

DECLARATION OF COMMON INTEREST COMMUNITY

FOR

SUNCREST VILLAGE TOWNHOMES

a Planned Development form of Common Interest Community
situate in
Morgan District of Monongalia County, West Virginia

THIS DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES, is effective the 1st day of November, 2011, and Suncrest Village, LLC, a West Virginia limited liability company (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements subject hereof for itself and its grantees and assigns, hereby makes the following declaration and dedication:

1. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP. Declarant does hereby submit, dedicate and declare Suncrest Village Townhomes 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 "Suncrest Village Townhomes". The Subdivision is located near West Virginia Route 705 in Morgan Tax District, Monongalia County, West Virginia.

3. THE LAND. The Subdivision comprised of roads, easements, rights-of-way, utility systems, and Units, all as more particularly depicted, shown, set forth and described on that certain map or plat entitled Map Showing Townhome Phase I Being Part of the Lands of Suncrest Village LLC, prepared by Gary A. Pratt, P.S. No. 907, dated October 26, 2011, recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in **Map Cabinet No. 5 in Envelope No. 115B**, which said map or plat is attached hereto as Exhibit A 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").

3.1 It is the Declarant's intent to dedicate the Subdivision in Phases (each a "Phase") with the first Phase of Units and Common Elements being created and dedicated by this instrument. Additional Property identified on Exhibit B, may become part of the Subdivision as Units or Common Elements at a later date if dedicated by recording an amendment to this Declaration. No portion of the Additional Property is part of the Subdivision or subject to the Act or the provisions of this Declaration applicable to Unit Owners and the Association until an amendment to this instrument is recorded dedicating such land as a Phase in the Subdivision, and then only to the extent so dedicated as part of the Subdivision. The Additional Property is, however, benefitted by various easements, rights-of-way, rights, covenants, conditions, which are excepted and reserved as are set forth below. The use of those rights-of-way and easements appurtenant to the Additional Property is governed by the Association or the covenants and restrictions set forth below which are applicable to Units, Unit Owners, the Association and the invitees, licensees, tenants, guests and contractors of Association and Unit Owners.

3.2 The Subdivision is contiguous to, and is accessed through, Suncrest Village

Condominium, a separate and distinct condominium form of Common Interest Community. The Subdivision is a planned community and is not a part of the Condominium. The Subdivision is benefitted by rights-of-way and easements to utilize some of the common elements of the Condominium for access and recreation as more particularly set forth below. Those rights-of-way and easements are Common Elements of the Subdivision, and because they permit use of common elements of the Condominium they are referred to in the Condominium Declaration and also in this instrument as "Shared Common Elements". Condominium Association is charged with the maintenance and upkeep of the Shared Common Elements and the Subdivision is responsible for a percentage of those costs. **Notwithstanding the foregoing rights-of-way and easements, through a condominium, NO PORTION OF THE SUBDIVISION IS A CONDOMINIUM.** To the extent that Association is charged with the maintenance and upkeep of the Common Elements, Association's duty is secondary to Condominium Association with regard to Shared Common Elements. The Shared Common Elements are Common Element Easements of the Subdivision, which were reserved from, and imposed over, fee common elements of the Condominium.

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. **"Additional Property"** means all land identified on **Exhibit B** which is not dedicated hereby and also identified as a Unit or Common Element on the Plat. Declarant makes no assurance whether any of the Additional Property will be dedicated as future Phases of the Subdivision.

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

4.3. **"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.

4.4. **"Association"** means The Suncrest Village Townhomes 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.

4.5. **"Attached Dwelling"** means a residential structure such as a Townhouse situate on a Unit which is physically joined or attached to another Attached Dwelling.

4.6. **"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.

4.7. **"Builder"** means Dan Ryan Builders, Inc., a Maryland corporation, or any other "builder" subsequently granted exclusive right to purchase all of Declarant's remaining Units in the Subdivision in the event that Dan Ryan Builder, Inc., should not do so.

4.8. **"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 grant or deny Construction Approval with regard to construction plans and specifications for

certain 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. Construction Approval authority is initially vested in the Declarant but will pass to the Association and BCC as more particularly set forth in Section 11.1 (generally), below.

4.9. **"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.

4.10 **"Clerk's Office"** means the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

4.11. **"Common Elements"** means all portions of the Subdivision other than the Units, and which are owned in fee, easement or otherwise by the Association.

4.12. **"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.

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

4.14. **"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.

4.15. **"Condominium"** means Suncrest Village Condominiums, a condominium form of CIC.

4.16. **"Condominium Association"** means Suncrest Village Association, a West Virginia non-profit corporation, which is the statutory association of Common Interest Community Unit Owners for the Condominium.

4.17. **"Condominium Declaration"** means that certain Declaration Establishing a Plan for Condominium Ownership by Section of a Tract of Approximately 19.35 Acres and Certain Improvements thereon and Appurtenances thereunto situate at State Route 705, Monongalia County, West Virginia, Pursuant to the West Virginia Common Interest Ownership Act, Chapter 36B of the Code of West Virginia of 1931, as Amended, which is recorded in the Clerk's Office in Deed Book No. 1312 at Page No. 31, and the amendments thereto recorded in Deed Book No. 1315 at Page No. 344, in Deed Book No. 1364 at Page 266, in Deed Book No. 1386 at Page No. 493, Deed Book No. 1420 at Page No. 424, and subsequent amendments thereto.

4.18. **"Construction Approval"**, means authorization by Declarant by exercise of Declarant Approval Rights or thereafter by Association via its BCC of any regulated improvement to a Unit for which consent is required hereunder.

4.19. **"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.

4.20. **"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 in Article 13.

4.21. **"Declarant"** means Suncrest Village, LLC, 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, Development 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. A party may by a limited purpose successor declarant if that party succeeds to less than all Development Rights and Special Declarant Rights.

4.22. **"Declarant Approval Rights"** means the Declarant's reserved right to approve the initial construction and improvement of all Units and Common Elements as set forth in Sections 4.8, 4.18, and 11.

4.23. **"Declaration"** means this instrument and any amendments hereto, recorded in the Office of the Clerk of the County Commission of Monongalia 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.

4.24. **"Dedicate, Dedication, or Dedicated"** means recordation in the office of the Clerk of the County Commission of Monongalia County, West Virginia, of this Declaration or any amendment hereto whereby land is made a part of the Subdivision and by operation of this 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.

