

snowmobiles, jet skis, wave runners, campers, motor homes, boats, or boat trailers parked in or on any Unit for any extended period of time. For the purposes of the foregoing provision, commercial vehicles shall be and mean any vehicles which shall (i) not be manufactured and marketed for consumer use in the transportation of one (1) to six (6) passengers or (b) be in excess of two (2) tons gross weight.

- (i) There shall be a posted speed limit of fifteen (15) m.p.h. within and throughout the Development and all vehicles, motorized and otherwise, shall at all times adhere to all roadway and traffic regulations enacted, adopted, or promulgated by the Association.
- (j) No motor vehicle or vehicle with an engine shall be operated on any non-roadway Common Element, path, walkway, or trail within the Development at any time other than during construction. Unlicensed motor vehicles, including, without limitation, golf carts, go carts, dirt bikes, and all terrain vehicles, shall not be operated on any roadway or Common Element within the Development.
- (k) There shall be no burning of trash, debris, rubbish, leaves, yard waste, or other materials in or on any Unit or Common Element.
- (l) Except for and excluding lawn furniture and Improvements approved by the Association and except during the construction of a Dwelling or other Unit Improvement, there shall be no storage of any goods, furniture, construction materials, or equipment on any Unit outside of any Dwelling.
- (m) Except for and excluding home and vehicle alarm devices used exclusively for security purposes, no Unit shall be used for the discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device which shall be audible from any Common Element or other Unit.
- (n) Except during construction of a Dwelling and other Unit Improvements, no loud power tools shall be used or operated on any Unit outside of a Dwelling between the hours of 9:30 p.m. and 8:00 a.m. For the purposes of this provision, loud power tools shall include, without limitation, the following: lawn mowers, trimmers, shredders, chain saws, jack hammers, snow blowers, and circular and other electric or gas powered saws; provided, however, that snow blowers and snow removal equipment shall be an exception to this provision when utilized to remove snow from the driveway and/or sidewalk on a Unit.
- (o) No Unit or Common Element shall be used for the discharge of firecrackers, fireworks, or firearms, except as is authorized by applicable law.
- (p) Hunting and trapping shall be expressly prohibited within the Development.
- (q) No animals or livestock of any kind or description, except for and excluding usual household pets, shall be kept on or at any Unit, and such usual household pets shall be kept upon a Unit and shall not be permitted to run at large within the Development or to cause any damage or injury to other Unit Owners or their property. Aggressive pets shall not be permitted within the Development.
- (r) No dog houses shall be located on a Unit.

- (s) Pets shall not be left unsupervised on the exterior of a Dwelling.
- (t) Pets shall only be permitted in or on Common Elements if restrained by a leash and accompanied by the owner of the pet. All Units Owners shall actively collect and dispose of all animal waste deposited on a Common Element by their pets and shall be subject to a reasonable fine for each violation of this provision, which fine shall not be less than Fifty Dollars (\$50.00) per occurrence (in 2009 dollars subject to consumer price index variations under, in accordance with, and pursuant to the provisions of West Virginia Code § 36B-1-114).
- (u) No Unit shall be utilized for animal breeding and no Unit Owner shall feed stray or other animals within the Development.
- (v) Except with the written consent of the Association or as may be required by legal proceedings, no commercial signs, including, without limitation, signs stating "garage sale," shall be erected, placed, maintained, or displayed on any Unit or on any Common Element. Not more than one "for sale" or "for rent" sign shall be erected, placed, maintained, or displayed on any Unit at any time, and all such signs shall be preapproved as to substance, content, appearance, and size by the Association. No "for sale" or "for rent" sign shall be erected, placed, maintained, or displayed on any Common Element. No political sign or sign advertising or advocating any candidate for public office or any political issue shall be erected, placed, maintained, or displayed on any Unit or any Common Element. Notwithstanding any provision contained herein to the contrary, Builder shall be entitled to display "For Sale" signs in and around the Units, the Common Elements and the Subdivision in general and to advertise its building, construction and sales activities in further of the rights and powers transferred to Builder pursuant to Section 5.8 above including, without limitation, 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.
- (w) Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring such Unit Owner's Unit and the Improvements thereon against the risk of loss due to fire, casualty, or other disaster in an amount equal to at least one hundred percent (100%) of the replacement cost of the Unit and such Improvements. In the case of a fire, casualty, or other disaster, each Unit Owner shall, at the minimum, apply all insurance proceeds to the extent necessary to return the Unit to its condition as existed prior to the fire, casualty, or other disaster.
- (x) No detached, secondary structure with walls and a roof such as a free standing storage building shall be located on any Unit.
- (y) No clothes lines of any type shall be erected or placed upon any Unit.
- (z) Each Unit Owner shall keep all receptacles for garbage, trash, and recycling inside of a Dwelling until no sooner than twenty-four (24) hours prior to pick-up.
- (aa) No exterior wood stoves, fireplaces, fire pits, barbecue pits, or wood burning

