

**SECOND AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR
DUNCAN'S LANDING, PHASE I, A RESIDENTIAL SUBDIVISION IN POCAHONTAS COUNTY, WEST VIRGINIA**

THIS SECOND AMENDMENT, made and effective on this 5th day of October, 2024, by the DUNCAN'S LANDING OWNERS' ASSOCIATION, hereinafter referred to as "ASSOCIATION, a West Virginia corporation, as to certain real estate known as DUNCAN'S LANDING, hereinafter referred to as "DL", developed by Curtis Construction, LLC, hereinafter referred to as "Developer".

WHEREAS, Developer was the owner of certain real estate, or property, situate in Edray District, near Buckeye, in Pocahontas County, West Virginia designated as Duncan's Landing Phase I, hereinafter referred to as "Development"; and

WHEREAS, Developer desired to create and establish a uniform plan of development for Duncan's Landing, Sections I, II and III, and to sell and convey tracts within the Development and before doing so, to impose upon them actual and beneficial restrictions, covenants, easements, equitable servitudes, charges, assessments and liens under a general plat of development and improvement of the Development for the mutual enjoyment, convenience, protections and benefit of said Lots and the Owners of said Lots, present and future, and

WHEREAS, Developer established a "Declaration of Covenants and Restrictions for Duncan's Landing, Phase I". A Residential Subdivision in Pocahontas County, West Virginia, dated April 28, 2004, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Volume 289, page 208; and

WHEREAS, Developer established an "Amendment to Declarations of Covenants and Restrictions for Duncan's Landing" dated April 21 2008, of record in the aforesaid Clerk's office in Volume 314, Page 115; and

WHEREAS, in accordance with applicable West Virginia law and in accordance with the governing documents, Duncan Landing Owners' ASSOCIATION, hereinafter referred to as "ASSOCIATION" adopted this First amendment to the Declaration of Protective Covenants and Restrictions for Duncan's Landing.

WHEREAS, the ASSOCIATION desires and intends this Second Amendment to amend and restate the Declaration in its entirety and to preserve the value and desirability of said real estate.

WHEREAS, the Bylaws of the Duncan's Landing Owners' ASSOCIATION were recorded in Deed Book, 322, at page 348.

WHEREAS, the West Virginia Uniform Common Interest Ownership Act (W.Va. Code § 36B-1-101 *et seq.*) ("UCIOA"), which is applicable to ASSOCIATION, does not require the ASSOCIATION to record its bylaws in the Clerk's office.

WHEREAS, ASSOCIATION desires to maintain the Bylaws in its corporate records and not of record in the Clerk's office.

NOW, THEREFORE, the Board of Directors, for and on behalf of the ASSOCIATION, hereby declares all lots within Duncan's Landing subject hereto, and amends and restates the Declaration as follows:

ARTICLE I. COVENANT FOR MAINTENANCE ASSESSMENTS

1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

The Developer, for each lot within Duncan's Landing, hereby covenants, and each owner of any lot, by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to accept membership in the ASSOCIATION, and to pay Dues and Assessments to be established and collected as hereinafter provided, and to abide by the provisions of the bylaws or other regulations imposed by said ASSOCIATION. The Dues, or annual Assessments of said ASSOCIATION, together with interest, cost and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a recorded, continuing lien upon the property against which each such assessment is made. The Assessments collected by the ASSOCIATION may be used for routine maintenance and upkeep of the streets, improvements, and Common Areas of said subdivision, as well as for any other purpose the ASSOCIATION sees fit, to promote the interests of said subdivision. Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

A. Dues: The dues shall be set annually by ASSOCIATION Board of Directors and approved at the annual board meeting by the membership. The dues will be per lot, whether developed or undeveloped, and payable by each individual lot owner and may be, pursuant to the procedures outlined in the ASSOCIATION'S bylaws, increased or decreased as approved at the annual meeting by the membership. The Dues described under this provision shall be considered an assessment under W.Va. Code § 36B-1-101 et seq. and may be enforced and collected as an Assessment. The Dues paid by the lot owners in DL will be responsible for funding (100%) of the DL "Common Expenses". An annual budget for common expenditures shall be approved at a meeting of the ASSOCIATION.