4.25. **"Development Plan"** means those Improvements Declarant intends to complete and which are part of the CIC as depicted and shown on Plats. No Improvement is part of the Development Plan unless depicted or shown in the Development Plan. The Development Plan provides for the sale of Units which do not contain Dwellings and construction thereon of Dwellings by non-Declarant purchasers including, but not limited to, Builder.

4.26. **"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..

4.27. **"Dwelling"** means any house or townhouse structure which, when completed, will be

suitable for occupancy.

4.28. **"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.

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

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

4.31. **"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. Exhibits A through F appended hereto are incorporated herein by reference whether specifically cited herein or not.

4.32. **"Improvement"** means an item of any variety set, placed, constructed or put on any Unit or Common Element.

4.33. **"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 in Article 8.

4.34. **"Living Area"** means the occupiable interior and enclosed space within a Dwelling but shall not include finished or unfinished basements, garages, decks, porches, patios, stoops, attics, and other similar and ancillary interior or exterior spaces. Living Area is used exclusively for determination of the allocation of Shared Common Expenses. For purposes of Shared Common Expense cost allocation, the Living Area of each Unit is identified on the Plat whereby the Unit was originally dedicated based on the dwelling approved by Declarant to be constructed thereon.

4.35. **"Main Floor"** means the lowest story of a Dwelling which contains the main or primary entrance from the street.

4.36. **"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.

4.37. **"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.

4.38. **"Phase"** means a section of land comprised of Units and Common Elements which is identified in an amendment hereto or an amendment to the Plat as one or more Sections.

4.39. **"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.

4.40. **"Procedural Covenant"** means the covenants set forth in Section 11 which require that Unit Owners secure BCC approval prior to commencing construction of certain improvements to Units.

4.41. **“Setback”** means limitations imposed around the perimeter of Units limiting the locations where improvements may be constructed, built, installed or placed on the Units.

4.42. **“Shared Common Elements”** means those Common Elements of the Subdivision owned by Association which are easements or rights to use portions of the Condominium. The Association owns easements or right to use portions of the common elements of the Condominium as set forth in Sections 6.5, 6.6, 7.2(f), 8.1, 8.2 and 16.3. The common elements of the Condominium which the Association has the right to use are the “community room, swimming pool, car wash area, streets, roads, driveways, sidewalks, walkways, trails, paths and any general common element of the Condominium designed or intended for foot, bicycle and automobile transit” within the Condominium but specifically excluding there from all units in the Condominium, and all buildings of the Condominium which contain Condominium units. **Notwithstanding the foregoing, NO PORTION OF THE SUBDIVISION IS SUBJECT TO THE CONDOMINIUM FORM OF OWNERSHIP. Rather, certain Common Elements of the Subdivision are imposed over and across land which is part of the Condominium.**

4.43. **“Shared Common Elements Agreement”** means, the right reserved by Declarant in Section 10.05 of the Condominium Declaration to grant rights-of-way and easements pertaining to the Shared Common Elements subject to the cost sharing and allocation provisions set forth in Section 9.4, below.

4.44. **“Shared Common Expenses”** means the expenses incurred by Condominium Association with regard to maintenance, upkeep, repair, replacement, and operation of the Shared Common Elements but specifically excluding there from, the costs of insurance on the Shared Common Elements. Condominium Association and Association shall each maintain at their respective cost, independent insurance policies covering their respective interests in, and to, the Shared Common Elements.

4.45. **“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.

4.46. **“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.

4.47. **“Substantive Covenant”** means each of the Construction Standards which establish substantive, rather than procedural, requirements governing improvements to Units.

4.48. **“Unit”** means a physical portion of the Subdivision designated for separate ownership or occupancy, the boundaries of which are shown on the Plat. 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; (d) a right to utilize all Common Elements; and (e) a right to utilize all Shared

Common Elements.

4.49. **"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.

4.50. **"Use Restrictions"** means the restrictions and limitations in Article 16 governing the use and occupancy of a Unit.

5. THE DECLARANT. Declarant owns all land dedicated as the Subdivision except for the Shared Common Elements part of which are easements over land in the Condominium which Declarant reserved appurtenant to the Subdivision. Because the Common Elements are dedicated by this instrument, after the sale of the first Unit in the Subdivision by Declarant to a third-party, Declarant will be a Unit Owner selling Units in the ordinary course of business but vested with Special Declarant's Rights, Development Rights and certain easements necessary for completion of the Subdivision, and also exercise of Special Declarant Rights and Development Rights. Easements reserved by Declarant are also reserved for the benefit of the Additional Property unless otherwise for the purposes set forth herein.

5.1. Declarant specifically excepts and reserves all Special Declarant Rights and all Development Rights set forth in Section 3-103(14) of the Act, and Sections 4.26 and 4.45, above, which rights are alienable in whole or in part and may be unilaterally transferred or assigned by Declarant on such terms as are reflected in the instrument of transfer. There are no conditions which will cause a lapse of any Development Right which may otherwise be exercised in accordance with law. **NOTICE TO ASSESSOR, pursuant to Section 1-105(b) of the Act, beginning at the time of the sale of the first Unit in each Phase to a third party, all Development Rights relating to that Phase will expire by operation of law and each Unit and Common Element in such Phase must be a separate tax parcel. No tax may be levied against any Common Element in any Phase after the first Unit in such Phase if conveyed by Declarant to a third party.**

5.2. With regard to Declarant's Development Right to add land to the Subdivision, Declarant may: (a) add any of the Additional Property; and (b) add lands which are not included in the Additional Property to the extent permitted by law.

5.3. With regard to Declarant's Development Rights to create Units and Common Elements, and to convert Units to Common Elements, Declarant may not create more than Fifty-Five (55) total Units in the Subdivision.

5.4. Each of Declarant's Development Rights may be exercised at any time prior to the earlier of the twentieth anniversary of this Declaration or the voluntary or involuntary termination of such Development Right, which ever shall occur first. All Development Rights may be exercised concurrent with or independent of all other Development Rights. The exercise of, or failure to exercise, any Development Right with regard to any Unit, lot, tract, parcel or piece of land, including the Additional Property, shall not in any manner prejudice, effect, termination or waive Declarant's Development Rights, or any of them, with regard to the remainder of, or any other any other, Unit, lot, tract, parcel, portion or piece of land or Additional Property. There are no fixed boundaries with regard to the exercise of Development Rights. Development Rights may be exercised with regard to any portion of any land subject to those Development Rights. No assurance is made that any Development Right will be exercised, or with regard to the order in which Development Rights may be exercised. The exercise of any Development Right does not impose a corresponding duty to exercise any other Development Right.

