Unit may contain more than one (1) Dwelling and all Dwellings must be detached from all other Dwellings.

13.2 No improvement may be made to any Unit which is not a Dwelling or of residential character.

13.3 All Dwellings shall be of traditional residential character and appearance common to residential neighborhoods in Hampshire County, West Virginia. The Association is vested with exclusive authority to determine what constitutes traditional residential character. The BCC shall consider in making such determinations the character and aesthetics of the Subdivision and the impact of proposed Dwellings on the neighborhood, community and other Units. The following are not of traditional residential character and may not be constructed in the Subdivision: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) log homes; (e) art-deco houses; (f) any dwelling with a commercial appearance; and (g) other non-traditional houses which are not common in residential Planned Communities in Hampshire County, West Virginia.

13.4 All Dwellings shall be: (i) stick-built on-site; (ii) panelized components assembled and finished on site; or (iii) pre-engineered or modular construction; or (iv) Mobile-homes which meet the minimum requirements of the Association. Trailers, campers and other vehicles which are issued titles by any State agency are not approved Dwellings unless approved by Association.

13.5 All Dwellings shall face the front of the Unit. The "front" of the Unit shall be: (a) if only one (1) road is contiguous to the Unit, the side of the Unit facing the road; and (b) if multiple roads are contiguous to the Unit, any of such roads. Provided, however, that the front of all Units facing Jennifer Land shall be accessed from Jennifer Lane absent written approval from the Association to the contrary.

13.7 No Dwelling shall be located nearer to the perimeter of the Unit than the established set-back lines set forth and no Dwelling shall be located in any easement reserved, conveyed or dedicated herein. The minimum established set-back lines are

20 feet as measured along the front of each Unit and any boundaries of the Unit which are also a common boundary of a Common Element;

20 feet as measured along the rear of each Unit which is not also a common boundary with a Common Element;

10 feet as measured along the sides of each Unit which are not also a common boundary with a Common Element; and

All other easements and no-build zones depicted and shown on the Plat.

13.8 No permanent improvement shall be made within any easement reserved herein except for driveways, sidewalks, fences, utility installations and other improvements approved by the Association specifically excluding buildings and Dwellings. For the purpose of this provision, an improvement is "permanent" if the surface of the soil is disturbed in its construction.

13.9 Roofing Requirements for all Dwellings:

a. Flat and non-peaked roofs are not permitted.

- b. All roofs, exclusive of porch roofs, shall have a minimum roof pitch of not less than 5 inches of rise for every 12 inches of run.
- c. The primary roof of a Dwelling shall be metal or shingles.

13.10. Exterior Surface Requirements for all Dwellings on all Units.

- a. Vertical siding may not be used as a cover or facade for more than ten (10%) per cent of any side of any Dwelling.
- b. The exterior wall surfaces of all Dwellings between the roof and lowest point of the lowest floor above grade shall be of either Masonry Materials, wood, or attractive synthetic siding such as Hardy Plank™ or high quality vinyl. Aluminum siding is not permitted.
- c. All exterior wall or foundation surfaces of all Dwellings below the lowest point of the lowest floor above grade shall be finished with Masonry Materials to grade.
- d. The exterior of all structures and improvements constructed or placed on any Unit shall have the appearance of new material.

13.11 Color Requirement for all Dwellings.

- a. All roofing shingles utilized for the primary roof surface of all Dwellings shall be one of the multi-dimensional varieties and colors approved by the Association.
- b. The Association shall at all times maintain a list of the approved colors, stone, brick and shingles and furnish the same upon request.
- c. The purpose of this Article 13.11 is to assure continuity but not uniformity of Dwellings.

13.12. Utility Installations to Dwellings.

- a. All utility services lines, pipes, ways, wires, pipes and systems installed on a Unit to provide service to the Dwelling thereon, shall be installed below grade with only meters and connection boxes required by the utility provider exposed to view.
- b. No outside toilet shall be permitted on any Unit except during construction and during construction the same shall not be situate within twenty (20) feet of any Common Element.
- c. All Units shall be serviced by public utilities except for the private sewage provided by Association. No Unit shall contain as a permanent utility component or source such a any water well.

13.13 Driveways, Garages, and Sidewalks.

- a. Each Unit shall have sufficient off-street parking to service the Dwelling.

- b. Weather permitting, driveways and sidewalks shall be completed within eight (8) months of commencement of construction.
- c. Common, joint or shared driveways ("Joint Driveways") servicing multiple Units are not permitted unless approved by the BCC. The BCC shall require, as a condition precedent to approval of any Joint Driveway, a recorded indemnity, insurance and hold-harmless agreement between the owners of the Units benefitted by the Joint Driveway.
- d. All driveways shall be completed and connected to the roadways in the Subdivision.

13.14 Construction Process Requirements.

- a. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
- b. During construction, all Unit boundary lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining Units, Common Elements, or Aquatic Resources. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.
- c. All construction sites on Units must at the conclusion of construction each day be kept neat, clean and free of any scattered debris or trash. No trash or scrap piles are permitted to be in front of or along the side of any Unit and must, to the extent reasonable, be stored where not visible from any street within the Subdivision. However, such accumulations may be kept towards the rear of any Unit or in a location upon the Unit designated by the BCC. All construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner and kept under tarps or covers.
- d. Construction materials may not be burned in the Subdivision.
- e. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit and not discharged in concentrated flows into the streets, Common Elements, Aquatic Resources or other Units except in compliance with Declarant's storm water designs for the Subdivision

13.14 Landscaping.

- a. Unit Owners shall cause at least five (5) bushes or trees of varieties and sizes suitable to the BCC to be planted on the Unit.
- b. The Unit Owner shall replace any bush or tree planted in compliance with the preceding requirement, which shall not survive for a period of at least twenty-four (24) months from planting.

13.15 General.

- a. Because all Units will be benefitted by United States Postal Service cluster-boxes situate on Common Elements, no mailboxes, newspaper boxes or other delivery boxes shall be situate on any Unit.
- b. No deck may be constructed more than two (2) stories above ground.
- c. Each Unit Owner shall either keep receptacles for garbage and recycling bins inside the Dwelling or provide receptacles for garbage and recycling bins in a screened area, not visible from the road or neighboring Units, in accordance with Hampshire County Health Department suggestions or reasonable standards as established by the BCC.
- d. Exterior wood stoves, fire-places, fire pits, barbecue pits and wood burning appliances and/or devices may not be situate within a set-back absent prior written consent of the BCC. All such exterior devices are subject to reasonable regulation by the Association so as to prevent creation of an unreasonable nuisance.
- e. All exterior hot-tubs shall be subject to the same Unit location requirements as Dwellings but shall, in addition, be reasonably screened from view pursuant to the directives of the BCC.
- f. The following are permitted on a Unit if no nearer the front of the Unit than the rear of the Dwelling and approved by BCC as to appearance and location: gardens, greenhouses, carports, tree houses, ponds, swimming pools, dog houses, and clothes lines, exterior hot-tubs and jacuzzis.
- g. Children's playground equipment, sliding boards, swing sets, play houses and all similar improvements may not be: (a) situated within setbacks without prior consent of the BCC; (b) may be located no nearer to any street than the front of the Dwelling situate on the Unit; and (c) may be reasonably regulated by the BCC as to all matters including, but not limited to, location, color, size, height, appearance, density and materials. The BCC may, in granting such approvals, reasonably limit the number and size of such improvements on any Unit and the proximity and density of such improvements over multiple Units.
- h. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision absent prior written consent by the Association.
- i. Any detached secondary structure with walls and a roof such as a free standing storage building is subject to the same Unit location requirements as Dwellings and the exterior color, and appearance of same shall be harmonious with and reasonable match the Dwelling constructed on the Unit.

13.16. No Dwelling may be constructed more than three (3) stories above the Main Floor.

13.17 No Dwelling shall contain less than one thousand square feet square feet of Finished Living Area.

13.18. Fences may be constructed on any Unit subject to the following limitations: (i) Metal fences such as hurricane, chicken-wire, and hardware cloth fences are not permitted; (ii) No portion of any fence may be constructed more than six (6) feet in height from grade; (iii) No fence may deny the

Association or any other beneficiary of an easement access to same; and (iv) All fences are subject to regulation by Association as to size, appearance, and location.

- 13.19 All Unit Owners shall connect the Dwelling on each Unit to the Treatment System and Storm Water System and at all times utilize the same in accordance with applicable law.

14. VARIANCES.

14.1 The Association is expressly authorized to grant reasonable variances from the Construction Standards as may be necessary to fulfill the Stated Purpose of the Construction Standards or otherwise overcome practical difficulties and prevent unnecessary hardship resulting from strict application of, or adherence to, the Construction Standards. A variance shall be warranted if: (a) consistent with the Stated Purpose of the Construction Standards; or (b) the variance permits a minor variation from the Construction Standards which is harmonious and generally consistent with the Subdivision when viewed in its entirety; or (c) the following balancing test is satisfied. The balancing test for variances shall be the benefit which is the purpose of the Construction Standard at issue and the degree to which an otherwise unpermitted improvement affects such benefit to the Association and other Unit Owners, balanced against the hardship resulting from denial of a variance. No Unit Owner is vested with an express beneficial right to strict enforcement of the Construction Standards and all Unit Owners, by acceptance of a deed conveying a Unit, acknowledge, covenant and agree that the Association may grant set-back variances of up to fifty (50%) percent.