B. Additional Assessments: The Board of Directors shall determine, on an annual basis based on the ASSOCIATION'S budget. The type of capital improvements and levy amounts shall be approved by a majority at the annual meeting.

C. Ownership interest in the Common Areas shall be apportioned equally according to the number of lots in Duncan Landing, therefore the owners of lots in Duncan Landing will have an equal ownership interest in said Common Areas. Multiple owners of one (1) lot in Duncan's Landing shall have the same ownership in said Common Areas as that of a single lot owner.

2. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Any Assessment not paid within sixty (60) days after the due date shall bear interest from the due date at the rate allowed by law. The ASSOCIATION may bring an action against the owner personally obligated to pay the same and file a lien against the lot held by the owner. The lien may be filed ex parte and without notice to the owner. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the roadways, easements, or abandonment of the lot.

3. SUBORDINATION OF THE LIEN TO MORTGAGES OR DEEDS OF TRUST

The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage or deed of trust foreclosure or any proceeding or deed in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE II. RESTRICTIVE COVENANTS

The Restrictive Covenants herein established are mandatory for all Duncan's Landing Lot Owners. The Powers of Enforcement regarding the Covenants are the responsibility of the Board of Directors.

1. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Board. The newly created parcel of land must be a least two (2) acres in size. In the event consent is granted, all road and utility installations to the newly created parcel will be the sole responsibility of the new lot owner. Any new road and utility development for the parcel must be approved by the Board in writing. Any new parcel owner will be solely responsible for drilling a water well on the newly created parcel in order to obtain water. The new lot owner shall become a member of the ASSOCIATION and will be required to abide by the Current Protective Covenants and Restrictions of the ASSOCIATION as provided in this document and in any future Amendments to said document and shall be subject to any dues and assessments therein. If approval is granted to subdivide a lot, the newly created lot(s) will be surveyed by a licensed engineer and recorded with the County Commission of Pocahontas County, West Virginia. The ASSOCIATION will be provided a copy of the newly recorded plat map as soon as the parcel is sold. All surveying and engineering expenses will be the sole responsibility of the lot owner. Not more than one single family residence shall be erected on any one lot.

2. **Construction Approval Notice** – No residence, building, facilities or other structures, or any additions thereto shall be erected, or the erections there of begun, on any lot until the site plans and specifications shall have been presented to and approved in writing by the Board. Said plans and specifications shall be submitted to the Board at least thirty (30) days prior to the intended construction date.

3. **Construction Guidelines** -- The following rules and regulations shall govern the approval of building plans and lot improvements:

a. Nothing but single family, private dwellings not to exceed two and one-half (2 ½) stories, shall be erected, altered, placed, or permitted to remain on any lot. Outbuildings, such as garages, stables, barns, greenhouses, shall also be permitted as approved by the Board. Any outbuilding permitted by the Board shall conform in design, style and construction to the dwelling.

b. The construction of any residence or other building on property herein described shall use, as a minimum standard of quality, the requirements set forth by The West Virginia State Building Code.

c. The minimum area of living space of the single-family residence shall be:

RIVER FRONT: one thousand four hundred (1400) square feet

RIVER BLUFF: one thousand two hundred (1200) square feet

INTERIOR LOTS: one thousand (1000) square feet

d. All utilities from utility rights of way to any residence or other building and/or between residences and other buildings shall be underground.

e. Exterior of residence, and any approved outbuilding, will be of a natural material (cedar siding, log, stone or cultured stone veneer). Hardi-Panel, or equivalent composite siding, is permitted but only in "natural muted earth tones" colors. In order to maintain the "Natural Muted Earth Tones" of the community, the color of all stained sidings (wood, log, or Hardi-panel equivalent", if not a natural wood shade, must be approved by the Board before application. Lot owners are required to maintain and protect from inclement weather and UV damage, the exterior material of their home on an ongoing basis. Cinder block foundations must be finished by paint, or stone veneer. Stamped painted concrete foundations will be permitted.

f. All exterior construction of residences and any additional buildings must be completed and closed in within one (1) year of the commencement date of construction.

g. Mobile and/or Modular-Prefabricated homes are not permitted within Duncan's Landing.