appliances and/or devices shall be made, built, constructed, erected, set, placed, and/or put on the exterior of any Dwelling.

- (bb) The following shall not be located on a Unit: gardens, greenhouses, carports, tree houses, ponds, and swimming pools.
- (cc) Hot-tubs and Jacuzzis shall not be located on a Unit unless the same shall be located and situate on a deck or patio on the rear of a Dwelling.
- (dd) Children's playground equipment, sliding boards, swing sets, play houses, and all similar Improvements (i) shall not be located or situate within set-back areas without the prior Construction Approval, (ii) shall be located and situate behind or to the rear of a Dwelling, and (iii) may be reasonably regulated by the Association as to all matters, including, without limitation, location, color, size, height, appearance, density, and materials. The Association may, in reasonably regulating children's playground equipment, sliding boards, swing sets, play houses, and all similar Improvements, reasonably limit the number and size of such Improvements on any Unit and the proximity and density of such Improvements across multiple Units.

Each Unit Owner shall be subject to fine by the Association as a result of a violation of any of the Use Restriction by the Unit Owner and/or the Unit Owner's family members, friends, guests, invitees, and lessees. Such fines shall be in an amount reasonably calculated by the Board to prevent future violations of the Use Restrictions.

## 17 THE ASSOCIATION.

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

- a. maintenance, upkeep and administration of the Common Elements;
- b. interpretation and if appropriate enforcement of the Governing Documents;
- c. upholding the community standards within the Subdivision;
- d. collection, management, maintenance and administration of the Association funds;
- e. participation and membership in Master Association;
- f. provision of "Lawncare Services"; and
- g. all other purposes for which Unit Owner associations are formed.

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

Owners shall after termination be directly responsible to Condominium Association for their respective share of Shared Common Expenses in accordance with Section 10.05 of the Condominium Declaration.

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

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

- p. Exercise any other powers conferred by the Governing Documents;
- q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
- r. Exercise any other powers necessary and proper for the governance and operation of the Subdivision, and;
- s. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

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

- a. maintain, repair, replace, restore, and rebuild the Common Elements, including, but not limited to: (i) snow removal and roadway repairs; (ii) lawn care and all Subdivision signage; (iii) paving and asphalt repairs; (iv) payment of Common Element property taxes, if any; (v) maintaining Common Element insurance; and (v) monitoring, maintenance and upkeep of all drainways and drainage systems which are Common Elements;
- b. to provide Lawncare Services as a Common Expense for the purpose of maintaining uniformity in appearance of Units throughout the Subdivision; and
- c. act in a representative capacity in behalf of all Unit Owners with the Condominium Association with regard to the Shared Common Elements, Shared Common Expenses and similar matters related thereto.

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

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

liability resulting from a good faith Association decision not to take any enforcement action which the Association's Board deems in good faith to not be in the best financial or other collective interest of the Association or the majority of the Unit Owners.

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

17.8. Board of Directors: The Association's Board shall be generally empowered to act in all instances on behalf of the Association. In the performance of their duties, the members of the Board shall be required to exercise care to the following standards: (i) if appointed by Declarant, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care. The Board may not act on behalf of the Association to: (i) amend the Declaration; (ii) to terminate the Subdivision; (iii) convey or encumber Common Elements; or (iv) determine the qualifications or terms of office of Board members; but, subject to the provisions of the Bylaws, the Board may fill vacancies in its membership for the unexpired portion of any term. 17.9. There shall be an initial period of Declarant's control of the Association during which Declarant or persons or entities designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control shall terminate no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent (75%) of the Units that may be conveyed to Unit Owners other than Declarant; (ii) Two years after Declarant shall have ceased to offer Units for sale in the ordinary course of business; or (iii) Two years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right of Declarant control at any time, and may also surrender its right to appoint and remove members of the Board before termination of that period, but in such event, Declarant may require for the duration of the period of Declarant's control certain specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, to be approved by Declarant before it becomes effective. **Declarant control of the Association is not dependent upon or linked to Declarant's obligation to complete Common Elements or Improvements to the Subdivision. Declarant's duties with regard to each Common Element and each Improvement terminates when same are completed in accordance with the Development Plan notwithstanding Declarant control of Association thereafter.**

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

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

17.13. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by Declarant.