14.2 All variances shall be reduced to writing in recordable form and acknowledged by the Association. The Unit Owner requesting the variance shall bear the cost of preparing and recording the variance, including the costs of surveys and amendments to the Declaration as may be required by this Declaration, the Act, or otherwise necessary.

15. UNIT SUBDIVISION, UNIT CONSOLIDATION and BOUNDARY ADJUSTMENTS.

15.1 No Unit or Units may be subdivided: (a) without written consent of the Association; or (b) to create more Units or permit construction of more Dwellings than could be constructed on the pre-subdivision Unit(s) as depicted on the Plats and restricted by this Declaration.

15.2 Boundary adjustments between Units are permitted if consented to by the Association and also all owners of the Units between which the boundary is to be adjusted.

15.3 Two or more contiguous Units may be consolidated into a single Unit if: (a) both Units have unanimity of ownership; (b) consented to by all Owners of the Units; (c) consented to by the Association; and (d) the Unit Owners requesting consolidation bear all costs, including the cost of relocating any utilities and/or drainage systems situate within easements along the common boundary between the Units. In the event of consolidation, only one (1) Dwelling is permitted on the consolidated Unit and all set-back lines and easements along the contiguous sides of the consolidated Units shall be null and void so as to permit one (1) Dwelling and attached appurtenances to be constructed across a Unit boundary line. Provided, however, all exterior set back lines and easements shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements, the Common Expense Liability apportioned to said Unit, and the Association voting rights allocated to such Unit as consolidated shall be on a Unit basis with the consolidated Units being one single Unit.

15.4 The Association shall acknowledge and record an amendment to this Declaration or a variance for the purpose of affecting a subdivision, boundary adjustment or consolidation under this Article, and

the affected Unit Owner shall bear the cost of preparing and recording the same, including the costs of surveys and attorney fees as may be required by this Declaration, the Act, or otherwise necessary.

16 UNIT AND COMMON ELEMENT USE AND OCCUPANCY RESTRICTIONS ("USE COVENANTS"). The following covenants, restrictions, limitations, regulations and agreements known as "Use Covenants" are hereby imposed upon all Units and Common Elements for the benefit of the Association and all Unit Owners.

16.1. Units may only be utilized for residential purposes and no Dwelling may be occupied until the Dwelling is completed.

16.2 Any Unit may be leased for residential purposes so long as the Unit Owner provides the Association: (i) a copy of the lease; (ii) the name and permanent addresses of all lessees; and (iii) the make, model and license information for all vehicles of lessees to be stored in the Subdivision. Lessees shall not be members of the Association and the Unit Owners of the leased Unit shall be liable for lessee compliance with the Governing Documents. The Association may not enact any Rule or Regulation or prohibition preventing the leasing of Units for residential purposes.

16.3. No Unit may be utilized for any activity which violates any local, state or federal law or regulation.

16.4. No Unit may be utilized for any activity which: (a) tends to cause an unclean, unhealthy or unsafe condition to exist outside of the Dwelling; (b) emits a foul or obnoxious odor or any fumes, dust, smoke, or pollution, except for and excluding fireplaces approved by the BCC or the Association; (c) which creates any unreasonable levels of noise, unreasonable risk of fire or explosion, or other conditions such as music or noise which are a public or private nuisance; (d) unreasonably increases the Association's cost of insurance or the cost of insurance to the owners of the other Units; or (e) produces or is accompanied by unreasonable litter, disorder, or any public or private nuisance.

16.5. No Unit nor any portion of the Subdivision shall be used for, or allowed to be the site of, any noxious, offensive or illegal activities, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision or any Unit therein or the owners thereof.

16.6. All Units shall at all times be aggressively maintained in an attractive manner consistent with the Governing Documents. All lawns must be well maintained (mowed and trimmed) in an attractive condition commensurate with the Association's standards at all times. Any portion of the Common Elements situate between the paved surface of the road and a Unit must be at all times maintained and mowed by the owner of the Unit. Unless the Association expressly agrees in writing to maintain any easement, each Unit Owner shall be obligated to maintain the surface of all easements located on the owner's Unit and the improvements, including drainage controls, situate therein.

16.7. Except as may be necessary for postal purposes, there shall be no parking on the streets or other Common Elements of the Subdivision.

16.8. There shall be a posted speed limit of no more than 25 M.P.H. throughout the Subdivision and all vehicles, motorized or other, shall at all times adhere to all roadway and traffic regulations promulgated by the Association or posted within the Subdivision. The Association may lower speed limits and otherwise impose reasonable roadway and traffic regulations from time to time as may be needed for safety purposes.

16.9. No motor vehicle or vehicle with an engine shall be operated on any non-roadway Common

Element, path, walkway or trails at any time other than during construction. Unlicensed motor vehicles including, but not limited to, golf carts, go carts, dirt bikes, and all terrain vehicles, may not be operated on any roadway or Common Element.

16.10 There shall be no burning of trash, leaves, debris or other materials in or on any Unit or Common Element except as permitted by the Association an applicable law.

16.11 Except for lawn furniture and improvements approved by the Association, there shall be no storage of goods, construction materials, or equipment on any Unit, except during construction on the Unit on which such materials are being stored.

16.12 No Unit shall be used for the discharge of any radio, loudspeaker, horn, whistle, bell or other sound device which is audible from any Common Element or Unit, except for home and vehicle alarm devices used exclusively for security purposes.

16.13. No Unit or Common Element shall be used for the discharge of firecrackers, fireworks, or firearms.

16.14 Hunting and trapping are expressly prohibited in the Subdivision.

16.15. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit, and those pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to other Unit Owners or their property. Pit bull terriers, rottweilers, Doberman pinchers, and other similar pets which have a reputation for aggression are not permitted in the Subdivision.

16.16 Pets shall not be left unsupervised on the exterior of a Unit and allowed to be, or cause, a nuisance.

16.17 Pets are only permitted in or on Common Elements if restrained by a leash and accompanied by the owner of the animal. All Units Owners shall actively collect and dispose of animal waste deposited in the Common Elements and shall be subject to a reasonable fine for each violation of this provision, which fine shall not be less than \$50.00 per occurrence (in 2009 dollars subject to Consumer Price Index variation in accordance with WV Code § 36B-1-114). The Association may revoke Common Element animal privileges as a result of any violation of this provision or other Rules and Regulations relating to the Common Elements.

16.18. No Unit shall be utilized for animal breeding and no Unit Owner shall feed stray or other animals in the Subdivision.

16.19. No commercial signs, including "Garage Sale", or other similar signs shall be erected, placed or maintained on any Unit or on any Common Element, except with the written permission of the Association, or except as may be required by legal proceedings. Not more than one "For Sale" or "For Rent" sign shall be displayed on any Unit at any time, and all such signs shall be preapproved as to substance, appearance and size by the Association. Not more than one political sign or sign advertising or advocating any candidate for public office or political issue may be displayed on, or be visible from, any Unit at any time ("Political Signs"). No Political Signs be displayed for a period of more than ten (10) days during any calendar month nor more than ten (10) days before or two (2) days after the election or vote subject of such sign and all of such signs shall be less than four (4) square feet in total placard area .

16.20. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount

equal to at least one hundred per cent (100%) of the replacement cost of the Unit and improvements. In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to its condition as existed prior to the fire, casualty or other disaster. Each Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

16.21. All Unit Owners shall be subject to fine or penalty as a result of violation of any of these restrictions by the Unit Owner's family, friends, guests and invitees. In the event of such an uncured violation, the Association may deny the violator non-Unit Owner the right of entry onto and use of the Common Elements of the Subdivision including but not limited to the roadways. In such circumstance, the Association may, after proper warning to the Unit Owner, have the non-Unit Owner violator prosecuted or otherwise pursue civil remedies against the violator for trespass on the Association's property.

16.22 No clothes lines of any type may be erected or placed upon any Unit.

16.23 Except during construction of a Dwelling, no loud power tool may be operated on the exterior of any Unit between 9:00 p.m. and 9:00 a.m. Loud power tools include, but are not limited to, the following: lawn mowers, trimmers, shredders, chain saws, jack hammers, snow blowers, circular and other electric or gas powered saws, etc. Provided, however, that snow blowers and snow removal equipment shall be an exception to this requirement when utilized to remove snow from the driveway and sidewalk of a Unit.

16.24 No Unit owner shall interfere with the ponds which comprise part of the Storm Water System. Further, by acceptance of a deed covenants and agrees to exercise extraordinary care to protect all residents, visitors, guests invitees, and licensees of the Unit owner from hazards of drowning and other pond related concerns. Children are not permitted in the vicinity of the ponds unless accompanied by an adult and supervised at all times. Each Unit owner, by acceptance of a deed agrees to: (a) hold harmless and indemnify both the Association and the Declarant from any injury to the Unit owner or the Unit owner's family, children, guests, invitees and licensees resulting from accident, injury, damage or death as a result of the Unit Owner's failure to comply with the provisions of this Declaration; and (b) not discharge any substance into the Storm Water System other than unadulterated storm or surface water.