5.5. Declarant excepts and reserves 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) make non-exclusive vehicular and pedestrian use of all rights-of-way and/or easements in the Subdivision; (c) utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements, drains, drainage systems and surface water controls, 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; (d) make improvements within the Subdivision; (e) 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; (f) store construction equipment and materials on or in Common Elements when completing improvements to the Subdivision or fulfilling its warranty obligations; and (g) enter onto any Common Element and fix, modify and change the grades and elevations of the Common Elements. Each of the foregoing non-exclusive reservations shall be alienable in whole, or in part, and may be unilaterally transferred or assigned by Declarant on such terms as are reflected in the instrument of transfer. Each of the foregoing non-exclusive reservations except item (d) is also made for the benefit of, and as appurtenant to, the Additional Property.

5.6. 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. Declarant right to appoint officers and directors of the Association is in no manner tied to its obligation to complete the improvements to the Subdivision which are part of its Development Plan.

5.7. 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 except as required by the Act. 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, Special Declarant Right or Declarant 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.

5.8. Notwithstanding any provision contained herein to the contrary, Declarant hereby transfers, assigns and sets over unto Builder, its successors and assigns, the right to maintain on both Units and Common Elements, without limitation as to number, size, location, or relocation, sales offices, management offices, signs advertising the Development, and models, and the right to conduct sales, marketing and promotional activities and events within the Subdivision, until the occurrence of one of the following: (a) the date which is one (1) year after the Builder ceases to own any Units in the Subdivision and does not by written agreement have the right or option to purchase additional Units within the Subdivision (including future phases), or (b) the date which is three (3) years after Builder ceases activity in connection with the construction of townhomes on the Units which it owns. Builder shall also have the right to advertise for any other development or community in which Builder owns or controls lots or units once Builder has less than four (4) remaining Units in the Subdivision. Declarant hereby grants and conveys unto Builder such non-exclusive easements and rights of way as may be necessary to exercise the right to maintain on both Units and Common Elements, without limitation as to number, size, location, or relocation, sales offices, management offices, signs advertising the Subdivision,

and models and the right to conduct sales, marketing and promotional activities and events within the Subdivision.

6. STRUCTURE OF THE SUBDIVISION.

6.1 The Subdivision is comprised of Units and Common Elements which are owned by the Association by dedication. Declarant reserves the right to make unilateral confirmatory transfers of Common Elements and improvements by deed, bill of sale or other instrument as may be necessary hereafter in Declarant's absolute discretion. Declarant shall complete all Units and Common Elements in accordance with its Development Plan and does not intend to make any additional or future improvements to same except to the extent shown on the Development Plan. Declarant intends to complete Units which are land suitable for construction of a Dwelling and Common Element improvements.

6.2 Declarant is responsible for the costs, expenses, maintenance and upkeep of all portions of the CIC subject to Development Rights. The Association is responsible for maintenance, repair, and replacement of Common Elements and all portions of the CIC other than the Units, which are subject to Development Rights. The Association's costs and expenses are allocated to and payable by the Unit Owners as Common Expenses.

6.3 Each Unit Owner, including Declarant as a 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 to a Unit. Notwithstanding the foregoing, the Association shall provide "Lawncare Services" to all Units as a Common Expense allocated equally to all Units without regard to size. Lawncare Services are mowing, mulching, trimming of, and seasonal leaf removal from, lawns and grass which are portions of the Unit. Lawncare Services do not include flower beds, flower gardens and similar Unit specific landscaping or improvements made by a Unit Owner.

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, including the right to make repairs to Units as set forth in Section 17.7. If material damage is inflicted on the Common Elements or on any Unit through which access is needed the Unit Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt and reasonable 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, including the Shared Common Elements to the extent that the same are easements or rights of use owned by Association; (b) non-exclusive easement for ingress, egress, regress and access over and across those portions of the Shared Common Elements designed for foot, bicycle and automobile transit such as the car wash area, streets, roads, driveways, sidewalks, walkways, trails, and paths; (c) non-exclusive license and right to utilize all Common Elements of the Subdivision and all Shared Common Elements; (d) voting rights in the Association; and (e) fractional share of, and liability for, the Common Expenses of the Association. Each of the foregoing rights is subject to reasonable rules of use, and regulation by, the Association, and the foregoing item (b) is also subject to reasonable rules of use, and regulation by, the Condominium Association.

6.6 Condominium Association is responsible for Shared Common Element maintenance, improvement, upkeep and insuring of the Shared Common Elements. A percentage of the costs of the maintenance, improvement, and upkeep of the Shared Common Elements is Shared Common Expenses

is payable by Association to Condominium Association. The Association's share of Shared Common Expenses is a Common Expense allocated to all Units in the Subdivision. Notwithstanding the foregoing, Association is charged with insuring its easement, right of use, or interest in and to the Shared Common Elements. Condominium Association's cost of insuring the Shared Common Elements, and improvements thereto, is not a Shared Common Expense. Association shall insure its Common Element which include its easements and rights to use the Shared Common Elements.

6.7 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 has exclusive benefit of any Common Element or the improvements thereon or thereto. This provision shall not, however, preclude the assessment of fines or penalties against one or more Units for the costs resulting from misuse or abuse of any portion of the Common Elements.

6.8 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.

6.9 The Subdivision is divided into Phases. All Units in all Phases are restricted exclusively to the construction of Attached Dwellings and approved appurtenant residential Improvements. Provided, however, that a Unit may be converted into a Common Element and utilized for other purposes if owned by the Association. The categorization into Phases is for the exclusive purpose of defining Development Rights and, if necessary, categorizing Construction Standards and Occupancy Restrictions which may vary between Phases.