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

#### 18 ASSOCIATION MEETINGS AND VOTING.

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

#### 19. ASSOCIATION FINANCIAL MATTERS, BUDGET AND RECORDS

19.1. Budget. The Board shall annually, not later than the 1<sup>st</sup> day of November of each calendar year: (a) adopt a proposed budget for the succeeding calendar year which shall be reasonably calculated to meet the anticipated costs and expenses of the Association for the succeeding calendar year ("Annual Costs") and annualized costs of long-term, reasonably anticipated capital expenditures for items such as comprehensive future paving or resurfacing of roads and streets ("Annualized Future Costs"), (b) publish a summary of the proposed budget to the Members, and (c) set a date for a meeting of the Members to consider ratification of the proposed budget, which meeting shall be not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Members reject the proposed budget, the proposed budget shall be ratified, whether or not a quorum shall be present. In the event the proposed budget shall be rejected, the periodic budget last ratified by the Members must be continued until such time as the Members shall ratify a subsequent budget proposed by the Board. Notwithstanding the foregoing, if the proposed budget shall be rejected and the periodic budget last ratified by the Members shall be insufficient to satisfy the Association's financial obligations to Master Association, the last ratified periodic budget shall be increased to the minimum amount necessary for the Association to meet such financial obligations.

19.2. Budget Requirements. For the purpose of the Association's annual budget, Annual Costs shall include, without limitation, premiums relative to insurance covering the Common Elements, premiums relative to officers and directors errors and omissions insurance, the cost and expense of utilities, mailings, governmental filings, and annual Common Element repairs, snow removal, maintenance, and improvements, the cost and expense of inspection of the storm water systems within the Subdivision, the Association's budgeted obligations to Master Association, and all other annual operating expenses of the Association. The Annualized Future Costs shall be for anticipated future costs and expenses which are reasonable and which, if fully assessed during any year, would cause the annual assessment to be at least three hundred percent (300%) of the most recent annual assessment. Notwithstanding the foregoing requirement, Annualized Future Costs may include amounts which would not meet the three hundred percent (300%) threshold test. The Association shall include Annualized Future Costs in the proposed

budget based on the average of three (3) estimates for the future cost or expense divided by the number of years before the cost or expense is anticipated to be incurred. For example, if the present value cost or expense of re-paving all Common Element roads ten (10) years in the future shall be Sixty Thousand Dollars (\$60,000.00), the Annualized Future Cost as to that item shall be Six Thousand Dollars (\$6,000.00) per year for each of the ten (10) years between the estimate and the occurrence of the re-paving. New estimates for Annualized Future Costs shall be procured as a basis for the proposed budget for any year in which the future cost or expense is to occur so as to assure that the Association's capital reserves plus revenues generated by the upcoming assessment shall be sufficient to satisfy such cost or expense when needed. Each year the Annualized Future Costs shall increase above the prior year's Annualized Future Costs proportionate to any increase in the Consumer Price Index during the preceding calendar year, unless the proposed budget shall actually be based on estimate(s) procured during such preceding calendar year. Each proposed budget shall be sufficiently detailed and include, without limitation, an accounting of all actual expenditures during the preceding calendar year, estimates for anticipated or proposed Annual Costs and Annualized Future Costs for the succeeding calendar year, a statement of all reserves held by the Association for the same, and the proposed formula by which all budgeted costs and expenses shall be allocated and invoiced.

19.3. Accounts. The Association shall deposit and maintain all monies collected for budgeted Annual Costs in one (1) account and all monies collected for budgeted Annualized Future Costs in one or more separate and distinct accounts.

19.4. Surplus. Any monies remaining in the account maintained for budgeted Annual Costs at the end of any calendar year for which the same were budgeted and collected shall be paid into the account maintained for budgeted Annualized Future Costs and credited in favor of the Members on behalf of which the same were collected.