## 17 THE ASSOCIATION.

17.1 Purpose: The Association was formed for the following primary purposes: (a) to enforce the Declaration, (b) to manage and maintain all of the Common Elements, (c) to assess and collect assessments, dues, and/or fees from Unit Owners necessary to permit the Association to manage and maintain the Common Elements and the improvements located thereon, (d) to generally govern the use and operation of the Common Elements, (e) to manage, administer, operate and maintain the Treatment System and Storm Water System, and (f) to take and/or perform all actions related to, incidental to, and/or ancillary to all of the foregoing. The Association shall be charged with maintaining the collective interests of the majority of Unit Owners rather than the individual rights or interests of any one or more Unit Owners to the extent same are contrary to the community's interests. The responsibilities of the Association include, but are not limited to:

- a. maintenance, upkeep, operation and administration of the Common Elements and improvements thereto, including but not limited to the Treatment System and Storm Water System;
- b. interpretation and if appropriate enforcement of the Governing Documents;
- c. upholding the community standards within the Subdivision;
- d. collection, management, maintenance and administration of the Association funds; and

- e. all other purposes for which Unit Owner associations are formed.

17.2. **Membership:** Every person or entity who is a Unit Owner, shall, by reason of such ownership, be a Member of the Association. Ownership of any interest in 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 a Unit merely as security for performance of any obligation and any tenant occupying or holding a Unit under a lease. Following a termination of the Subdivision, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder as provided by the then applicable provisions of the Act.

17.3. **Specific Powers of the Association:** The Association has all powers set forth in West Virginia Code § 36B-3-102, West Virginia Code Chapter 31E, and to the extent the Association owns the Common Elements, all powers inherent in the ownership of land. In addition, but not by way of limitation, the Association has the following specific powers, to:

- a. Adopt and amend Bylaws and Rules and Regulations;
- b. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Unit Owners;
- c. Hire and discharge managing agents and other employees, agents and independent contractors;
- d. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Subdivision;
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement and modification of the Units, and also the Common Elements;
- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the Subdivision may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
- i. Grant easements, leases, licenses and concessions through or over the Common Elements;
- j. Impose and receive payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;
- k. Cause to be placed or kept in effect liability insurance on Common Elements;
- l. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws and the Rules and Regulations of the Association;
- m. Impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid assessments;
- n. Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance as desirable;
- o. Assign its right to future income, including the right to receive Common Expenses, but only to the extent this Declaration expressly so provides;
- p. Exercise any other powers conferred by the Governing Documents;
- q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
- r. Exercise any other powers necessary and proper for the governance and operation of the Subdivision, and;
- s. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

17.4. **Non-Discretionary Obligations of Association:** The Association shall act on behalf of all Unit

Owners to maintain, repair, replace, restore, and rebuild the Common Elements, including, but not limited to: (i) snow removal and roadway repairs; (ii) lawn care and all Subdivision signage; (iii) paving and asphalt repairs; (iv) payment of Common Element property taxes, if any; (v) maintaining Common Element insurance; (vi) monitoring, maintenance and upkeep of all the Storm Water System; (vi) management, maintenance, upkeep, repair, replacement, inspection, and operation in accordance with law of the Treatment System; and (vii) maintaining in good standing all permits and governmental approvals necessary for or required by the Treatment System and Storm Water System, including, but not limited to, NPDES permits and permits issued by West Virginia Bureau of Public Health.

17.5. Discretionary Powers of Association: The Association shall have the power, but not the duty, to enforce the Governing Documents. In the event of unforeseen circumstances, violations of the Governing Documents may occur which are of minor impact to the community or which would result in an unreasonable hardship to one or more Unit Owners if strict adherence to the Governing Documents was required by the Association. In determining whether the Association shall take action to enforce strict compliance with the Governing Documents, the Association is authorized to apply a balancing test or cost-benefit analysis taking into consideration such factors as: (a) individual hardship to the Unit Owner(s); (b) the reasonable return to be achieved by strict enforcement; (c) the nature of the violation; (d) the benefit afforded by the applicable provision of the Governing Documents; (e) the Association's enforcement costs; (e) the actual material impact of the violation on the Subdivision, the Association, and a majority of the Unit Owners therein. Therefore, the Association has the right, but not the obligation, to enforce any part of the Governing Documents and to enforce the same to varying degrees as may be appropriate under the circumstances.

17.6. The Association is expressly authorized to avoid participation in disputes between individual Unit Owners, disputes between the Owners of multiple Units, or disputes which are appropriately addressed by legal authorities. In the event that the Association should elect not to pursue any action the Association reasonably believes is not in the best interest of the majority of Unit Owners, individual Unit Owners may individually or collectively bring suit against other Unit Owners to enforce the Governing Documents against other Unit Owners. Provided however, that such litigation shall be for the purpose of compelling compliance by a Unit Owner contrary to a ruling of the Association and not against the Association for damages resulting from any action or inaction by the Association or committee thereof. By acceptance of a deed subject to the Governing Documents, all Unit Owners release the Association from any and all liability resulting from a good faith Association decision not to take any enforcement action which the Association's Board deems in good faith to not be in the best financial or other collective interest of the Association or the majority of the Unit Owners.

17.7. Association's Right to Perform Unit Maintenance: In the event any Unit Owner shall fail to maintain the exterior of the Unit and the improvements situated thereon in a manner required by the Governing Documents, and the Unit Owner shall not correct the condition within thirty (30) days after notice and right to cure, the Association shall have the right, but not the duty, through its agents and employees, to enter upon said Unit and repair, maintain and restore the Unit to the extent authorized by law. Such right shall not be exercised unless two thirds (2/3) of the Board and fifty-one (51%) percent of the Unit Owners shall have voted by ballot, proxy or in person, in favor of the exercise of such power. The cost of such maintenance and/or restoration shall be charged to the Unit Owner via any applicable mechanism set forth herein and may, at the election of the Association, be perfected as a lien on said Unit. All Unit Owners by acceptance of a deed subject to the Governing Documents covenant and agree that such entry and maintenance and restoration after reasonable notice shall not constitute an actionable trespass or breach of the peace.

17.8. Board of Directors: The Association's Board shall be generally empowered to act in all instances on behalf of the Association. In the performance of their duties, the members of the Board shall be

required to exercise care to the following standards: (i) if appointed by Declarant, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care. The Board may not act on behalf of the Association to: (i) amend the Declaration; (ii) to terminate the Subdivision; (iii) convey or encumber Common Elements; or (iv) determine the qualifications or terms of office of Board members; but, subject to the provisions of the Bylaws, the Board may fill vacancies in its membership for the unexpired portion of any term.

17.9. There shall be an initial period of Declarant's control of the Association during which Declarant or persons or entities designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control shall terminate no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent (75%) of the Units that may be conveyed to Unit Owners other than Declarant; (ii) Two years after Declarant shall have ceased to offer Units for sale in the ordinary course of business; or (iii) Two years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right of Declarant control at any time, and may also surrender its right to appoint and remove members of the Board before termination of that period, but in such event, Declarant may require for the duration of the period of Declarant's control certain specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, to be approved by Declarant before it becomes effective.

17.10. The Association shall at all times have at least a five (5) member Board. An increase or decrease in the number of members of the Board shall require the affirmative, unanimous vote of all members of the Association. All directors shall serve two (2) year staggered terms with no fewer than two (2) and no more than three (3) director positions to be filled by election or appointment at any annual meeting of the Members. The terms of the initial directors of the Association shall expire at the first (1<sup>st</sup>) Members' meeting at which directors shall be elected. The term of a director elected or appointed to fill a vacancy shall expire at the next annual meeting of the Members at which directors shall be elected. Notwithstanding the expiration of a director's term, such director shall continue to serve as a director until his or her successor shall be elected and qualified or until there shall be a decrease in the number of directors.

17.12. The Board shall appoint all officers of the Association who shall conduct the daily business and affairs of the Association. Officers may be Board members.

17.13. Notwithstanding any provision of this 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 Declarant.

17.14. If entered into before the Board elected by the Unit Owners takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners takes office. Provided, however, that such termination may not be made by less than ninety (90) days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the Subdivision or reduce its size; or (ii) a proprietary lease.

## 18 ASSOCIATION MEETINGS AND VOTING.

18.1. Meetings of the Members and the voting rights of the Members shall be as set forth and provided

for in the Bylaws.

19. ASSOCIATION FINANCIAL MATTERS, BUDGET AND RECORDS

19.1. Governance of the Association's financial matters, the requirements for annual budgets, and financial required to be kept and maintained by the Association shall be as set forth and provided for in the Bylaws.

20. ASSOCIATION - ASSESSMENTS, LEVIES, FINES, AND FEES.

20.1. The Association is vested with authority to levy annual assessments, special assessments, fines, fees, penalties and transfer fees. All levies made by the Association shall run with the land and the sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from assessment liability. All Units are subject to assessment but Common Elements are not subject to assessment. Any assessment or installment thereof shall bear interest from the date the same is due at the rate to be established by the Association which rate shall not exceed twelve percent (12%) per year.

a. Annual Assessment for Common Expenses:

(i) The Board shall annually, not later than the 1<sup>st</sup> day of November of each calendar year: (a) adopt a proposed budget for the succeeding calendar year which shall be reasonably calculated to meet the anticipated costs and expenses of the Association for the succeeding calendar year ("Annual Costs") and annualized costs of long-term, reasonably anticipated capital expenditures for items such as comprehensive future paving or resurfacing of roads and streets ("Annualized Future Costs"); (b) publish the proposed a summary of the proposed budget to the Members; and (c) set a date for a meeting of the Unit Owners to consider ratification of the budget which shall be 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. Notwithstanding the foregoing, if the proposed budget is rejected and the periodic budget last ratified by the Unit Owners is insufficient to satisfy Association's financial obligations and needs as may be necessary to manage, administer, maintain and operate the common element sanitary sewage treatment system within the Subdivision in accordance with applicable law, the last ratified periodic budget shall be increased to the minimum amount necessary for Association to meet such financial obligations.

