

BYLAWS
DUNCAN'S LANDING OWNERS' ASSOCIATION, INC.
EDRAY DISTRICT, POCAHONTAS COUNTY,
WEST VIRGINIA

ARTICLE I

1. **Applicability.** Duncan's Landing Owners' Association shall be governed by the provisions of these Bylaws.
2. **Principal Office.** The principal office of the Owners' Association and of the Executive Board shall be located at Duncan's Landing, or such other location as may be designated from time to time by the Owners' Association.
3. **Establishment of the Association.** The Declarant of and for Duncan's Landing shall appoint an interim Executive Board and adopt interim Bylaws, on a one time basis, for a time period not to exceed twelve months.

ARTICLE II

1. **Membership.** The Owners' Association of Duncan's Landing, registered with the West Virginia Secretary of State Office as a Corporation, known as Duncan's Landing Owners' Association, Inc., shall be comprised of all of the owners of residential lots located within Duncan's Landing. For all purposes, the Owners' Association shall act merely as an agent for the owners collectively. The Owners' Association shall have the responsibility of managing the areas of the property designated for common usage, and shall have the following powers, duties, and responsibilities:

- (a) To ratify, adopt and or amend the interim Bylaws within twelve months of the formation of the Association and to generally adopt and amend Bylaws, and Rules and Regulations, and to amend the Declaration of Protective Covenants and Restrictions only as permitted by such Declaration;
- (b) Within twelve months of the appointment of the interim Executive Board; to elect an Executive Board empowered to adopt and amend budgets, revenues, expenditures, and reserves, and collect assessments for Association expenses from Owners; and to form and elect members to an Architectural Committee which shall consist of one member from Duncan's Landing, LLC and one member in good standing of the Duncan's Landing Owners' Association;

- (c) To hire and terminate employees, agents, and independent contractors;
- (d) To institute, defend, or intervene in litigation or administrative proceedings in its own name, or on behalf of itself or two or more owners on matters affecting the Development;
- (e) To make contracts and to incur liabilities;
- (f) To maintain, repair, replace, and modify all roadways, easements, rights of way, and other common areas in Duncan's Landing;
- (g) To cause additional improvements to be made as part of the roadways and common areas;
- (h) To acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property;
- (i) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, to levy reasonable fines for violation of the Declaration of Protective Covenants and Restrictions of Duncan's Landing, Bylaw, or Rules and Regulations of the Owners' Association;
- (j) To provide for the indemnification of its officers and Executive Board and to maintain directors and officers liability insurance;
- (k) To exercise all other powers conferred by the Declaration, Bylaw and applicable West Virginia law;
- (l) To exercise any other powers necessary and proper for the governing and operations of the Owners' Association;

The Owners' Association does not have the authority to grant easements, leases, licenses, and concessions through or over the roadways and common areas of Duncan's Landing. Said authority remains with Duncan's Landing.

2. **Annual Meetings.** The annual meeting of the Owners' Association shall be held each fiscal year on such date as may be established by the Executive Board. Any business may be transacted at an annual meeting if proper notice of said meeting is given.

3. **Place of Meetings.** Meetings of the Owners' Association shall be held at the principal office of the Owners' Association or at such other suitable place as may be convenient to the owners or members, and may be designated by the Executive Board from time to time.

4. **Special Meetings.** Special meetings may be called by the President, a majority of the Executive Board, or upon the petition signed and presented to the Secretary by the owners or members having not less than twenty percent (20%) of the total Lots.
5. **Notice of Meetings.** Not less than fourteen (14), nor more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand delivered or sent prepaid by United State Mail to the mailing address of each lot or to any other mailing address designated in writing by the owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendments to the Declaration of Protective Covenants and Restrictions or these Bylaws, and any proposal to remove an office or member of the Executive Board.
6. **Adjournment of Meetings.** If at any meeting of the Owners' Association a quorum is not present, Owners representing a majority of the lots at such meeting (in person or by proxy) may adjourn the meeting to a time after the time the original meeting was called.
7. **Order of Business.** The order of business at all meetings of the Owners' Association shall be as follows:
 - (a) Roll call (proof of quorum);
 - (b) Proof of adequacy of notice of meeting;
 - (c) Review and approval of the minutes of the preceding meeting;
 - (d) Reports of the officers (including treasurer's financial report);
 - (e) Reports of committees;
 - (f) Election of members of the Executive Board;
 - (g) Unfinished business;
 - (h) New business;
 - (i) Adjournment.
8. **Voting.**
 - (a) Each lot shall have one vote at Association meetings.
 - (b) No owner may vote at any meeting or be elected to or serve upon the Executive Board if payment of the assessment on his lot or payment of any fine or penalty assessed against his/her lot is delinquent more than thirty (30) days, and

the amount necessary to bring his/her account current has not been paid at the time of such meeting or election.

(c) No votes allocated to a lot owned by the Association may be cast.