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

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

a. Annual Assessment for Common Expenses: Annual Assessments must be made at least annually based on a budget adopted at least annually by the Association.

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

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

20.3. Common Expense Attributable to Unit: Notwithstanding the foregoing, if any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against such Unit Owner's Unit.



20.4. **Recreation and Amenity Fee:** The initial purchaser of each Unit in the Subdivision including, without limitation, Builder, shall pay to Declarant at closing a one-time, lump-sum recreation and amenity fee equal to Two Thousand Dollars and No Cents (\$2,000.00) per Unit as purchaser's contribution to the initial cost of constructing and installing the pool, clubhouse and other amenities which comprise part of the Shared Common Elements.

20.5 **Minimum Annual Assessment:** The minimum annual assessment for Common Expenses is, at the execution hereof, \_\_\_\_\_ **Dollars (\$\_\_\_\_\_00)** and the minimum annual assessment shall never be less than the original amount. The annual assessment shall always be based on the Association's budget which shall address reasonably anticipated needs of the Association.

20.6. **Transfer Fees:** Except with respect to transfers by Declarant to Builder, Transfer Fees are imposed on conveyances, transfers, devises, bequests and other changes in ownership of a Unit or an interest therein which are not otherwise exempt hereunder ("Transfer"). An Initial Transfer Fee is imposed on the initial sale, conveyance or transfer of a Unit by Builder to a third party and shall be One Thousand **Dollars (\$1,000.00)**. So long as Declarant owns at least one (1) Unit, the Transfer Fees may not be increased or decreased without Declarant's prior written consent.

20.7 **Subsequent Transfer Fees:** After the initial sale, conveyance or transfer of each Unit by Builder, all subsequent sales, conveyances or transfers of that Unit are subject to a Transfer Fee, unless excepted there from below. The Transfer Fee shall be payable by the transferee prior to, or within thirty (30) days after, the Transfer. The Transfer Fee shall initially be the same amount of as the Initial Transfer Fee. Thereafter, the Board shall have the sole discretion to determine the amount and method of determining the Resale Transfer Fee; provided, however, that the Resale Transfer Fee shall never exceed or be greater than one-half of the most recent annual assessment for Common Expenses. Only one (1) Subsequent Transfer Fee is payable with regard to any transfer without regard to the number of grantees set forth in the instrument of conveyance. All Transfer Fees shall be deposited by the Association in its capital reserve account to be held for future repairs, maintenance and improvement of the Common Elements, preservation and maintenance of natural areas, development or improvement of recreational facilities on the Common Elements and for community events and community activities benefitting the Unit Owners.

20.8 Except as set forth below, the following Transfers are exempt from all Transfer Fees:

- a) Any Transfer between spouses or between parent and child, or grand parent and child, which also includes the spouse of such grandparent, parent or child;
- b) Any Transfer which is a grant of a security interest held by the transferee or their trustee or agent as security for performance of an obligation. Deeds of trust, assignments of leases and rents, and mortgages are expressly exempted from Transfer Fees;
- c) With the exception of the Initial Transfer Fee, any Transfer wherein the grantee or transferee is already a member of Association by virtue of transferee's ownership of an interest in another Unit prior to Transfer;
- d) Any Transfer by deed in lieu of foreclosure, foreclosure, by corrective deed, confirmatory deed or quit-claim deed;
- e) Any Transfer by will, descent or distribution wherein the interest or estate

transferred was held by the decedent at the time of his or her death;

- f) Any Transfer to or from the United States, the state of West Virginia, or to or from any of their instrumentalities, agencies or political subdivisions;
- g) Any Transfer by partition or Court Order;
- h) Any Transfer by lease;
- i) Any Transfer occurring as the result of a change of name of artificial legal entities or the merger of artificial legal entities; and
- j) To the extent not specifically set forth above, the stated intent of the Association is for Transfer Fees to be payable as a result of a Transfer of beneficial ownership in any interest in a Unit to a third party when, except in the case of the Initial transfer Fee, the transferee is not already a member of Association.

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

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

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

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

## 21. ASSOCIATION LIENS:

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

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

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

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

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

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

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

became due; and (d) the date of recordation.