h. All construction sites shall be kept in a manner that complies with all West Virginia Department of Environmental Protection (DEP) regulations. This includes, but is not limited to, maintain proper drainage, employing stoned construction entrances and utilizing straw and silt

fence erosion control applications as mandated. Any and all fines levied by the DEP for site related infractions will be the sole responsibility of the lot owner.

i. Owners and builders must follow industry best practices for the disposal of all construction related debris and waste material.

j. All heating oil or gas tanks shall be screened with shrubs or natural fencing, or other material approved by the Board.

k. Final approval of all plans and specifications, including the waiver of certain requirements, will be the authority of the Board.

l. No building shall be erected closer than fifty (50) feet to any street or road, nor closer than thirty (30) to the side or rear of the lot line, with the exception that where two, or more lots, are used together for construction of one dwelling and said lots are considered as a single unit, then the thirty (30) foot set back shall apply only to the outside lines.

m. All fencing must be split rail or other fencing approved by the Board.

n. No trees measuring six (6) inches or more in diameter at four and one half (4 ½) feet above ground level may be removed without the written approval of the Board, unless the tree is within ten (10) feet of the residence or other approved building. However, it will be the responsibility of the landowner to remove diseased, or dead vegetation to preserve the wooded, natural aesthetic of the land.

o. All private driveways to each lot which enter and exit onto the main access road or interior access road shall have a drainpipe installed of not less than twelve feet in length and twelve inches in diameter in order to insure proper drainage.

p. Prior to the occupation of any residence situated in DL, the owner thereof shall, at their expense, drill a useable well, utilize a spring, or tap into a community water line if available for drinking water, and shall install a septic tank and drainage field, or sewage disposal. All toilets, septic tanks, sewage and water disposal systems constructed on said lots shall conform to the rules and regulations of the West Virginia State Health Department; further, activities or use of any lot shall not pollute or cause waste to any spring, drain, or stream situate on, or traversing, said lot.

4. Plan Approval – Remodeling: Plans for home additions and/or construction projects (including tree removal) that will alter the exterior appearance of a home or lot in DL must be submitted to the Board no less than 30 days prior to the commencement of construction for approval. The approval, or disapproval, of the Board shall be in writing. Failure of the Board to respond in writing within thirty days after the plans have been submitted to the Board shall constitute a waiver of the right of the Board to disapprove said plans.

5. Use of lots - All of said lots shall be used for residential or recreational purposes only. No business or commercial enterprise or profession of any kind or character shall be permitted or conducted thereon.

6. Signage -- No signs of any kind shall be displayed to the public view, except that one (1) sign of not more than two (2) square feet, showing the owner's name, address, or E911 address, in conformity with the standards developed by the Board. Owners may place one sign per lot, advertising the lot for sale. In no event shall said sign measure more than three (3) feet in length, height, or width. This covenant shall not be construed to prevent the erection of an entrance sign as approved by the Board.

7. Activity - No noxious or offensive activity shall be carried on or upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No nuisances shall be created or perpetuated in these or any designated common areas which would detract from the esthetic appearance of the area, or which would hinder the enjoyment of these areas by other owners. Camping shall not be permitted in the Commons Area. Quiet time hours will be observed between 10:00 P.M. and 7:00 A.M.

8. Livestock - No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except household pets, and they must be managed so as not to become a nuisance or annoyance to other lot owners. Personal riding horses, not to exceed one (1) per two acres may be kept if proper fencing and suitable facilities are approved and constructed.

9. Waste - No lot shall be used or maintained as a dumping ground for trash, rubbish and yard waste. Trash, garbage, or other waste shall not be kept except in sanitary containers. Violators will be charged a clean-up and disposal fee. Incinerators are prohibited. Equipment used for the storage or disposal of said materials should be kept in clean and sanitary condition.

10. Mowing - During the mowing season of May, June, July, August and September, all owners of lots situate in said subdivision shall maintain their lawn(s) by keeping them mowed, trimmed and in orderly condition. Lot owners that have not begun construction or any building activity on their lot may leave said lot in its natural state if primarily wooded; if primarily grass, mowing must occur at least once per month; providing that the natural state does not become unsightly. All lot owners will be responsible for the removal of overgrown grass/weeds, fallen trees or other unsightly debris if designated by the Board. If any lot is not maintained as above, the ASSOCIATION reserves the right to employ help to maintain said lot or lots at the sole expense of the owner of said lot(s).