(ii) For the purpose of the Association's annual budget, Annual Costs shall include, without limitation, premiums relative to insurance covering the Common Elements, premiums relative to officers and directors errors and omissions insurance, the cost and expense of utilities, mailings, governmental filings, and annual Common Element repairs, snow removal, maintenance, and improvements, the cost and expense of inspection of the storm water systems within Sleepy Knolls Subdivision, the Association's cost to manage, administer, maintain and operate the common element sanitary sewage treatment system within the Subdivision in accordance with applicable law, and all other annual operating expenses of the Association. The Annualized Future Costs shall be for anticipated future costs and expenses which are reasonable and which, if fully assessed during any year, would cause the annual assessment to be at least three hundred percent (300%) of the most recent annual assessment. Notwithstanding the

foregoing requirement, Annualized Future Costs may include amounts which would not meet the three hundred percent (300%) threshold test. The Association shall include Annualized Future Costs in the proposed budget based on the average of three (3) estimates for the future cost or expense divided by the number of years before the cost or expense is anticipated to be incurred. *For example, if the present value cost or expense of re-paving all Common Element roads ten (10) years in the future shall be Sixty Thousand Dollars (\$60,000.00), the Annualized Future Cost as to that item shall be Six Thousand Dollars (\$6,000.00) per year for each of the ten (10) years between the estimate and the occurrence of the re-paving.* New estimates for Annualized Future Costs shall be procured as a basis for the proposed budget for any year in which the future cost or expense is to occur so as to assure that the Association's capital reserves plus revenues generated by the upcoming assessment shall be sufficient to satisfy such cost or expense when needed. Each year the Annualized Future Costs shall increase above the prior year's Annualized Future Costs proportionate to any increase in the Consumer Price Index during the preceding calendar year, unless the proposed budget shall actually be based on estimate(s) procured during such preceding calendar year. Each proposed budget shall be sufficiently detailed and include, without limitation, an accounting of all actual expenditures during the preceding calendar year, estimates for anticipated or proposed Annual Costs and Annualized Future Costs for the succeeding calendar year, a statement of all reserves held by the Association for the same, and the proposed formula by which all budgeted costs and expenses shall be allocated and invoiced.

b. Common Expenses to be levied pursuant to Common Expense Liability: All annual assessments and special assessments levied as a result of Common Expenses must be levied against all Units proportionate to the Units' respective Common Expense Liability as allocated herein.

20.2. Judgment Assessments: Assessments to pay a judgment against the Association may be made only against the Units in the Subdivision at the time the judgment was entered, and in proportion to their Common Expense Liability.

20.3. Common Expense Attributable to Unit: Notwithstanding the foregoing, 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 such Unit Owner's Unit.

20.4. Minimum Annual Assessment: The minimum annual assessment for Common Expenses is, at the execution hereof Four Hundred Fifty Dollars (\$450.00) if all Association costs are being paid by Association and none are being paid by Declarant and the minimum annual assessment shall never be less than the original amount. The annual assessment shall always be based on the Association's budget which shall address reasonably anticipated needs of the Association.

20.5. Transfer Fees: The Board shall have the authority, on behalf of the Association, to establish and collect a transfer fee from the transfer of ownership of each Unit, which said fee shall be payable at closing and shall be the obligation of the purchaser to pay. Only one fee may be imposed on each transfer of ownership regardless of the number of transferees. No fee may be imposed on a transfer wherein the post-transfer Unit Owners were all pre-transfer owners of the Unit at issue. All transfer fees shall be deposited by the Association in its capital reserve account to be held for future repairs, maintenance and improvement of the Common Elements, preservation and maintenance of natural areas, development or improvement of recreational facilities on the Common Elements and for community events and community activities benefitting the Unit Owners. The initial transfer fee is Two Hundred Fifty Dollars (\$250.00) payable to Association by the Grantees each time a Unit is sold by the Declarant to a third party

by arm's length sale. After termination of Declarant control, the Board shall have the sole discretion to determine the amount and method of determining such transfer fee; provided, however, that the transfer fee shall never exceed or be greater than one-half of the most recent annual assessment for Common Expenses. Transfer fees are not due or payable as the result of any conveyance or transfer to a Builder as defined herein, to a successor Declarant or to any entity wholly owned by Declarant. Provided, however, that transfer fees shall be due when such otherwise exempt Units are subsequently conveyed by such entities to the ultimate consumer.

20.6. Special Assessments: In addition to annual assessments, the Board may periodically levy special assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments must be budgeted for and levied against all Units proportionate to the Units' Common Expense Liability allocation. Special Assessments may, at the Board's discretion, be made payable over a period of time which extends beyond the calendar year in which same is levied.

20.7. Fines and Penalties: The Association may, after notice and opportunity to be heard, assess any Unit Owners with reasonable fines and penalties for violation of the Governing Documents. Fines shall be the exclusive remedy for the first violation of the Procedural Covenant by a Unit Owner who has completed an improvement which was not approved by the BCC but otherwise substantially and materially complies with the substantive aspects of the Construction Standards. The Association may not assess Units owned by Declarant for any material violation by Declarant as Declarant rather than Declarant as a Unit Owner. The Association, not the Declarant, is vested with exclusive authority to assess and levy fines and penalties resulting from violations of the Construction Standards or any BCC ruling. Prior to assessing any reasonable fine or penalty the Association shall:

- a. provide the Unit Owner with written notice of the violation and a reasonable opportunity to cure same, which said period shall except in circumstances where the violation is reasonably likely to result in immediate damage or injury to persons or property, not be less than thirty (30) days;
- b. if the violation continues after initial notice, notify the Unit Owner that a fine or penalty will be imposed if the violation is not cured within an additional thirty (30) days;
- c. notify the Unit Owner of the amount of the fine, whether the fine will be re-occurring and if so on what basis; and
- d. afford the Unit Owner an opportunity to address the offense at a hearing with the Board. The Association shall not levy any fine or penalty against a Unit Owner, and the Association shall not attempt to collect any fine or penalty if a Unit Owner produces a petition signed by the owners entitled to cast votes on behalf of fifty-one (51%) percent of all Units indicating that said Unit Owners oppose the fine or approve of the violation.

20.8. Surplus of Assessment: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any pre-payment of reserves must be credited to the Unit Owners in proportion to their Common Expense Liability assessed to them to reduce their future Common Expense Liabilities.

## 21. ASSOCIATION LIENS:

21.1. Lien for Assessments: The Association has a lien on a Unit for any assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first

installment thereof becomes due.

21.2. **Assessment Lien Priority:** A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the assessment sought to be enforced becomes delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expense Liabilities based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, curtesy or other like exemptions.

21.3. **Limitation on Liens:** A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due. This limitation shall, however, only apply to the lien against real property and shall in no manner restrict the limitations period applicable to the underlying obligation.

21.4. **Enforcement of Lien:** This section does not prohibit actions to recover sums for any valid Association lien or prohibit the Association from taking a deed in lieu of foreclosure.

21.5. **Attorney's Fees, Costs, Expenses:** Any lien shall include the costs of preparation, service, and recordation of same. A judgment or decree in any action brought to enforce a lien or collect any past due assessments shall include costs and reasonable attorney's fees for the prevailing party.

21.6. **Statement of Assessment Balance:** The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit Owner's interest in real estate. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and shall be binding on the Association, the Board and/or every Unit Owner.

21.7. **Notice of Lien:** For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Hampshire County, West Virginia. The notice shall contain: (a) a legally-sufficient description of the Unit; (b) the name or names of the Owners of the Unit; (c) the amount of unpaid assessments due, together with the date when each became due; and (d) the date of recordation.

21.8. **Release of Lien:** Upon payment of the assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense of the Unit Owner in the Office of the Clerk wherein the notice of the lien was filed.

21.9. **Other Association Liens:** A judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the Subdivision at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association. If the Association has granted a security interest in the Common Elements to a creditor of the Association, the holder of that security interest shall exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.

21.10 Limitation on Association Ability to Perfect Liens Against Declarant: The Association may perfect liens or assess fines or penalties against Declarant-owned Units as a result of violations of this Declaration by Declarant as a Unit Owner. The Association may not, however, perfect liens or assess fines or penalties against Declarant-owned Units as a result of any actual or perceived failure by Declarant to fulfill or perform any duty or obligation of Declarant as a declarant rather than as a Unit Owner. Subject to other limitations herein, the Association's authority over Declarant is expressly limited to Declarant's ownership of Units and does not extend to Declarant's rights, powers, duties and obligations.

22. ASSOCIATION RULES AND REGULATIONS:

22.1. Purpose/Enactment: Rules and Regulations may be enacted and amended by the Board for the purpose of explaining, interpreting and expanding the provisions of the Governing Documents. Provided, however, that no such modification to the Rules and Regulations shall be enforceable against any party until twenty (20) days after the Rules and Regulations have been published to all Unit Owners. Further, so long as Declarant owns any Unit in the Subdivision, no such amendment may be made without Declarant's prior written consent.

22.2. Rules and Regulations may be enacted by the Association for any legitimate, non-discriminatory and permitted purpose so long as the Rules and Regulations do not conflict with the Declaration, Articles, Bylaws or applicable law. Foreseeable subject matter for Rules and Regulations includes, but is not limited to: (a) the use, occupancy, enjoyment, maintenance and operation of the Common Elements which are owned by Association; (b) Construction Guidelines which are supplemental to the Construction Standards and intended to explain or provide additional detail on matters naturally arising from, but not specifically addressed in, the Construction Standards; and (c) day to day operating policies and procedures for the Association in the conduct of its business.