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

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

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

## 22. ASSOCIATION RULES AND REGULATIONS:

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

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

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

- a. Similar Treatment. Similarly situated Unit Owners shall be treated similarly.
- b. Displays. The rights of Unit Owners to display religious and holiday signs, symbols, and decorations inside Dwellings shall not be abridged, except that the Association may adopt time, place, size, lighting, number and manner rules with respect to displays visible from outside the Dwellings.

c. Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place, number and manner of posting such signs within the limitations set forth elsewhere herein.

d. Household Composition. No rule shall interfere with the freedom of Unit Owners to determine the composition of their households.

e. Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of Dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Unit Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside of Dwellings, or that create an unreasonable source of annoyance to persons outside of Dwellings.

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

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

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

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

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

## 23 REPRESENTATIONS AND WARRANTIES.

23.1. All Unit Owners, their heirs, successors and assigns, by their acceptance and recordation of a deed conveying any interest in any Unit acknowledge the conditions, limitations, restrictions, provisions, exceptions and reservations set forth herein. Declarant makes no representation or warranty direct, express or implied, which is contrary to the provisions hereof and no representation or warranty by any

realtor, real estate broker or real estate agent contrary to the provisions of this Declaration shall be binding on Declarant unless reduced to writing and signed by Declarant.

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

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

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

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

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

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

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

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

## 24. REMEDIES.

24.1 In the event of any violation of the provisions of this Declaration by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any occupant of a Unit, or other person present in the

Subdivision or on the Unit as a guest, family member, or invitee of a Unit Owner), the Association shall have all of the rights and remedies which are set forth in the Governing Documents or otherwise provided for in the Act and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any subject actions or proceedings, including court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expenses of the Association and the Association shall have a lien against the Unit for all of the same.

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

## 25. AMENDMENT.

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

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

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

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

25.5 The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act, and FURTHER PROVIDED that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Board where alteration of the provisions hereof are made solely to bring this Declaration into compliance with the Act, other existing law or to correct errors of scriveners, architects or surveyors with no notice to Unit Owners unless such change, modification or rescission directly affects an individual Unit Owner's interest in the real estate or appurtenances.

## 26. NOTICES

26.1 Notices provided for in the Act, this Declaration, the Articles, or the Bylaws shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at the Unit address provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notice to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof. Upon written request to the Board setting forth its address, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or the Bylaws to be given to the Unit Owner or Unit Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in the absence of submission of a lien holder's address.

## 27. SEVERABILITY

27.1 If any provision of this Declaration, the Articles, or the Bylaws or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration, the Articles, and the Bylaws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration, the Articles, or the Bylaws shall be construed as if such invalid part was never included therein.

## 28. PERPETUITIES AND RESTRAINTS ON ALIENATION.

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



## 29. TERMINATION AND EMINENT DOMAIN

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

## 30. SEPARATE TITLES AND TAXATION

30.1 Pursuant to West Virginia Code § 36B-1-105, because Declarant has not reserved any Development Rights and Declarant has conveyed or will convey the Common Elements to the Association, when the first Unit is conveyed to a third party, (a) each Unit that has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate; (b) each Unit must be separately taxed and assessed; and (c) no separate tax or assessment may be rendered against any Common Elements.

## 31. RIGHTS AND OBLIGATIONS OF GRANTEEES.

31.1 Each grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same SUBJECT TO all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and ALL MATTERS SET FORTH IN THIS DECLARATION. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

## 32. HEADINGS.

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

## 33. DESCRIPTION INCLUSIONS BY REFERENCE

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

## 34. ADJUSTMENT OF DOLLAR AMOUNTS

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

Witness the following signature this 3<sup>rd</sup> day of November, 2011.

Declarant:  
SUNCREST VILLAGE, LLC,  
a West Virginia limited liability company

By: [Signature]  
Richard A. Biafora, its Manager

By: [Signature]  
Patrick Alexander, its Manager

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 3<sup>rd</sup> day of Nov., 2011, by Richard A. Biafora and Patrick Alexander, in their capacity as Managers of SUNCREST VILLAGE, LLC, a West Virginia limited liability company, for and on behalf of said company by exercise of authority duly given and as the official act thereof.