9. **Proxies.** A vote allocated to a lot may be cast pursuant to a proxy duly executed by an Owner. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over the meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

10. **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy at the beginning of the meeting of owners owning thirty percent (30%) or more of the lots shall constitute a quorum at all meeting of the Owners' Association.

11. **Conduct of Meeting.** The President shall preside over all the meetings of the Property Owners' Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Owners' Association, unless such rules are in conflict with the Declaration, these Bylaws, or applicable law.

ARTICLE III

1. **Powers and Duties.**

(a) Except as provided in the Declaration, these Bylaws, or applicable law, the Executive Board may act in all instances on behalf of the Association.

(b) The Executive Board may not act on behalf of the Association to:

(i) Amend the Declaration;

(ii) Amend the Bylaws;

(iii) Elect members of the Executive Board or determine the qualifications, powers and duties, or term of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term;

(iv) Acquire, hold, encumber and convey real property.

(c) The Executive Board shall establish and approve an annual budget for the operation of the Association. Said budget shall be proposed by the Treasurer of the Association, and approved by a majority of the Executive Board. Within

thirty (30) days after adoption of the budget, and at all times, prior to the adjournment of the annual meeting of members, the Executive Board shall provide a summary of the adopted budget to all the owners. In the event the budget, proposed by the Treasurer to the Executive Board, is rejected, the periodic budget last adopted by the Executive Board, must be continued until such time as the Executive Board ratifies a subsequent budget proposed by the Treasurer.

(d) The Executive Board may make alterations and improvements and perform maintenance to the roadways and common areas without obtaining the prior consent of the Owners, if such alterations, improvements, or maintenance do not cost in excess of the amount contained in the current annual budget for such expenditure. All expenditures in excess of the amount contained therefore in the current year's budget, shall require approval of the Owners' Association.

2. **Number and Term of Office.** The Executive Board shall consist of five (5) persons, the elected officers and two (2) members-at-large, all of whom shall be Lot Owners. The Executive Board members and officers shall take office upon election and shall serve a term of one (1) year.
3. **Election of Executive Board Members.** Members of the Executive Board shall be elected by a plurality of the votes cast at the Annual Meeting of the Association.
4. **Vacancies.** Vacancies in the Executive Board shall be filled by a vote of the majority of the remaining Board members at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Failure of any elected Executive board member to attend, in person or by telephone, two (2) consecutive duly called meeting of the Executive Board, shall constitute a vacation of said members responsibility to the Executive Board and Owners' Association, and shall cause the Executive Board to terminate said member's position and vacate any offices held on the Executive Board. The vacancy created on the Executive Board as a result of the termination, shall be filled in accordance with Article III, Item 4, of these Bylaws.
5. **Regular Meeting.** Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the members, but such meetings shall be held at least once every four months during each fiscal year. Notice of regular meetings of the Executive Board shall be given in writing to each member of the Executive Board, by hand delivery or mail at least ten (ten) days prior to the day named for such meeting.
6. **Quorum of Executive Board.** At all meetings of the Executive Board a majority of the board members shall constitute a quorum for the transaction of business, and the votes of a majority of the board members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. A member of the Executive Board who participates in a meeting by means of telephone communication shall be deemed present at the meeting for all purposes.

7. **Compensation.** No Executive Board member shall receive any salary from the Association for acting as such; however, a Board member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

ARTICLE IV

OFFICERS

1. **Designation.** The principal officers of the Owners' Association shall be the President, the Vice-president, the Secretary, and the Treasurer, all of whom shall be elected annually by the Membership. Any person may hold two (2) offices except that the President shall not also be the Secretary. The President and Secretary shall be members of the Executive Board and be Lot Owners.
2. **President.** The President shall be the Chief Executive Officer of the Owners' Association and of the Executive Board; have general active management of the business of the Owners' Association subject to the control of the Executive Board; see that all orders and resolutions of the Executive Board are carried into effect; and appoint committees from among the Owners from time to time to assist in the conduct of the affairs of the Owners' Association.
3. **Vice-president.** There shall be one (1) Vice-president. The Vice-president shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act.
4. **Secretary.** The Secretary shall keep the Minutes of all meetings of the Owners' Association and the Executive Board; have charge of such books and papers as the Executive Board may direct; give or cause to be given all notices required to be given by the Owners' Association; and in general, perform all the duties incident to the office of Secretary.
5. **Treasurer.** The Treasurer shall be responsible for Owners' Association funds; keep full and accurate financial records and books of account showing all receipts and disbursements; deposit all monies in the name of the Executive Board or the Owners' Association in such depositories as may from time to time be designated by the Executive Board; and in general, perform all the duties incident to the office of Treasurer.
6. **Execution of Documents.** All agreements, contracts, deeds, leases, checks and other instruments of the Owners' Association for expenditures or obligations of Five Hundred Dollars, (\$500.00) or less, except from reserve accounts, may be executed by any one person designated by the Executive Board. All agreements, contracts, deeds, leases, checks and other instruments of the Owners' Association for expenditures or obligations in excess of Five Hundred Dollars (\$500.00) shall be executed by two persons designated by the Executive Board.
7. **Compensation of Officers.** No Officer who is also a member of the Executive Board shall receive any compensation from the Owners' Association for acting as such officer.