23.3. Limitations on Rules and Regulations: Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules and Regulations of the Association, all Rules and Regulations shall comply with the following provisions:

- a. Similar Treatment. Similarly situated Unit Owners shall be treated similarly.
- b. Displays. The rights of Unit Owners to display religious and holiday signs, symbols, and decorations inside Dwellings shall not be abridged, except that the Association may adopt time, place, size, lighting, number and manner rules with respect to displays visible from outside the Dwellings.
- c. Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place, number and manner of posting such signs within the limitations set forth elsewhere herein.
- d. Household Composition. No rule shall interfere with the freedom of Unit Owners to determine the composition of their households.
- e. Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of Dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Unit Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from

outside of Dwellings, or that create an unreasonable source of annoyance to persons outside of Dwellings.

f. Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Unit Owner over that Unit Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Elements or violate the Governing Documents. No Rule or Regulation may deny a Unit Owner access over and across the paved streets in the Subdivision to the Owner's Unit.

g. Alienation. Except as set forth herein above, no rule shall prohibit leasing or transfer of any Unit, or require consent of the Association for leasing or transfer of any Unit; provided, the Association may require the lessor Unit Owner to furnish the Association with a copy of the lease and to provide information relating to the lessees and occupants of the Unit.

h. Abridging Existing Rights. No rule shall require a Unit Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Unit Owner's ownership of the Unit, and shall not apply to subsequent Unit Owners who take title to the Unit after adoption of the rule.

i. Reasonable Rights to Develop. No rule or action by the Association shall unreasonably impede Declarant's right to develop the Subdivision or other properties in the vicinity of the Subdivision nor increase the cost to Declarant thereof.

j. Amendments to Governing Documents. No Rule or Regulation shall be utilized as a mechanism for enactment of new restrictive covenants or substantive amendment to any Governing Documents when the power to take such action is vested exclusively in the Unit Owners.

## 23 REPRESENTATIONS AND WARRANTIES.

23.1. All Unit Owners, their heirs, successors and assigns, by their acceptance and recordation of a deed conveying any interest in any Unit acknowledge the conditions, limitations, restrictions, provisions, exceptions and reservations set forth herein. Declarant makes no representation or warranty direct, express or implied, which is contrary to the provisions hereof and no representation or warranty by any realtor, real estate broker or real estate agent contrary to the provisions of this Declaration shall be binding on Declarant unless reduced to writing and signed by Declarant.

23.2. The Subdivision is a Common Interest Community created and designed for use as a residential community. Declarant makes no implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all express warranties of quality are excluded. Declarant expressly reserves the right to limit all express or implied warranties applicable to any Unit or Units by written agreement and specific disclaimers of actual conditions present within the Unit or Units.

23.3 All Units are offered for sale subject only to the following implied warranties of quality which are required by West Virginia Code § 36B-4-114, and which run with the land in the Subdivision for the applicable warranty limitations period:

a. Declarant warrants that a Unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted;

b. Declarant warrants that a Unit and the Common Elements are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by Declarant, or made by any person before the creation of the Subdivision, will be: (1) Free from defective materials; and (2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

c. Declarant warrants that use of the Units for residential purposes does not violate applicable law at the earlier of the time Declarant conveys or delivers of possession of the Unit.

23.4. The applicable warranty limitations period for the above implied warranties is six (6) years commencing: (a) with regard to Units, on the date of the initial conveyance of the Unit from Declarant to a third party, or on the date of the initial occupancy of the Unit, whichever occurs first; and (b) with regard to Common Elements, on the date the first Unit in the Subdivision is conveyed to a third party.

23.5 Declarant offers Units for sale subject to the following condition which is applicable to all Units. All purchasers from Declarant shall execute a separate instrument attached as an Exhibit to the Public Offering Statement marked as "Agreement and Waiver." This Agreement and Waiver, between Declarant and Unit purchaser, waives Unit purchaser's statutory right to a six (6) 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 action by a Unit purchaser for breach of warranty within two (2) years of the date the Unit purchaser either accepts a deed for the Unit or enters into possession of the Unit, whichever shall occur first. Purchasers should consult the Agreement and Waiver for more detailed information.

23.6 Units are offered for sale by Declarant conditioned on the foregoing Agreement and Waiver and all contracts for such sale are expressly made subject to and contingent on the Agreement and Waiver regardless of whether expressly mention in the contract. All deeds from Declarant to Unit purchasers shall include the foregoing waiver for purpose of making the same part of the public record with regard to the Unit.

#### 24. REMEDIES.

24.1 In the event of any violation of the provisions of this Declaration by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any occupant of a Unit, or other person present in the Subdivision or on the Unit as a guest, family member, or invitee of a Unit Owner), the Association shall have all of the rights and remedies which are set forth in the Governing Documents or otherwise provided for in the Act and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit, or for damages, injunction 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 Association in connection with any subject actions or proceedings, including court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than ten percent (10%) per annum until paid, 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 Expenses of the Association and the Association shall have a lien against the Unit for all of the same.

24.2 Notwithstanding the foregoing, the Association's remedy for any single knowing violation of a procedural Construction Standard in making or causing an improvement to a Unit which does not violate a substantive Construction Standard shall be the levy of fines in an amount reasonably calculated to discourage such procedural violation in the future. The Association shall have all reasonable rights and remedies set forth in Section 24.1 in the event that a Unit Owner: (a) causes an unapproved Unit improvement to be commenced on the Unit; (b) knowingly commits repeated violations of procedural Construction Standards; (c) knowingly causes repeated substantive violations of the Construction Standards; or (d) knowingly causes or allows his or her guests or invitees to cause repeated violations of the Use and Occupancy Restrictions. For example: if a Unit Owner commences construction of a fence otherwise permitted by this Declaration and which in all manners complies with the requirements of the Governing Documents except that the Unit Owner failed to secure BCC approval prior to commencing the fence, the Association may impose fines to discourage future unapproved improvements but it may not seek removal of the fence or other injunctive relief. If, however, the Unit Owner has not completed the unapproved fence, the Unit Owner has previously completed procedurally unapproved Unit improvements and been fined by the Association for same, or the fence violates the substantive Construction Standards, the Association may pursue any appropriate Section 24.1 remedy.

## 25. AMENDMENT.

25.1 This Declaration is an evolutionary document which expressly contemplates future modification and amendment for the purpose of modifying existing covenants and restrictions, or imposing new covenants and restrictions, by less than all Unit Owners.

25.2 Except as set forth below, the provisions of this Declaration may be changed, modified or rescinded only by an instrument in writing setting forth such change, modification or rescission and executed by vote or agreement of Unit Owners owning not less than sixty-seven percent (67%) of the Units. Any amendment to this Declaration shall be prepared, executed, acknowledged and properly recorded for the Association by its President.

25.3 Notwithstanding the evolutionary nature of this Declaration, no change, modification or rescission may alter Unit boundaries or increase the allocated interests of a Unit without the consent of the affected Unit Owner.

25.4 ALL UNIT PURCHASERS ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS DOCUMENT MAY BE AMENDED BY A SIXTY-SEVEN (67%) PERCENT MAJORITY OF UNIT OWNERS AND AS A RESULT: (A) ALL UNIT OWNERS CONSENT TO MODIFICATION OF THE PROVISIONS HEREOF AND THE IMPOSITION OF ADDITIONAL RESTRICTIONS ON THEIR UNITS; and (B) ACKNOWLEDGE THAT SUBJECT TO THE FOREGOING, NO VESTED INTEREST ARISES AS A RESULT OF ANY AMENDABLE COVENANT OR RESTRICTION. Provided, however, that any substantive amendment to the Construction Standards shall not require the removal of any existing and previously permitted improvements. Rather, existing and previously permitted improvements prohibited by an amendment shall be grandfathered and allowed to remain so long as the improvement is maintained but may not be replaced or rebuilt if destroyed or removed.

25.5 The change, modification or rescission whether accomplished under either of 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 Hampshire County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act, and FURTHER PROVIDED that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Board where alteration of the provisions hereof are made solely to

bring this Declaration into compliance with the Act, other existing law or to correct errors of scriveners, architects or surveyors with no notice to Unit Owners unless such change, modification or rescission directly affects an individual Unit Owner's interest in the real estate or appurtenances.

**25.6 The Subdivision differs from common law to the extent that new covenants and restrictions may be imposed on land, or existing covenants may be modified or release, by a sixty-seven (67%) per cent majority of all Units with, or without, the consent of all Unit Owners. By acceptance of a deed all Unit purchasers agree to imposition of non-discriminatory covenants or non-discriminatory modifications to covenants governing their Units made by sixty-seven (67%) per cent of all Unit Owners and agree to be bound by same.**

## 26. NOTICES

26.1 Notices provided for in the Act, this Declaration, the Articles, or the Bylaws shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at the 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 registered or certified mail 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 the Bylaws to be given to the Unit Owner or Unit 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 the absence of submission of a lien holder's address.

## 27. SEVERABILITY

27.1 If any provision of this Declaration, the Articles, or the 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, the Articles, 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, the Articles, or the Bylaws shall be construed as if such invalid part was never included therein.

**28. PERPETUITIES AND RESTRAINTS ON ALIENATION.** If any provision of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States, Barack Hussein Obama.