6.10 Declarant's Development Plan provides that all streets in the CIC s which are depicted on the Plat and which are the exclusive means of vehicular or pedestrian access to a Unit or Common Element shall be paved and completed prior to the time that each Phase is dedicated. Declarant covenants that (a) all streets within the Subdivision shall be paved and completed with a final top-coat, wearing course not later than six (6) months after the sale by Declarant of its final Unit in the Subdivision; (b) prior to such sale Declarant shall maintain base coat (type II aggregate asphalt) roads; (c) streets shall be paved to a general average, but not uniform, width of not less than sixteen (16) feet; and (d) streets shall consist of a total average compacted thickness of two inches (2") of road base (type II aggregate asphalt) and a one inch (1") average thickness wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards. Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving and maintenance of any section of street or roadway beginning at the time that a final top-coat, wearing course of type I aggregate asphalt is applied to same.

6.10 **NOTICE TO MONONGALIA COUNTY ASSESSOR.** The Subdivision is a planned community form of Common Interest Community and pursuant to Section 1-103(4) of the Act, land in a planned community cannot be a "Common Element" unless it is owned or leased by the Association. The recordation of this Declaration constitutes an offer of private dedication transferring the Common Elements of the Subdivision to the Association. The private dedication is effective, irrevocable and accepted as to the Phase of the Subdivision dedicated hereby when the first Unit in such Phase is conveyed to a party other than the Declarant. Further, under the Act, Declarant's Development Rights expire as to any Common Element when the first Unit in the same Phase as the Common Element is conveyed to a third party. Pursuant to Section 1-105(b)(2) of the Act, if 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.

BEGINNING AT THE TIME THE FIRST UNIT IN ANY PHASE IS CONVEYED BY DECLARANT TO A THIRD-PARTY, the ASSESSOR IS REQUIRED to assign a separate parcel number to each Unit and Common Element in the same Phase and to cause the Units to be separately taxed and assessed with no separate tax or assessment rendered against any Common Element in such Phase.

6.11 NOTICE TO UNIT PURCHASERS REGARDING ASSOCIATION COSTS AND DECLARANT COSTS. Declarant is only responsible for the costs and expenses of real estate and Improvements which are subject to Development Rights. All costs of real estate and improvements not subject to Development Rights are expenses of the Association. Once real estate is dedicated to the Subdivision as a Common Element and the first Unit in the same Phase as the Common Element is conveyed by Declarant, all costs and expenses of the Common Element are costs of the Association. Similarly, when an Improvement to a Common Element is completed, all costs and expenses of the Improvement are costs and expenses of the Association. Declarant's cost obligation continues so long, and so long only, as Common Elements are subject to Development Rights, and with regard to Common Element Improvements, so long and so far, as the same remain incomplete. Pursuant to the Act, Declarant's liability for the Costs of Common Elements in any Phase terminates when the first Unit in the same Phase is conveyed by Declarant because: a) the Common Element cannot thereafter be withdrawn; b) the Common Element is not a Unit; and c) the Common Element is already dedicated and part of the Subdivision. With regard to Improvements, if an Improvement is partially completed, the Association is charged with maintenance, upkeep, repair and replacement of the Improvement, and the costs thereof, to the extent same is completed notwithstanding Declarant's right to make further additions, repairs or changes thereto at a later date, once a roadway or parking area is paved the pavement is the responsibility of the Association.

6.12 NOTICE REGARDING ROADWAYS AND ASPHALT SURFACES. With the exception of the primary entrance to the Subdivision and the road which provides the primary means of access to each Unit, Declarant makes no assurance as to whether any other paths, streets or roads depicted on the Plat which are utilized for access to lands outside of the Subdivision, or which are utilized for maintenance, construction or similar purposes will be built. Secondary road, streets and paths depicted on the Plat which are not the single primary means of access to a Unit "NEED NOT BE BUILT". Declarant covenants that (a) all primary streets within the Subdivision shall be paved and completed with a final top-coat, wearing course not later than six (6) months after the sale by Declarant of its final Unit in the Subdivision; (b) prior to such sale Declarant shall maintain base coat (type II aggregate asphalt) roads; (c) streets shall be paved to a general average, but not uniform, width of not less than sixteen (16) feet; and (d) streets shall consist of a total average compacted thickness of two inches (2") of road base (type II aggregate asphalt) and a one inch (1") average thickness wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards. Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving and maintenance of any section of street or roadway beginning at the time that a final top-coat, wearing course of type I aggregate asphalt is applied to same.

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 reserves to Declarant both in its capacity as Declarant and also reserves to Declarant as appurtenant to the Additional Property, and also grants and conveys to the Association, the non-exclusive and perpetual rights-of-way and easements set forth in this Section 7. Each right-of-way

and easement is, to the extent reserved to the Association, 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 and Common Elements as depicted and shown on the Plats;
- b. Easements over and across all Units in Phase I as follows:
 - Ten (10) 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 road;
 - Ten (10) feet as measured along the rear of each Unit which is not also a common boundary with a Common Element road;
 - Ten (10) feet as measured along each Unit side boundary which is not a location where the Unit adjoins a: (i) a Common Element road; or (ii) another Unit.
 - 0 feet as measured along each Unit side boundary which is a location where two Attached Dwellings are physically connected, except that a 2 foot easement is imposed along the exterior of and above Attached Dwellings for the purposes of eaves, roofs, gutters, downspouts, and similar appurtenant Improvements which constitute the over-hanging roof systems, if any, of the Units.
- d. An easement six (6) feet in width as measured three (3) feet on each side of the center of the following, if existing prior to the sale of a Unit by the Declarant and installed within a Unit by or for 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 discharging surface water, storm water and drainage within the Subdivision.
- e. 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.
- f. An easement to utilize all Shared Common Elements for the benefit of the Additional Property. Provided, however, that in the event the Additional Property is developed and not made a part of Condominium or Subdivision, then any units in such other development with the right to use the Shared Common Elements shall also be burdened with a share of the maintenance and upkeep of same pursuant to the formula set forth in Section 9.4.
- g. An easement for access on, over and across all portions of all Units which are not a Dwelling as may be necessary for provision by Association of Lawncare Services.

7.3 Declarant reserves unto Declarant, and also 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 hereunder, and fulfilling Declarant's duties, as Declarant.

7.4. Notwithstanding any provisions herein to the contrary, construction approval by the Declarant or 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 to Declarant, reserved appurtenant to the Additional Property or granted to Association in this Article 7 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 reasonable 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 All easements reserved by Declarant, whether for the benefit of Declarant, the Additional property and/or Association, are alienable in whole or in part and may be unilaterally transferred or assigned by Declarant on such terms as are reflected in the instrument of transfer. All easements not specifically limited to access by the Declarant for exercise of its Special Declarant Rights, or Development Rights, are also reserved appurtenant to Declarant's Retained Real Estate.