11. Licensed Vehicles - Only licensed four-wheel vehicles may be used on the roadways or right of ways in DL. Vehicles such as motorcycles, dirt bikes, three or four wheelers, ATV's, or recreation vehicles are strictly prohibited within DL, and, if present, must be trailered or garaged. The sole exception to this covenant is the use of such vehicles for agricultural purposes.

12. Golf Carts - Gas and/or Electric golf carts with original stock manufactured engines and mufflers, the engine of which may not exceed 14 Horsepower, may be operated on DL roadways within manufacture's operational specifications and guidelines. When not in use, golf carts must be stored in owner's basement, garage, or outbuilding.

13. Campers - Campers may not be used in DL but can be stored in DL if storage is concealed from sight in garage, or outbuilding and approved by Board.

14. Parking - Each lot owner shall provide adequate off-street parking for all vehicles owned and kept at each lot location. On street parking shall be prohibited except for occasional use by visitors. All vehicles shall be fully licensed and in operable condition. No stripped, partially wrecked, or junked vehicles, or any part thereof, shall be permitted to be parked or kept on any lot.

15. Hunting - No hunting of any kind will be permitted, nor shall any firearms be discharged within DL.

16. Temporary Living Quarters - No mobile home, house, or travel trailer, camper unit, tent or other temporary living quarters shall be placed, maintained, or occupied on any lot; provided, however, intermittent camping on said lot by the lot owner will be permitted for a period of one (1) year and requires specific written permission of the Board. Intermittent camping is allowed with the specific and expressed understanding and agreement that all vehicles and camping equipment will be taken with and removed by the lot owner when departing said lot after each camping visit, unless otherwise permitted in writing by the Board.

17. Dish/Antenna - No exterior satellite devise shall be constructed or erected on any lot or residence exceeding thirty-six (36) inches in diameter, nor of any color other than brown, black, grey or white, without the written permission of the Board.

18. Riverfront Recreation Area - There will be dedicated to the use of all owners within DL a certain area fronting on the Greenbrier River, as shown on the plat of DL, which shall be known as the Riverfront Recreation Area. This area will be deemed to be a common area and shall be for the exclusive use of owners within DL, their guests and invitees. No nuisances shall be created or perpetuated in this, or any other designated common areas, which would detract from the esthetic appearance of the area, or which would hinder the enjoyment of this area by other owners. Camping shall not be permitted in the Riverfront Recreation Area.

19. Codes - All governmental building codes, health regulations, zoning restrictions and the like, applicable to said lot now or hereafter made, shall be observed. In the event of any conflict between any provision of any governmental code, regulation, or restriction and any provision of these covenants, the more restrictive provision shall apply.

20. Association Membership - By acceptance of a deed for a lot in Duncan's Landing, each lot owner shall automatically become a member of Duncan's Landing Owners' ASSOCIATION, a non-profit, West Virginia Corporation, which has as part of its purpose, the ownership and maintenance of the streets, improvements and Common Area of Duncan's Landing. Each lot owner shall pay the reasonable Dues and Assessments of said ASSOCIATION and shall abide by the rules, regulations, and Bylaws of said ASSOCIATION.

21. Board Membership - The ASSOCIATION shall elect an Executive Board of Directors consisting of five (5) members. While each lot represents one (1) vote within the ASSOCIATION, owners of more than one (1) lot may not represent more than one (1) member of the Board. An annual, general election shall be held at the Annual Member's meeting each year, the date of said meeting to be determined by the current Board of Directors.

All Owners of one (1) lot in said subdivision shall be considered as one (1) member of said ASSOCIATION and shall be subject to all the rules and regulations of said ASSOCIATION including any assessments that may be charged to individual lots for the development, maintenance, and upkeep of improvements that might be placed in said subdivision. It being understood that each lot represents one (1) member of the ASSOCIATION, every member shall have one (1) vote on matters pertaining to the development including matters of any recreation areas within said subdivision or any future expansions as to the roads and streets therein.

If an Owner of any property within Duncan's Landing violates one or more of the restrictive covenants above, they will receive a notice of violation from the Board. This notice of violation shall be dated and shall state which covenant has been violated and shall give Owner thirty (30) days to cure the violation. If, with good cause shown, the Owner requires more than thirty (30) days to cure the violation, the Owner may apply to the Board for an extension of thirty (30) days to cure the violation.