## 29. TERMINATION AND EMINENT DOMAIN

29.1. Termination: The Subdivision may be terminated only in accordance with West Virginia Code Chapter 36B as in effect on the date of the proposed termination.

THIS IS ALL STATUTORY

## 30. SEPARATE TITLES AND TAXATION

30.1 Pursuant to West Virginia Code § 36B-1-105, because Declarant has not reserved any Development Rights and Declarant has conveyed or will convey the Common Elements to the

Association, when the first Unit is conveyed to a third party, (a) each Unit that has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate; (b) each Unit must be separately taxed and assessed; and (c) no separate tax or assessment may be rendered against any Common Elements.

### 31. RIGHTS AND OBLIGATIONS OF GRANTEEES.

31.1 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 land, and shall inure to the benefit of such grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

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

### 33. DESCRIPTION INCLUSIONS BY REFERENCE

33.1 The legal description of the real estate submitted to the Common Interest Community, Planned Development, form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

### 34. ADJUSTMENT OF DOLLAR AMOUNTS

34.1 All fixed dollar amounts specified in this Declaration shall be subject to annual adjustment according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, as more particularly set forth in West Virginia Code § 36B-1-114. Provided, however, that such adjustments shall pertain only to events and requirements occurring after the effective date of this Declaration and shall not, for example, pertain to Declarant's initial funding of Association accounts prior to this Declaration.

### 35. DEEDS AND DEDICATION OF COMMON ELEMENTS

35.1 Declarant hereby dedicates, by private dedication, the Common Elements of the Subdivision. Declarant may unilaterally deed the same to Association in easement or in fee at any time with, or without the consent of the Association, before or after termination of Declarant control of the Subdivision. Any and all Declarant warranties with regard to Common Element or Unit improvements are distinguished from, and not related to, Declarant's obligation and/or right to deed Common Elements to the Association and Declarant may elect to do so at any time.

### 36. COMMON ELEMENT TAXES – NOTICE TO ASSESSOR.

36.1 Pursuant to WV Code §36B-1-105. Separate titles and taxation, subsection (b)(1) If there is any unit owner other than a declarant, each Unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate. Pursuant to subsection

(b)(2) beginning at the time there is any Unit Owner other than a Declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a Declarant has reserved no Development Rights. The HAMPSHIRE COUNTY ASSESSOR IS HEREBY NOTIFIED THAT DECLARANT HAS RESERVED NO DEVELOPMENT RIGHTS AND THE COMMON ELEMENTS MAY NOT BE TAXED OR ASSESSED BEGINNING AT THE TIME THE FIRST UNIT IS CONVEYED BY DECLARANT TO A THIRD PARTY.

Witness the following signature this 23 day of December, 2009:

Declarant,  
Sleepy Creek Holdings, LLP:

By: Malcolm C. Berman  
Managing Partner Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

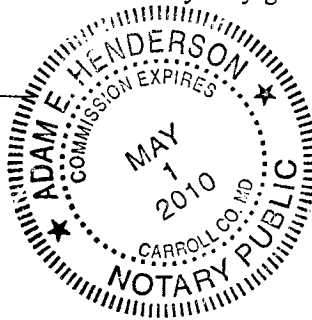
STATE OF Maryland,

COUNTY OF Baltimore, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 23 day of Dec, 2009, by Malcolm C Berman and West Virginia, in their capacity as Managing Partner of Sleepy Creek Holdings, LLP, a West Virginia limited liability partnership, for and on behalf of said limited liability partnership by exercise of authority duly given and as the official act thereof.

My Commission Expires: 5/1/10

Adam E. Henderson  
Notary Public



This is a  
West Virginia  
limited liability  
Partnership.

THIS DOCUMENT PREPARED BY:

STEVEN M. PRUNTY

Final Plat of  
Sleepy Knolls Subdivision  
a Planned Development form of Common Interest Community  
Lots 1 - 62

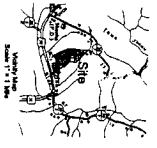
Gore District Hampshire County  
West Virginia

Reference: Deed Book 447 Page 309  
Tax Map 30 Parcel 7

Total Area 93.364 Acres  
Includes the 1972 Gore Shange Treatment Lot  
Total Area Within Route 1 = 8.28 Acres

Table of Contents

- Sheet 1: Cover Sheet
- Sheet 2: Lot Layout - Lots 1-5
- Sheet 3: Lot Layout - Lots 6, 48-50, 54, 55
- Sheet 4: Lot Layout - Lots 8, 9, 48, 47, 51, 56, 57
- Sheet 5: Lot Layout - Lots 10, 43-45, 52, 53, 58-62
- Sheet 6: Lot Layout - Lots 1-6
- Sheet 7: Lot Layout - Lots 15-18, 26-38
- Sheet 8: Lot Layout - Lots 19-25



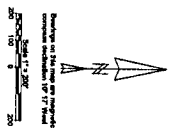
LEGEND

— Right of Way Lines

Sheet 1 of 8

Moreland's Surveying  
& Consulting, Inc.  
Sunrise Professional Building  
HC 63 Box 3590  
Romney, WV 26757  
(304) 822-4441

Date: May 1, 2008  
Scale: 1" = 100'



Owner/Developer:  
Moreland's Surveying  
HC 63 Box 3590  
Romney, WV 26757  
Phone: (304) 822-4441

I hereby certify that this plat is a true and correct representation of the facts as shown on the ground and as shown on the survey, and that the same are correct and true.

Surveyor's Note:  
This survey was made by the Surveyor on the ground and as shown on the survey, and that the same are correct and true.

1. The following is a description of the property to be surveyed and is a true and correct representation of the facts as shown on the ground and as shown on the survey, and that the same are correct and true.

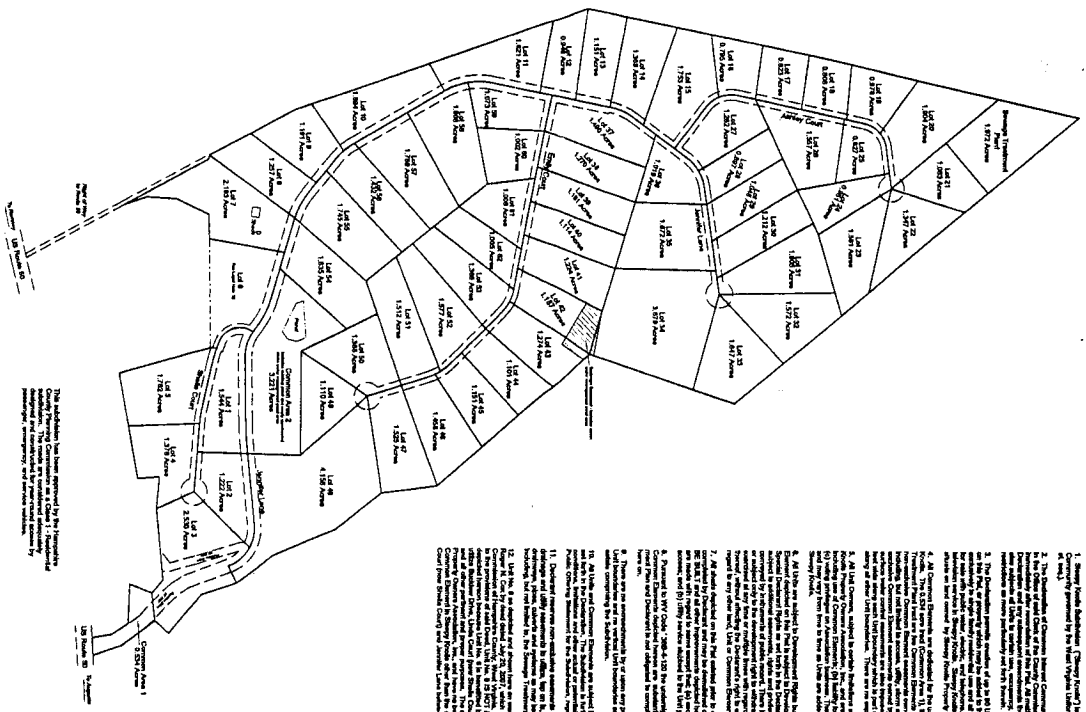
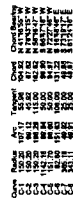