My Commission Expires: 10-28-2017

[Signature]  
Notary Public



THIS DOCUMENT PREPARED BY:

STEVEN M. PRUNTY  
BOWLES RICE MCDAVID GRAFF & LOVE, LLP  
7000 HAMPTON CENTER, SUITE K,  
MORGANTOWN, WV 26505

STEPHEN K. SHUMAN  
REEDER & SHUMAN  
PO BOX 842  
MORGANTOWN, WV 26507-0842

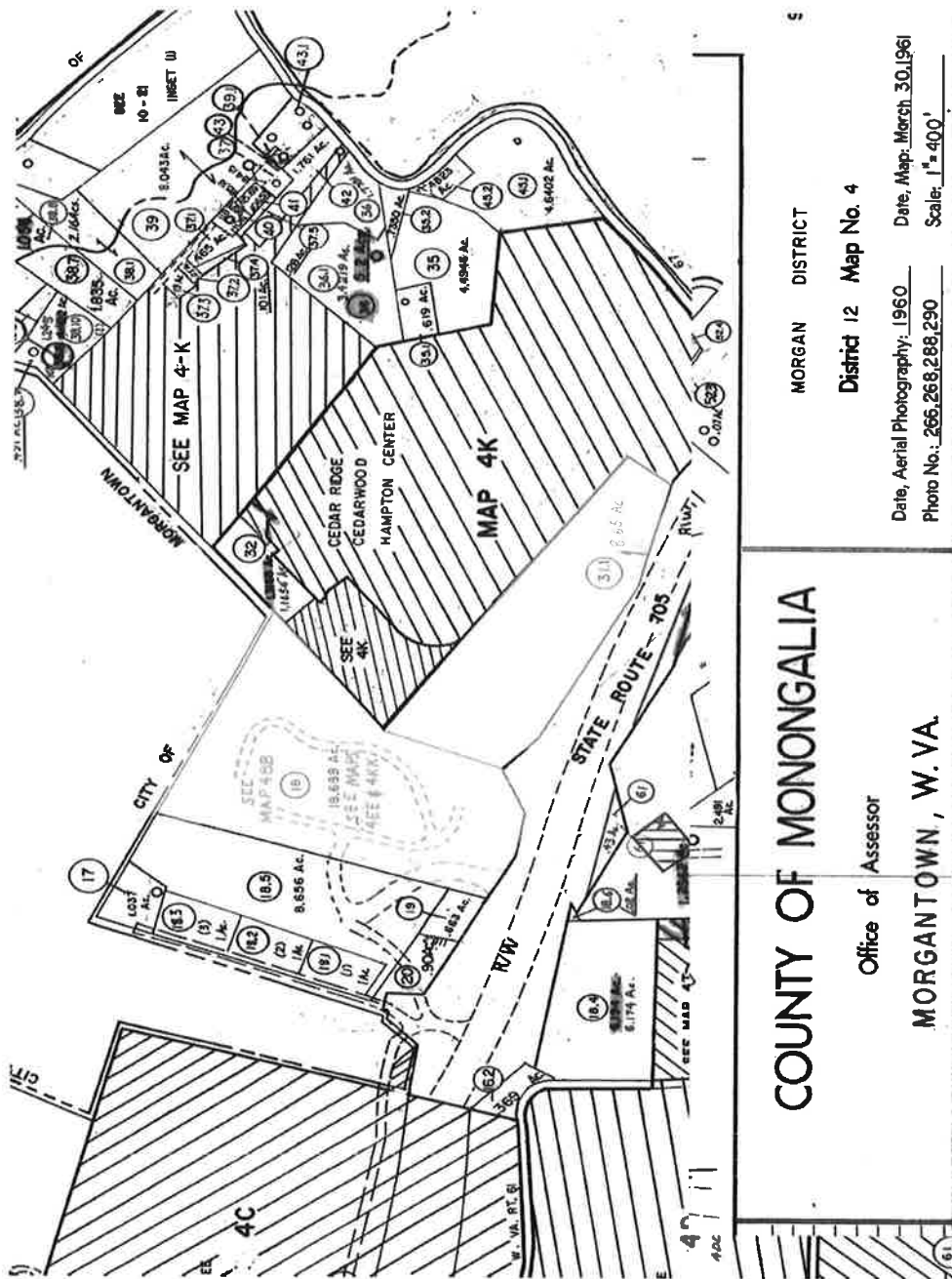
**EXHIBIT A**  
**TO DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES**

## EXHIBIT B

## TO DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES

## ADDITIONAL PROPERTY

Any or all portions of Parcel 18, Parcel 31.1 as depicted on the excerpt from Morgan District Map 4 below, and also any lands, estates, easements, rights-of-way, privileges, licenses or hereditaments, appurtenant or adjacent thereto.