If the violation is not cured within the thirty (30) day period and no extension has been granted by the Board, or, if an extension has been granted and expired and the violation is not cured, the Board, at its option, may take steps necessary to cure the violation, including retaining someone to cure the defect. The Board shall then bill the Owner for monies expended by it to cure the defect. That invoice becomes due and payable immediately upon submission by the Board to the Owner. This obligation shall become a personal obligation of the Owner. If the invoice is not paid by the Owner within sixty (60) days, the ASSOCIATION may bring any action against the Owner personally obligated to pay the same or file a lien against the lot(s) held by the Owner.

ARTICLE III. RESERVATIONS

1. The Association reserves unto itself, its successors and assigns, the right of ways and easements through and across each lot in Duncans Landing.
2. The Association reserves an easement for the maintenance, upkeep and repair of the roadways and right of ways. The location of these is recorded in the aforesaid Clerk's Office.
3. The Association reserves an easement to excavate, construct, install, erect, operate, maintain and remove all utility poles, conducts, conduits, cables, pipes, transformers, overhead and underground lines and other equipment necessary for utility service to the lots herein described, including, but not limited to the accessory right to cut, trim, or remove trees, shrubs, or plantings wherever necessary. All easements reserved for the purpose of utility operation shall be limited to a strip of land fifteen (15) feet wide at any point along the side, rear and thirty (30) feet on front lines of any said lot.
4. The Association reserves the right to grant to others both in and out of Duncans Landing, the use and enjoyment of the streets in said development, as the same now exist or may be hereafter created. Said streets may be used by the owners of the lots in Duncans Landing, in common with the Developer, its assigns, and successors in title. Lot owners shall not be permitted to grant to adjacent property owners' access or right of ways through their lots, such as to landowners owning property adjacent to the subdivision.

ARTICLE IV. GENERAL PROVISIONS

ENFORCEMENT

1. **SUPERSEDING DECLARATION:** The Second Amendment of Protective Covenants, Conditions and Restrictions amends and restates all prior Declarations. The Second Declaration controls and superseded all prior Declaration of Covenants and Restrictions.
2. **ENFORCEMENT:** The ASSOCIATION or any Owner shall have the right to enforce by a civil action all restrictions, conditions, covenants, restrictions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the ASSOCIATION to enforce any covenant or reservation herein contained shall in no event be deemed a waiver of the right to do so thereafter.
3. **SEVERABILITY:** Invalidation of any one of these covenants or reservation by judgement or order of the Court shall in no way affect any other provision, which shall remain in full force and effect.
4. **PROPERTY OWNER LIMITATIONS:** No property owner, without prior written approval of the Board may impose any additional covenants or restrictions on any part of the land in Duncan's Landing as shown upon the aforesaid maps or as shown upon any future maps which may be prepared and recorded.
5. **AMENDMENT:** The covenants, restrictions and reservations of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of recordation of this Declaration after which time they shall be automatically extended for successive periods of ten (ten) years each unless, a written agreement, voted upon and approved by the then owners of two-thirds of the lots within Duncan's Landing, executed by an Officer of the Board of Directors and recorded in the Office of the Clerk of the County Commission of Pocahontas County, WV, permits any of these Protective Covenants and Restrictions for Duncan's Landing provided for herein, to be changed, modified, waived or extinguished in whole or in part, as to all or any part of the lots.
6. **BYLAWS:** The Bylaws of Duncan's Landing Owners' ASSOCIATION, Inc., were recorded in Deed Book 322, at page 348. UCIOA does not require the ASSOCIATION to record its Bylaws in the Clerk's office. As of the date of this Second Amendment, all Bylaws of record for the ASSOCIATION in the Clerk's office are hereby declared null, void; and of no further force or effect; *provided however*, the ASSOCIATION shall maintain the Bylaws of the ASSOCIATION, and any amendments thereto, in the corporate records of the ASSOCIATION and make such Bylaws available to the membership.

[This is the end of the Second Amendment to the Declaration]

Signing for Duncan's Landing Owners' Association

W. H. Hall Jr. 10/17/2024

Vice President/Date Signed

Secretary/Date Signed