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 Declarant or the Association; and (c) the non-exclusive rights-of-way, easements and rights-of-use for the Shared Common Elements.

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 the right to utilize roadways for access to Units 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).

8.2. All Unit Owners are entitled to the use and benefit of the Shared Common Elements subject to the reasonable Rules and Regulations as may be, from time to time, promulgated by the Condominium Association. With the exception of the right to utilize roadways for access to Units, Condominium Association may, after notice and right to be heard, suspend: (a) any Unit Owner's Right to utilize any

Shared Common Element as a result of violations of the permitted uses of the Shared Common Element by that Unit Owner or their tenants, guests or invitees; or (b) all Unit Owner's Rights to utilize the Shared Common Elements at any time which the Association's share of Shared Common Expense payable to Condominium Association is delinquent or past due. Condominium Association may also suspend all Unit Owners' rights to utilize the Shared Common Elements for good cause if all owners of all Condominium Units are also denied such use.

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.

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 of 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: As of the date of this Declaration there are twenty-one (21) Units in the Subdivision and each Unit is allocated 1/21st of the votes and 1/21st of the Common Expense Liability of the Association. If two Units are combined so that there are only twenty

(20) Units in the Subdivision, each Unit will be allocated 1/20th of the votes and 1/20th of the Common Expense Liability of the Association.

9.4 ALLOCATION OF SHARED COMMON EXPENSE LIABILITY AND VOTES BETWEEN ASSOCIATION and CONDOMINIUM ASSOCIATION.

Shared Common Expense liability is part of the Common Expense Liability and is allocated between the Association and Condominium Association in proportion to, and based on, the total Living Area of all Units in both the Condominium and Subdivision, the proportion of Shared Common Expenses to be shared by the Association as a Common Expense shall be determined by the following formula set forth in the Condominium Declaration: “(1) the sum of the square footage of all of the [L]iving [A]rea of all units in the [Subdivision] sharing in the use of the Shared Common Elements; (2) divided by the following sum: the square footage of the [L]iving [A]rea of all [U]nits of the [Subdivision] sharing in the use of the Shared Common Elements plus the [L]iving [A]rea of all units in the Condominium; (3) which division yields a percentage to be known as the Expense Factor; (4) the Expense Factor is then multiplied by the applicable line items in [the Condominium Association’s] yearly common expense budget for Shared Common Elements of the Condominium to which the tenants and guests of the [Subdivision] have access and right to use; (5) which determines the share of such expenses to be paid by the [Unit O]wner(s) of the [Subdivision].”

Formula:

The sum of square footage of [L]iving [A]rea in the [Subdivision]

_____ x Expense Factor x Applicable Common Expense = share paid by [Subdivision Unit] owner(s)

The sum of the square footage of the [L]iving [A]rea in the [Subdivision] + sum of square footage of [Living Area] in the Condominium¹

Example for illustrative purposes only:

Total [L]iving [A]rea of [Subdivision]:	10,000 square feet
Total living area of Condominium:	5,000 square feet

[Subdivision Living [A]rea (10,000 square feet) divided by combined [Subdivision] and Condominium [L]iving [A]rea (15,000 square feet) = 66.33% Expense Factor

Common Expense for Shared Common Elements of \$1,000.00 multiplied by Expense Factor = \$663.30 to be paid by owner(s) of the [Subdivision] in equal shares.

The foregoing formula and allocation of costs is established in Section 16.05 of the Condominium Declaration with regard to any development of the Additional Property. In the Condominium, such development or developments are referred to as the “Alternate Development” and for the purpose of this instrument the term “Subdivision” is inserted in place of “Alternate Development”. Notwithstanding the foregoing, if less than all of the Additional Property is dedicated to the Subdivision, any other Alternate Development created from the Additional Property shall, if granted the use of the Shared Common Elements, be subject to and share in the foregoing allocation of Shared Common Expenses in the same manner as Condominium and Subdivision.

¹ Provided, that if the Additional Real Estate is developed into Units which have the right to use the Shared Common Elements, the denominator shall be the total [Living Area] of all Units with the right to use the Shared Common Elements.

Because all Unit Owners must be members of Association and the Association is empowered to enforce liens against Units as set forth below, all Shared Common Expense liability of the Units is a Common Expense of Association payable by Unit Owners to Association and by Association to Condominium Association. All voting and approval rights afforded to Units with regard to Shared Common Elements are vested in Association, in its representative capacity in behalf of the Unit Owners. This Declaration supersedes the language provisions of Section 10.6 of the Condominium Declaration so, and so far only, as the Condominium Declaration makes each Unit in the Subdivision liable for Shared Expenses but this Declaration interposes Association as a mechanism for collection and payment of Shared Common Expenses to Condominium Association by Association in its representative capacity in behalf of Unit Owners.

For the purposes of this Section 9.4, the sum of the square footage of all of the [L]iving [A]rea of all Units in the [Subdivision] sharing in the use of the Shared Common Elements shall be conclusively determined by reference to the Plat in accordance with Standard Appraisal Policies and Procedures which shall exclude finished and unfinished basements and garages.

The [L]iving [A]rea of all dwellings approved for construction in Phase 1 is set forth on Exhibit E. Each amendment hereto adding any new Units shall include an amendment to Exhibit E restating the cumulative [L]iving [A]rea of all dwellings in the Subdivision for Shared Common Expense allocation purposes.

10 STATED PURPOSE OF THE CONSTRUCTION STANDARDS.

10.1. These 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. Declarant reserves the unilateral right to approve all aspects the initial: (a) construction of Dwellings and completion of initial improvements made each Unit until the time the Dwelling situate on the Unit is first occupied for residential purposes; and (b) the initial construction, completion and improvement of all Common Elements and the improvements thereto ([a] and [b] collectively "Declarant Approval Rights"). Beginning on the date that each Unit is initially occupied as a residence, the right to approve subsequent construction and improvements with regard to that Unit shall transfer from Declarant to the Association via its BCC. Beginning sixty (60) days after all Units in a Phase have been initially occupied as a residence, the right to approve subsequent construction and improvement with regard to the Common Elements in the Phase shall transfer from Declarant to Association via its BCC. With regard to exercise of Declarant Approval Rights, the Declarant is not subject to the requirements, guidelines, conditions, covenants and conditions imposed by this instrument on the BCC, the Board of the Association.