EXHIBIT - ORIGINAL OF RECORD

POWLES RICE MCDAVID GRAFF & LOVE, LLP  
7090 HAMPTON CENTER, SUITE K,  
MORGANTOWN, WV 26505

**Lots 1 - 5**



(304) 822-4441

Date: May 5, 2008 Map No.: 01-527-01

EXHIBIT - ORIGINAL OF RECORD

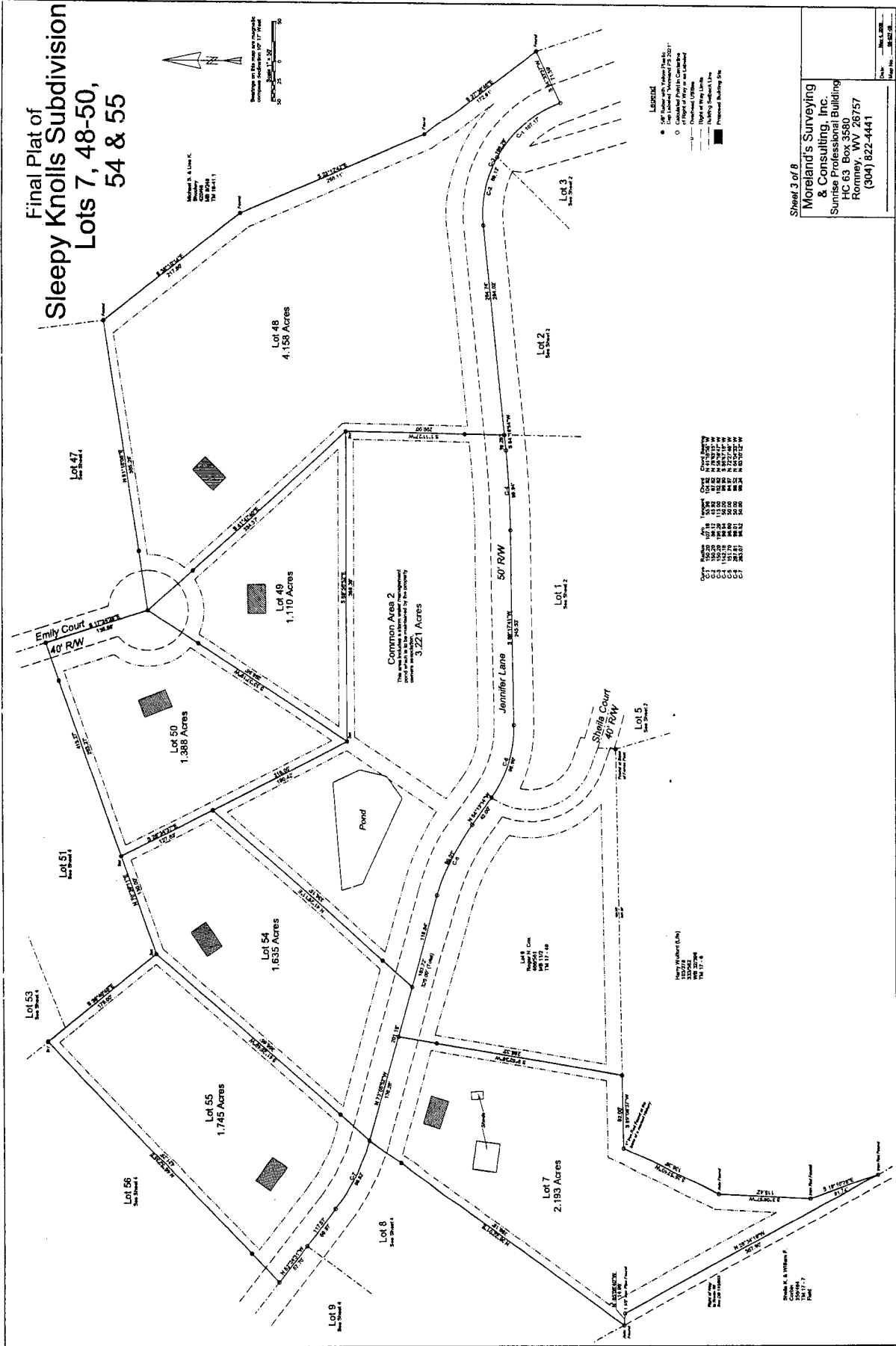


EXHIBIT - ORIGINAL OF RECORD



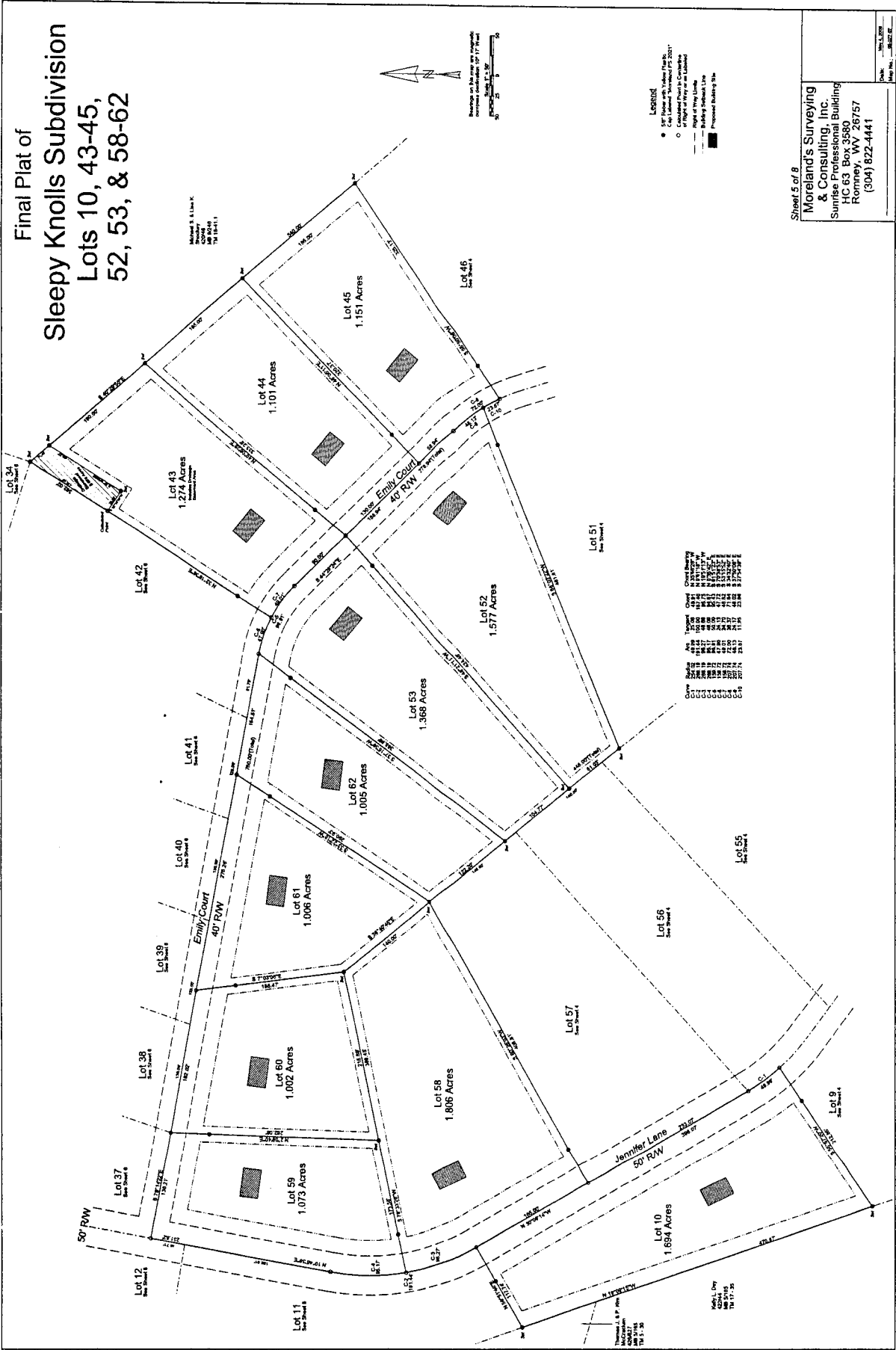


EXHIBIT - ORIGINAL OF RECORD

Final Plat of  
Sleepy Knolls Subdivision  