ARTICLE V

COMPLIANCE AND DEFAULT

Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, Bylaws, Rules and Regulations and applicable law. A default by an owner shall entitle the Owners' Association, acting through its Executive Board to the following relief:

1. **Additional Liability.** Each Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his employees, agents, tenants, invitees, or licensees, or any occupant permitted by such owner to occupy his lot.
2. **Costs and Attorney's Fees.** In any proceeding instituted by the Association arising out of any alleged default by an Owner, his family members, or his employees, agents, tenants, invitees, or licensees, or any occupant permitted by such Owner to occupy his lot, the Association shall be entitled to recover the cost of such proceeding and such Attorney's fees as may be determined by the Court to be reasonable.
3. **No Waiver of Rights.** The failure of the Owners' Association, the Executive Board or of an Owner to enforce any right, provision, covenant, or condition which may be granted by the Declaration, Bylaws, Rules and Regulation, or applicable law, shall not constitute a waiver of the right of the Owners' Association, the Executive Board, or the Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Owners' Association, the Executive Board or any Owner pursuant to any term, provision, covenant, or condition of the Declaration, Bylaws or Rules and Regulations of the Owners' Association shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Declaration, Bylaws, Rules and Regulations, or applicable law.
4. **Late Charges.** In the event of a default by any owner in paying any sum assessed against his lot which continues for a period in excess of ninety (90) days after the due date, a late charge in an amount equal to the amount of the delinquent assessment and a legal/administrative fee in an amount to be determined as reasonable by the Executive Board, shall be imposed against the delinquent Owner and his/her lot.
5. **Abating and Enjoining Violations by Unit Owners.** The violation of any of the Rules and Regulations adopted by the Executive Board, the breach of any Bylaw contained herein or the breach of any provision of the Declaration or of applicable law shall give the Executive Board the right, in addition to any other rights set forth in these Bylaws:
 - (i) to enter upon the Lot in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner,

any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Executive board shall not thereby be deemed guilty in any manner of trespass;

(ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; and/or

(iii) to levy reasonable fines in accordance with Rules and Regulations promulgated which establish fines and various types of violations for which fines may be imposed.

6. **Legal Proceedings.** Failure to comply with any of the terms of the Declaration, these Bylaws, and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Owners' Association, the Executive Board, or, if appropriate, by any aggrieved owner and shall not constitute an election of remedies.

ARTICLE VI

ASSESSMENTS, LIENS, AND RECORDS

1. **Initial Assessment Deposit.** The subsequent purchaser of any lot in the Development from an initial purchaser shall, on the date of purchase, pay to the Owners' Association an amount, equal to twelve (12) months' assessment with respect to the lot purchased. Such payment is not refundable, and shall be placed in the reserve account of the Association.

2. **Assessment for Common Expenses.**

(a) An assessment for common expenses will be set each year at the annual Owners meeting, and will remain in effect for the fiscal year in which adopted, until altered or changed by the Owners at a subsequent meeting.

(b) Except for assessments under subsections (c), (d), and (e), all assessments must be assessed against all lots in accordance with the provisions set forth in the Declaration.

(c) To the extent reasonably determinable, any common expense or portion thereof benefiting fewer than all of the lots must be assessed exclusively against the lots benefited.

(d) Assessments to pay a judgment against the Association may be made only against the lots in the Development at the time the judgment was entered, and in proportion to their common expense liability.

(e) If any common expense is caused by the misconduct of any owner, or his invitees, lessees, or tenants, the Association may assess that expense exclusively against his/her lot.

3. **Lien for Assessments.** The total annual assessment of each Owner for Common Expenses or any Special Assessment, or any other sum duly levied (including without limitation, fines, interest, late charges, legal fees, and expenses etc.), made pursuant to these Bylaws, is hereby declared to be a lien levied against the lot of such Owner, which lien shall, with respect to the annual assessments, be effective on the first day of each fiscal year of the Association and, as to special assessment and other sums duly levied, on the first day of the next month which begins more than seven (7) days after delivery to the Owner notice of such special assessment.

ARTICLE VIII

MISCELLANEOUS

1. **Amendments.** These Bylaws may not be modified or amended except upon the affirmative vote of at least sixty-seven percent (67%) of the Lot Owners present (in person or by proxy) after the establishment of a quorum. Such amendment may be adopted at any regular meeting or at any special meeting only upon due notice given to members in the Notice of the Meeting, which shall set forth the proposed amendment(s). All amendments to the Bylaws shall be prepared and executed by the Secretary.

2. **Notices.** All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, return receipt requested, postage prepaid.

3. **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

4. **Construction.** These Bylaws shall be interpreted and applied in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the said Corporation has caused these presents to be signed and its corporate seal to be hereunto affixed by its proper officer thereunto duly authorized, on this the 5 day of OCTOBER, 2009.