11.2 The BCC is a standing committee of the Association created to assume construction approval rights from Declarant in accordance with Section 11.1. The BCC is 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.

11.3. The BCC has no construction approval authority with regard to use of easements reserved within the Subdivision by Declarant for the benefit of the Additional Property or with regard improvements made to the Shared Common Element Easements by or in behalf of Condominium Association. To the extent that any Unit may be occupied for residential purposes prior to final completion thereof, BCC may not revoke, revise, modify, limit or expand and plans or specifications approved by Declarant for the initial construction and completion of the Unit. BCC shall be bound by all Declarant construction approvals and may not modify or amend same without the prior written consent of Declarant and also the owner of the Unit for which such approval was given. The BCC has no Construction Approval authority with regard to any Unit or Common Element for which Declarant Approval Rights have not expired.

11.4. The BCC 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 in the case of Unit Owners which are not natural persons.

11.5 The BCC shall be appointed by the Board and: (a) at least one member of the BCC shall also be a Board member; (b) no two (2) members may serve on the BCC if they are collectively the owners of, or representatives of the owner of, only one (1) Unit in the Subdivision; (c) the qualifications of the BCC members not specified herein, shall from time to time, be set by the Board; and (d) 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.

11.6. All powers and authority of the BCC derive from the Board and subject to Declarant's Approval Rights the Board may, from time to time, increase or decrease the powers and authority delegated by it to the BCC. Notwithstanding the foregoing, the Board may not increase the powers and authority delegated by it to the BCC until such time all Units in the Subdivision have initially been occupied for residential purposes, and it shall not decrease the powers expressly delegated to the BCC herein. 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 to the extent that those powers are not set forth herein. The BCC shall, in

exercise of powers and authority (whether derived from the Board or this instrument), 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.

11.7 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 Associations' 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 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. The costs of the special meeting shall be borne by the prevailing party unless the membership shall specify otherwise at the meeting,

11.8. Procedural Covenant. Subject to the provisions of Section 11.15, 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 granted Construction Approval. Provided, however, that Construction Approval is not 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.

11.9. 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.

11.10. 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 Master Agreement, the other Governing Documents, and applicable law.

11.11. 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. BCC's failure to approve or disapprove any Plans submitted for approval in substantial compliance with this Article 11 within thirty (30) days shall be conclusively deemed as an approval.

11.12. 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 Master Agreement, 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.

11.13. 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.

11.14. All Construction Approvals made or given by the Declarant, 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 Declarant, 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.

11.15. 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 mineralization of impact on peaceful occupancy of other Units.

11.16. The Declarant, 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.

11.17. 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.

11.18. The Procedural Covenants of this Article 11 are procedural restrictions which govern the process for securing Construction 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.

11.19 The Declarant has contracted to sell all Units in the Subdivision to Builder. Builder desires to construct Dwellings on the Units. Builder has submitted plans for various proposed Dwellings and other Unit and Common Element improvements to Declarant for Construction Approval. Declarant has granted written Construction Approval for a variety of Dwellings and other improvements which Builder may construct on any Unit or Units owned by Builder and also on certain Common Elements including, without limitation, the Windsor model type. Declarant Construction Approval is granted: (a) prior to this instrument when Declarant was owner of all land in the Subdivision prior to dedication of the Subdivision; (b) simultaneous herewith as owner of all Units and therefore as the Unanimous consent of all Unit Owners, and all officers, directors and members of Association and BCC. The Construction Approval given by Declarant is made with regard to Builder's submitted and approved Plans and specifications pertaining to exterior building materials for the model Dwelling types that Builder intends to construct in the Subdivision, and the Construction Approval permits Builder to construct any of its pre-approved models on any Units without being any additional Construction Approvals required so long as Builder does not materially and adversely deviate from the approved Plans. Each Unit Owner, by acceptance of a Deed conveying a Unit covenants and agrees to not vote in favor of, or otherwise participate in, any attempt to otherwise invalidate the prior construction approval granted Builder.

11.20 Declarant, as owner of all Units in the Subdivision and as sole member of Association, hereby agrees to permit Builder to install standard, uniform type of cluster style mailboxes after Builder is the owner of at least twenty-one (21) Units. Declarant shall, at Declarant's expense, identify and provide Builder with a mutually agreeable location or locations on the Common Elements or Shared Common Elements suitable for the installation of same which such mutually agreeable location shall be approved by the United States Postal Service. All mailboxes and appurtenant landscaping and improvements installed by Builder pursuant to this provision shall be Common Elements and to the extent applicable belong to Association. The provisions of this Section are an accommodation and license by Declarant and Association to a present or future Unit Owner because mailbox location and placement cannot be approved by the United States Postal Service until after construction of Dwellings and in no manner shall any provision of this Section be construed to make Builder a declarant, successor declarant or otherwise vested with any Development right or Special Declarant Right.

11.21 The provisions of Sections 11.19 and 11.20 are inducements for Builder to Purchase Units and may not be revoked, rescinded, modified or terminated without the prior written consent of Builder.

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. So long as Declarant owns at least one (1) Unit, Association may not promulgate or enforce any Construction Guidelines without the prior written consent of Declarant.

13 CONSTRUCTION STANDARDS APPLICABLE TO ALL UNITS:

13.1 No Unit may contain more than one (1) Dwelling.

13.1.1 No Improvement other than a residential Dwelling, or an appurtenance to a Dwelling which is of a residential character, shall be made, built, constructed, erected, set, placed, and/or put on any Unit.

13.3 All Dwellings shall be of traditional residential townhouse character and appearance common to similar attached Dwellings in similar residential neighborhoods in Monongalia County, West Virginia. The entity authorized to grant Construction Approval is vested with exclusive authority to determine what constitutes traditional residential character. The entity authorized to grant Construction Approval 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.

13.4 All Dwellings shall be stick-built on-site and constructed of new materials. Mobile-homes, trailers, campers and other vehicles which are issued titles by any State agency are not approved Dwellings. Panelized, sectional and modular dwellings are not "stick-built" for the purposes of this provision but trusses and other components are permitted.