Lots 11-14, & 37-42

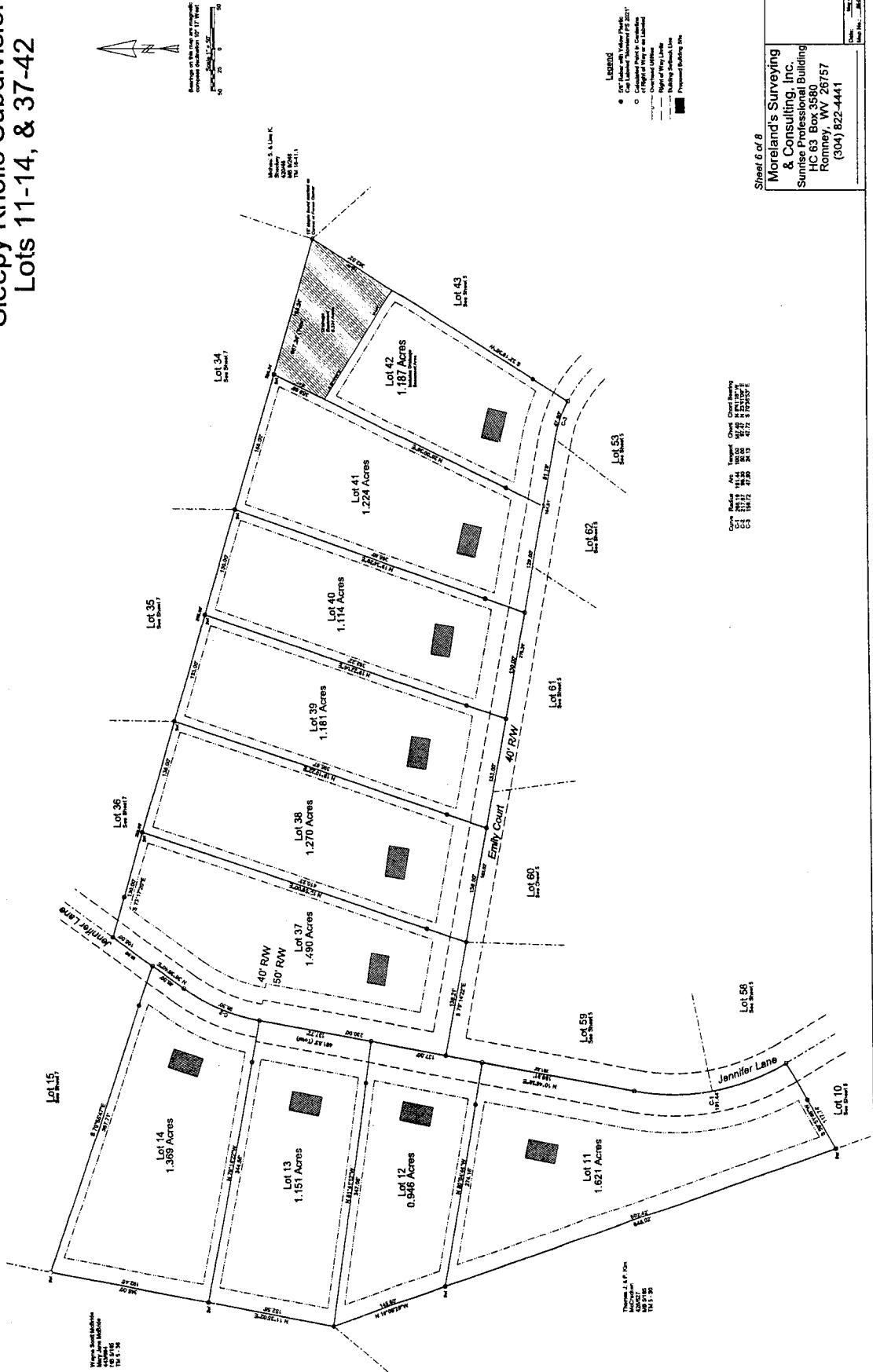


EXHIBIT - ORIGINAL OF RECORD

Final Plat of  
Sleepy Knolls Subdivision  
Lots 15-18, & 26-36

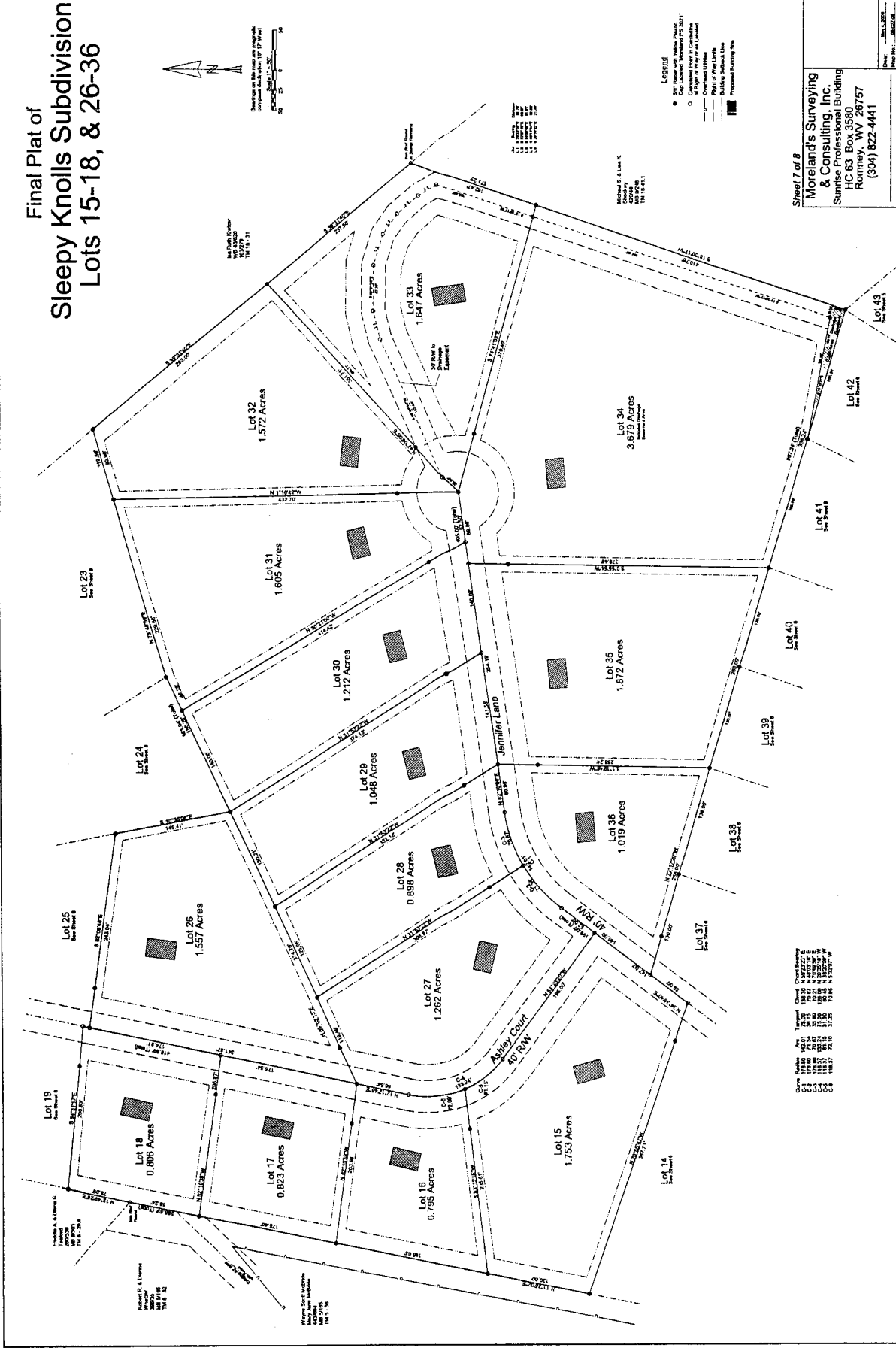
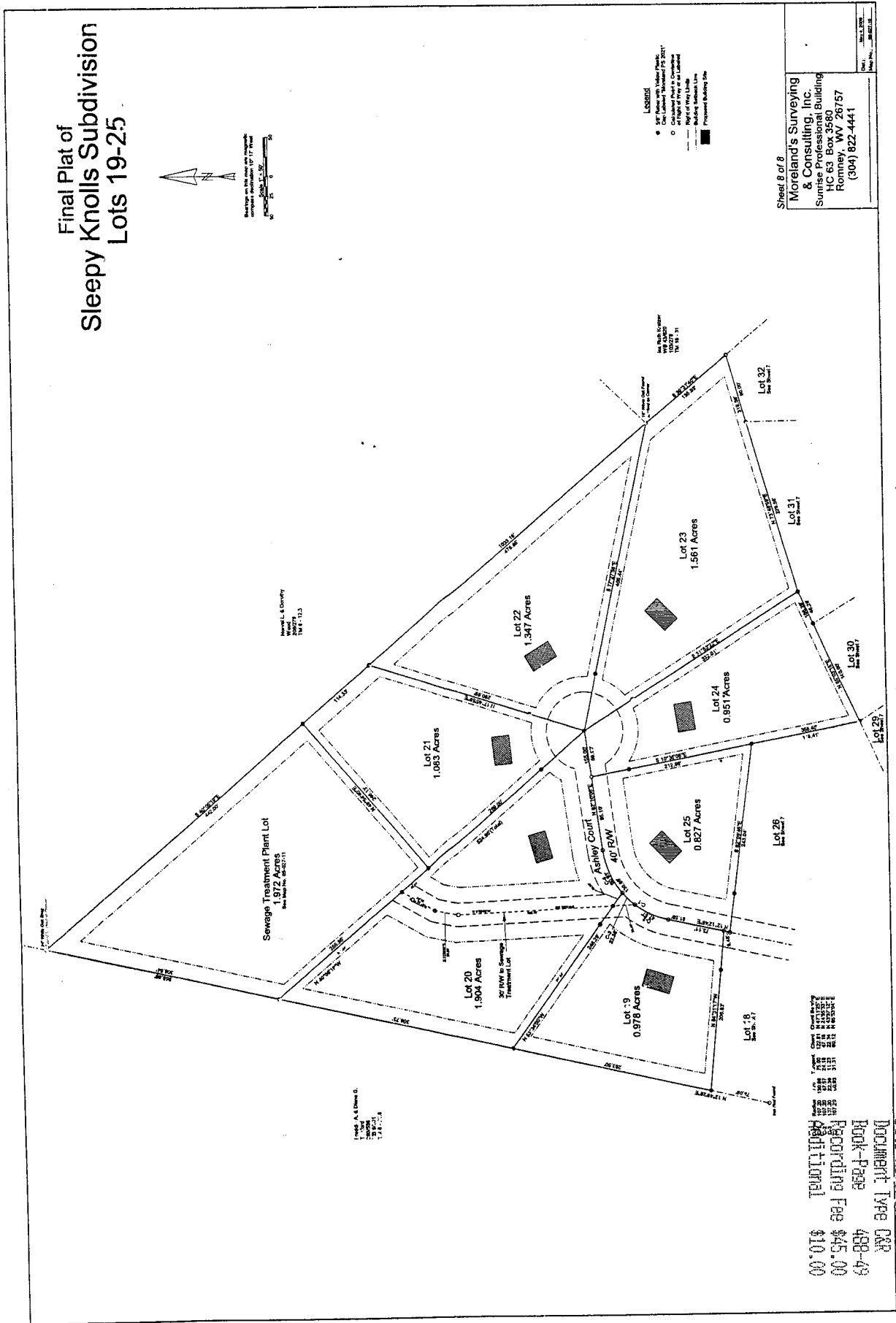


EXHIBIT - ORIGINAL OF RECORD



STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office 114/10 10:21 AM

The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sharon H. Link Clerk.