**EXHIBIT C****To DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES**

Recording information regarding known record easements, licenses and encumbrances.

1. Deed of Trust dated September 23, 2002, from Gateway Village, LLC to Barry W. Dobson and/or George M. Cipriani, Trustees, to secure The Huntington National Bank, the payment of \$1,440,000, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Trust Deed Book No. 1131, at Page 23.

2. Credit Line Deed of Trust dated July 31, 2003, from Gateway Village, LLC to Stephen K. Shuman and Michael D. Morris, Trustees, to secure The Huntington National Bank, the payment of \$13,808,000.00, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Trust Deed Book No. 1223, at Page 373.

3. Fixture Filing for Gateway Village, LLC securing Huntington National Bank and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1223, at Page 392.

4. Assignment of Leases and Rents dated July 31, 2003, from Gateway Village, LLC to The Huntington National Bank which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Assignment Book No. 77, at Page 196.

5. Deed of Trust dated February 22, 2008, and recorded in the aforesaid County Clerk's Office in Trust Deed Book No. 1617, at Page 411, from Suncrest Village, LLC to Michael Morris, Trustee, to secure the Huntington National Bank, the payment of \$ \_\_\_\_\_. (EXCLUDES BLDGS 1300, 1600, 1800, 2500, 2600 & 2700 of PHASE I)

6. Credit Line Deed of Trust dated August 18, 2008, from Suncrest Village, LLC, a West Virginia limited liability company, to Brian D. Gallagher and Kristian J. Jamieson, Trustees, to secure The Huntington National Bank, the payment of \$2,830,000.00, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Trust Deed Book No. 1654, at Page 249.

7. Collateral Assignment of Rents and Leases dated August 18, 2008, from Suncrest Village, LLC, a West Virginia limited liability company, to The Huntington National Bank which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Assignment Book No. 102, at Page 188.

8. Terms, provisions, restrictions, conditions, easements, liens, assessments, developer rights, options, rights of first refusal and reservations contained in the Declaration of Establishing a Plan for Condominium Ownership by Phase(s) of a Tract approximately 19.35 acres and Certain Improvements Thereon., which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1312, at Page 31, First Modification to Declaration of Covenants, Conditions and Restrictions recorded in Deed Book No. 1315, at Page 344, Second Modification to Declaration of Covenants, Conditions and Restrictions recorded in Deed Book No. 1364, at Page 266, Third Modification to Declaration of Covenants, Conditions, and Restrictions recorded in Deed Book No. 1386, at Page 493, Fourth Modification to Declaration of Covenants, Conditions, and Restrictions recorded in Deed Book No. 1420, at Page 424, and Notice of Rules and Regulations by Suncrest Village Condominium

Association, Inc. with regard to all Units in Suncrest Village Condominium recorded in Deed Book No. 1435, at Page 533. **Provided, however, that the Subdivision is not a Condominium, rather various easements, rights and requirements set forth in the foregoing documents apply to the land which comprises the Subdivision and the easements which are Common Elements thereof.**

10. The following rights-of-way or easements, which may affect the subject property:

(a) Right of way recorded in Deed Book No. 411, at Page 3, from George J. Lawson and Hollie R. Lawson to C & P Telephone Company.

(b) Right of way recorded in Deed Book No. 473, at Page 461, from George J. Lawson and Hollie R. Lawson to Monongahela Power Company.

(c) Right of way recorded in Deed Book No. 551, at Page 93, from George J. Lawson and Hollie R. Lawson to Hope Natural Gas Company.

(d) Right of way recorded in Deed Book No. 1263, at Page 610, from Gateway Village, LLC to Monongahela Power Company.

(e) Right of way recorded in Deed Book No. 1302, at Page 378, from Gateway Village, LLC to City of Morgantown for sanitary sewer for development.

(f) Right of way recorded in Deed Book No. 1303, at Page 262, from Gateway Village, LLC to City of Morgantown for water line for development.

(g) Partial Rescission and Release of Right of Way and Easement recorded in Deed Book No. 1444, at Page 815, from Suncrest Village and City of Morgantown.