13.5 No Dwelling shall be located nearer to the perimeter of the Unit than the established set-back lines set forth below absent a prior written variance the entity authorized to grant Construction Approval. The entity authorized to grant Construction Approval also has the unilateral right to grant variances from all easements and set-backs for the purpose of permitting Improvements within easement and set-backs and no Unit Owner consent is required for same.

13.6 Subject to Sections 10 and 14, no permanent improvement shall be made within any easement reserved in Article 7, except for driveways, sidewalks, fences, utility installations and other improvements without Construction Approval. For the purpose of this provision, an improvement is "permanent" if the surface of the soil is disturbed in its construction. Any approved fence shall be substantially composed of attractive vinyl or aluminum materials.

13.7 Unit Setbacks are those easement areas established in Section 7.2(b).

13.8 All exterior Unit primary finishes and sidings shall be of at least the same quality as the exterior of Units in the Condominium.

13.9 Roofing Requirements for all Dwellings:

a. All attached Dwellings shall have stepped or broken roof lines so that, for all material purposes, the exterior of each attached Dwelling may be maintained, kept up, repaired, replaced, restored, and rebuilt independent of the Dwelling to which it is attached.

b. The following shall be the roofing standards for each Dwelling: (i) flat and non-peaked roofs shall be prohibited, (ii) all roofs, exclusive of porch roofs, shall have a minimum roof pitch of not less than six (6) inches of rise for every twelve (12) inches of run, and (iii) the primary roof of a Dwelling shall not be metal, however, metal roofing components may be utilized for porches, gables, eaves, awnings, overhangs, and similar minor amenities.

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

The following shall be the exterior surface standards for each Dwelling: (i) all exposed, above grade surfaces shall be of either Masonry Materials, wood, or attractive synthetic siding such as Hardy Plank™ or high quality vinyl, (ii) aluminum siding, stucco, and drivet shall be prohibited, (iii) the exterior wall surfaces of a Dwelling below the lowest point of the lowest floor above grade shall be finished with Masonry Materials to grade, and (iv) no concrete walls or cinder block shall be exposed to view at any location on a Dwelling; provided, however, that poured concrete foundations that are painted to match the Dwelling's facade or finished with attractive stamping shall be acceptable.

13.11 Color Requirement for all Dwellings.

The following shall be the exterior color standards for each Dwelling: (i) all non-masonry primary exterior surfaces of a Dwelling shall be of a color approved by the Declarant, and after termination of Declarant Approval Rights, by Association, (ii) all masonry exterior surfaces of a Dwelling shall be of a variety and color approved by the Declarant or Association as set forth in section (i), and (iii) all roofing shingles utilized for the primary roof surface of a Dwelling shall be of a variety and color approved by Declarant or Association as set forth in section (i) and (ii).

13.12. Utility Installations to Dwellings.

The following shall be the utility installation standards for each Dwelling: (i) all Lines and Related Improvements on a Unit shall be installed below-grade with only meters, connection boxes, and similar facilities exposed to view; provided, however, that the foregoing standard shall not apply to Lines and Related Improvements installed, constructed, improved, laid, extended, repaired, removed, replaced, reinstalled, re-constructed, re-improved, re-laid, and re-extended by Declarant, (ii) no Unit shall contain as a permanent utility component or source, any (1) water well or (2) propane or other fuel storage tank or container.

13.13 Driveways, Garages, Sidewalks and Curbs.

The following shall be the driveway, sidewalk, and curbs standards for each Unit: (i) the driveway of each Unit shall contain sufficient area to park two (2) passenger cars, (ii) common, joint, or shared driveways shall be prohibited, (iii) each driveway and sidewalk shall be constructed of concrete or paved with asphalt, (iv) each driveway shall be completed and connected to the roadways within the Development with a curb, apron, or skirt connecting the driveway to the paved surface of the road, and (v) to the extent that a driveway shall slope downhill from a roadway to a Dwelling or downhill from a Dwelling to a roadway, appropriate and industry-standard measures shall be employed to ensure adequate storm water controls are in place.

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 or Common Elements. 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 or other Units except in compliance with Declarant's storm water designs for the Subdivision

13.14 Landscaping.

a. Each Unit shall be fully landscaped in a manner suitable and appropriate for a residential townhome community in the Morgantown, West Virginia, area. A Unit Owner shall from time to time remove and replace any and all dead bushes, shrubs, or trees located on his, her, their, or its Unit.

b. No fences shall be constructed on any Unit without the prior written Construction Approval; provided, however, that no approved fence shall block or restrict another Unit Owner's access to or use and enjoyment of his, her, their, or its Unit.

c. Retaining walls shall be constructed of brick, Versa-Lock blocks, or similar materials approved by the entity entitled to grant Construction Approval. To the extent reasonably possible, the color and style of brick or block utilized in any retaining wall shall match the Dwelling situate on the Unit.

13.15 General.

a. Because all Units will be benefited 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. [Intentionally Deleted]

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 Monongalia 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 are not permitted on the exterior of any Dwelling 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. The following are not permitted on any Unit: gardens, greenhouses, carports, tree houses, ponds, swimming pools, dog houses, gardens, detached buildings of any variety, and clothes lines. Hot-tubs and Jacuzzis are only permitted if situate on a deck or patio and then only if no nearer the front of the Unit than the rear of the Dwelling.

f. Children's playground equipment, sliding boards, swing sets, play houses and all similar improvements: (a) shall not be situated within setbacks without prior Construction Approval; (b) shall 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 entity entitled to grant Construction Approval as to all matters including, but not limited to, location, color, size, height, appearance, density and materials. The entity entitled to grant Construction Approval 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.

g. 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 entity entitled to grant Construction Approval.

h. No detached secondary structure with walls and a roof such as a free standing storage building is permitted on any Unit.

j. No Attached Dwelling in Phase I shall be constructed more than three (3) stories above grade.

k. Eaves, awnings, gutters and similar components of Attached Dwellings may be constructed over or across a boundary between two (2) Attached Dwellings if the Owners of both such Units consent to same and create, impose, grant and reserve easements permitting same. To the extent that Units are under common ownership at the time of construction of the improvement constructed across a boundary between Units, necessary appurtenant easements are created, imposed, granted and reserved, as necessary, by the severance of common ownership without further act or action by the Owner thereof or the inclusion of any express provision in any instrument or order affecting such transfer.