(h) Right of way recorded in Deed Book No. 1322, at Page 218, from Gateway Village, LLC to City of Morgantown for sanitary sewer for development.

(i) Right of way recorded in Deed Book No. 1444, at Page 807, from Suncrest Village, LLC to City of Morgantown for water line for development.

(j) Right of way recorded in Deed Book No. 1444, at Page 811, from Suncrest Village, LLC to City of Morgantown for sanitary sewer for development.

The foregoing listing is current through 9:00 a.m. on October 10, 2011, and is based on a forty (40) year title examination. The foregoing reflect only instruments actually recorded during said time period notwithstanding any reference in an instrument to any other document actually recorded outside of said time period.

**EXHIBIT D**

**To DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES**  
Morgantown Utility Board easement width letter.

**EXHIBIT E****To DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES**

[L]iving [A]rea of dwelling approved for construction of Units in Phase I of the Subdivision for allocation of Shared Common Expense Liability and Votes between Association and Condominium Association, pursuant to Section 9.4 of Subdivision Declaration and Section 16.05 of the Condominium Declaration.

As set forth on Table "A" of the Plat which is Exhibit A, the dwellings approved for construction in Phase 1 are all 1690 square feet in [L]iving [A]rea, pursuant to Article 9 of the Declaration.

**The total [L]iving [A]rea of Phase 1 of the Subdivision is:**

**21 Units in Phase 1**

*multiplied by*

**1690 square feet of [L]iving [A]rea per Unit**

*equals*

**35,490 square feet of [L]iving [A]rea in Phase 1**



**EXHIBIT F**

**To DECLARATION OF COMMON INTEREST COMMUNITY FOR SUNCREST VILLAGE TOWNHOMES**  
Zoning letter from Monongalia County Planning Commission designating Subdivision as pre-existing use/structure status under West Run Zoning Ordinance.

**MCPC**

MONONGALIA COUNTY  
PLANNING COMMISSION

82 Hart Field Road, Suite 105  
Morgantown, WV 26505  
Phone 304.291.9572  
Fax 304.291.9573  
www.moncpc.org



October 12, 2011

Mr. Seth Wilson, Esq.  
Bowles Rice McDavid Graff & Love LLP  
7000 Hampton Center  
Morgantown, West Virginia 26505-1720

RE: Suncrest Village Townhomes Development, Morgantown, WV

Dear Mr. Wilson:

Upon consultation with Assistant Prosecuting Attorney Phillip M. Magro, and review of the documentation substantiating planned development prior to the enactment of the West Run Planning District Zoning Ordinance (November 12, 2011) provided by Mr. Stephen K. Shuman, Esq. In particular, the site plan and the document titled Declaration Establishing A Plan For Condominium Ownership By Phase(s) 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; as well as, the provision of evidence of a substantial prior investment directly relating to the development of the site. It has been determined that the development at Suncrest Village has established nonconforming use/structure status under the provisions contained in Article 2350 Nonconforming Provisions of the West Run Planning District Zoning Ordinance.

If you require any additional assistance on this matter, please do not hesitate to contact me.

Sincerely,

*Richard L. Wood*

Richard L. Wood, AICP  
Director of Planning

CC: Stephen K. Shuman, Esq.  
CC: Phillip M. Magro, Esq.

**Planning Commissioners:**

Robert C. Gorman, Esq., President

Glenn Williams, Esq., Vice President

William H. Gandy, Commissioner

Alan C. Gorman

William A. Gorman, Esq.

Alan S. Gandy

William H. Gandy

William H. Gandy

William H. Gandy

William H. Gandy

Deputy of Planning

William H. Gandy, AICP

November 2, 2011

Steven K. Shuman  
245 High Street  
Morgantown, WV 26505

Re: Suncrest Village Right-of-Way

Mr. Shuman:

As per our recent conversation, our mutual understanding of the rights-of-way provided by the Suncrest Village LLC has a ten foot width with 5 feet on either side of the respective water and sewer lines. The subject rights-of-way are recorded in the Monongalia County Courthouse as DB 1444 Pg 807 and DB1444 Pg811.

If you have any questions or need any additional information, please don't hesitate to contact me at 304-292-8443.

Sincerely,  
MORGANTOWN UTILITY BOARD



Douglas R. Smith, P.E.  
Assistant General Manager  
Chief Engineer