l. All Units shall include an integral garage with capacity for at least One (1) passenger automobile. No garage may be occupied as a bedroom or other living area and garages shall be utilized exclusively for storage of automobiles and other personal property; provided, that, Builder shall have a right to temporarily convert the garage of any sales model into living area so long as Builder restores it to garage use upon ceasing to use such Unit as a sales model.

m. All Attached Dwellings shall be structurally independent of the Attached Dwellings to which they are attached so that no siding, trim, plywood, gutters, flashing, shingles, tar paper, soffit or fascia necessary to maintain the structural stability of the multiple Attached Dwellings spans the common boundary between the Attached Dwellings. All Attached Dwellings shall have stepped or broken roof lines and similar breaks between Attached Dwellings so that the exterior of each Attached Dwelling may be replaced, maintained, repaired, restored and rebuilt, independent of similar components of the Attached Dwelling to which it is attached. Provided, however, that an adjoining Attached Dwelling may serve as the weather barrier for another Attached Dwelling.

n. All Attached Dwellings shall at all times be maintained so as to prevent permeation of moisture and water into other Attached Dwellings.

o. The cost of reasonable repair and maintenance of a party wall between two Attached Dwellings shall be shared by the owners who make use of the wall in proportion to such use.

p. If one (1) or more Attached Dwellings are damaged or destroyed by fire or casualty, the Attached Dwellings shall be rebuilt to the same plans and specifications, without delay.

q. No party may make any material structural modification to any party wall which in any manner adversely impacts the adjoining Attached Dwelling or the use and enjoyment of other Attached Dwellings by the owners thereof.

(a) Each wall which is built as part of the original construction of a Townhome upon the Property and placed on the dividing line between Townhomes shall constitute a Party Wall. The adjoining Owners of the Townhomes on either side of the Party Wall shall jointly maintain the exterior portion of such Party Wall, and shall insure such Party Wall. Each individual Owner sharing a Party Wall shall be responsible for all interior maintenance, repair, and replacement of such Party Wall which is located within their respective Townhome.

(b) Each Owner sharing a Party Wall shall have the full right to use the Party Wall for the support of beams and structural materials or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the wall, foundation or other portion of the Townhome of the other Owner, and shall not impair or endanger the Party Wall benefits and supports to which the adjoining Townhome is entitled.

(c) Neither Owner of a Townhome sharing a Party Wall may extend the length or increase the height of the Party Wall.

(d) The cost of reasonable repair and maintenance of the exterior of the Party Wall shall be shared equally by the Owners who make use of the Party Wall.

(e) Notwithstanding any other provision of this subsection, an Owner who by his or her negligent or willful act or such act of their Occupants, agents, or contractors causes the Party Wall to be exposed to the elements or otherwise be damaged, then such Owner shall bear the whole cost of furnishing the necessary protection against such elements or repair of such damage.

(f) The right of any Owner to contribution from any other Owner under this subsection shall be appurtenant to the land and shall pass to such Owners successors in title.

(g) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, such dispute shall be submitted to arbitration in accordance with the Commercial Rules of the American Arbitration Association

r. Commensurate with applicable Federal Regulations, no satellite dish, antenna or other mechanism for the receipt of electronic television broadcast signals may be placed, attached or otherwise maintained on the exterior of any Unit without the prior written Construction Approval as to location, size and appearance. Personal use satellite dishes with a diameter of not more than twenty-four inches (24") shall be permitted. The location of such approved devices may be limited so long as such limitations do not prevent the device from performing its intended

purpose from some location within the perimeter of the Unit. Signal distribution devices for the transmission of electronic signals from the Unit to outside of the Condominium (e.g. radio transmitters), are not permitted.

14. VARIANCES.

14.1 Either Declarant or Association, if vested with Construction Approval Rights with regard to a Unit or Common Element are expressly authorized to grant reasonable variances from the Construction Standards with regard to such Unit or Common Element 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. Provided, however, that Declarant and Builder may subdivide, consolidate or otherwise adjust boundaries between any Units owned entirely by either or both of them without the Association's consent.

15.2 Subject to Declarant and Builder exceptions in the preceding Section, 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 Declarant, Declarant's Addition Property, and Association.

- (a) Units shall only be utilized for residential purposes.
- (b) No Dwelling shall be occupied until the Dwelling shall be completed.
- (c) A Unit may be leased for residential purposes so long as the Unit Owner shall provide to the Association the names and permanent addresses of all lessees of the Unit. A lessee of a Unit shall not be a member of the Association and the Unit Owners of a leased Unit shall be responsible, obligated, and liable for the lessees compliance with the Governing Documents. The Association shall not enact, adopt, or promulgate any Rules or Regulations prohibiting or preventing the leasing of Units for residential purposes.
- (d) No Unit shall be utilized for any activity which shall (i) tend to cause an unclean, unhealthy, or unsafe condition to exist outside of the Dwelling, (b) emit a foul or obnoxious odor or any fumes, dust, smoke, or pollution, except for and excluding fireplaces approved by the Association, (c) create any unreasonable levels of noise, unreasonable risk of fire or explosion, or other conditions which shall be a public or private nuisance, (d) unreasonably increases the Association's or other Unit Owner's cost of insurance, or (e) produce or shall be accompanied by unreasonable litter, debris, disorder, or any public or private nuisance; provided, however, that the foregoing prohibitions shall not be applicable during the construction of a Dwelling or another Unit Improvement.
- (e) No Unit shall be utilized for or be the site of any noxious, offensive, or illegal activities.
- (f) Each Unit shall at all times be aggressively maintained and upkeep in an attractive manner and condition consistent with the Governing Documents. All lawns shall be well-maintained, mowed, and trimmed in an attractive manner and condition in compliance with the Association's standards at all times. All portions of a Common Element, including, without limitation, an easement or right of way that shall be a Common Element, located and situate between the paved surface of a roadway and a Unit shall be well-maintained, mowed, and trimmed in an attractive manner and condition in compliance with the Association's standards at all times by the Unit Owner of the Unit adjacent to the Common Element.
- (g) Except as may be reasonably necessary for postal purposes, there shall be no parking on the roadways or other Common Elements within the Development.
- (h) Except as may be reasonably necessary for delivery, maintenance, and construction purposes, there shall be no commercial vehicles, recreational vehicles, trailers,