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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SPRING MILLS SUBDIVISION

17

Prepared By

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# TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS	6
1. Area of Common Responsibility . . . . .	6
2. Articles of Incorporation; Articles . . . . .	6
3. Association . . . . .	6
4. Base Assessment . . . . .	7
5. By-Laws . . . . .	7
6. Class "B" Control Period. . . . .	7
7. Common Area . . . . .	7
8. Common Expense. . . . .	7
9. Community Standard. . . . .	7
10. Concept Plan. . . . .	7
11. Declarant . . . . .	7
12. Exclusive Common Area . . . . .	7
13. General Common Area . . . . .	8
14. Member. . . . .	8
15. Mortgage. . . . .	8
16. Mortgagee . . . . .	8
17. Mortgagor . . . . .	8
18. Neighborhood. . . . .	8
19. Neighborhood Assessment . . . . .	8
20. Neighborhood Expenses . . . . .	8
21. Owner . . . . .	9
22. Parcel Developer. . . . .	9
23. Person. . . . .	9
24. Properties. . . . .	9
25. Special Assessment. . . . .	9
26. Supplemental Declaration. . . . .	9
27. Unit. . . . .	9
28. Voting Member . . . . .	10
II. PROPERTY RIGHTS	10
III. MEMBERSHIP AND VOTING RIGHTS	10
1. Membership. . . . .	10
2. Voting. . . . .	11
3. Neighborhoods . . . . .	12
IV. MAINTENANCE	12
1. Association's Responsibility. . . . .	12
2. Owner's Responsibility. . . . .	14
3. Neighborhood's Responsibility . . . . .	14
V. INSURANCE AND CASUALTY LOSSES	14
1. Insurance . . . . .	14
2. Individual Insurance. . . . .	17
3. Damage and Destruction. . . . .	17
4. Disbursement of Proceeds. . . . .	18
5. Repair and Reconstruction . . . . .	18
VI. NO PARTITION	18
VII. CONDEMNATION	19
VIII. ANNEXATION OF ADDITIONAL PROPERTY	19
1. Annexation Without Approval of Class "A" Membership. . . . .	19
2. Annexation With Approval of Class "A" Membership. . . . .	19
3. Acquisition of Additional Common Area . . . . .	20
4. Amendment . . . . .	20

	<u>Page</u>
5.1. Development Rights . . . . .	20
5.2. Limitations on Development Rights . . . . .	20
5.3. Phasing of Development Rights . . . . .	21
5.4. Special Declarant Rights . . . . .	21
5.5. Models, Including Model Homes and Homesites, Sales Offices, and Management Offices . . . . .	22
5.6. Construction: Declarant's Easement . . . . .	22
5.7. Signs and Marketing . . . . .	22
5.8. Declarant's Personal Property . . . . .	22
5.9. Declarant Control of the Association . . . . .	22
5.10. Limitations on Special Declarant Rights . . . . .	22
5.11. Interference with Development Rights or Special Declarant Rights . . . . .	22
 IX. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	 23
1. Common Area . . . . .	23
2. Personal Property and Real Property for Common Use . . . . .	24
3. Rules and Regulations . . . . .	24
4. Implied Rights . . . . .	24
5. Governmental Interests . . . . .	24
 X. ASSESSMENTS	 24
1. Creation of Assessments . . . . .	24
2. Computation of Base Assessment . . . . .	25
3. Computation of Neighborhood Assessments . . . . .	26
4. Assessment for the Designated Business Units in Spring Mills Subdivision . . . . .	27
5. Special Assessments . . . . .	27
6. Lien For Assessments . . . . .	27
7. Capital Budget and Contribution . . . . .	27
8. Date of Commencement of Assessments . . . . .	28
9. Subordination of the Lien to Institutional First Mortgages . . . . .	28
10. Exempt Property . . . . .	28
11. Assessment Limitation . . . . .	28
 XI. ARCHITECTURAL REVIEW	 29
1. Applicability . . . . .	29
2. Duties . . . . .	29
3. Application for Approval of Improvements . . . . .	29
4. Basis for Approval of Improvements . . . . .	29
5. Form of Approval and Denials . . . . .	29
6. Proceeding With Work . . . . .	30
7. Failure to Complete Work . . . . .	30
8. Determination of Compliance . . . . .	30
9. Failure to Remedy the Non-Compliances . . . . .	30
10. Waiver . . . . .	30
11. Estoppel Certificate . . . . .	31
12. Liability . . . . .	31
13. Non-Applicability to Declarant . . . . .	31
14. General Exterior Painting . . . . .	31
 XII. USE RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY	 31
1. Primary Use and Occupancy Restriction . . . . .	31
2. Other Use and Occupancy Restrictions . . . . .	33
3. Restrictions on Alienation . . . . .	38
 XIII. MORTGAGEE PROVISION	 39
1. Notices of Action . . . . .	39
2. Special FHLMC Provision . . . . .	39
3. No Priority . . . . .	40

	<u>Page</u>
4. Notice of Association . . . . .	40
5. Amendment by Board. . . . .	40
6. Applicability of Article XIII . . . . .	40
7. Failure of Mortgagee to Respond . . . . .	40
8. Development Rights. . . . .	40
XIV. ADDITIONAL DECLARANT'S RIGHTS	41
XV. SPORTS AND RECREATIONAL COMPLEX	42
1. General . . . . .	42
2. Conveyance of Sports and Recreational Complex . .	42
3. Rights of Access and Parking. . . . .	42
4. Limitations on Amendments . . . . .	42
5. Jurisdiction and Cooperation. . . . .	43
XVI. EASEMENTS, RIGHTS-OF-WAY, AND LICENSES	43
1. Easement for Access . . . . .	43
2. Utility Easements . . . . .	43
3. Walking Path or Trail Easements . . . . .	43
4. Jamestown Drive Easement. . . . .	43
5. Stonewall Jackson Drive, North Road, South Road Easement . . . . .	44
6. Easements of Encroachment . . . . .	44
7. Easements for Utilities, Etc. . . . .	44
8. Easement for Access Over Private Streets. . . . .	45
XVII. GENERAL PROVISIONS	45
1. Term. . . . .	45
2. Amendment . . . . .	45
3. Indemnification . . . . .	46
4. Severability. . . . .	46
5. Right of Entry. . . . .	46
6. Litigation. . . . .	46
7. Cumulative Effect; Conflict . . . . .	47
8. Use of the Words "Spring Mill" or "Spring Mills Subdivision", Spring Mills Development", or "Spring Mills Unit Owners Association". . . . .	47
9. Nonresidential Properties; Easement and Covenant to Share Costs . . . . .	47
10. Security. . . . .	47

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Appearing</u>
"A"	Land Initially Submitted	49
"B"	Land Subject to Annexation	50
"C"	By-Laws of Spring Mills Subdivision Unit Owners Association, Inc.	52
"D"	Covenant to Share Costs	75
"E"	Table of Zoning District Uses, Martinsburg, West Virginia Zoning Code	80
"F"	Concept Plan, as Presently Amended	88

# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

## SPRING MILLS SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made and dated this 1st day of December, 1989, by Van Wyk Enterprises, Inc., a West Virginia corporation (hereinafter referred to as "Declarant"), and consented to by the undersigned owners of property;

Declarant is the owner or is acting with the consent of the owners of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration;

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, liens, and assessments which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the West Virginia Uniform Common Interest Ownership Act, Chapter 36B, West Virginia Statutes (the Act), et seq. This Declaration is intended to create a common interest community and planned community as defined in the Act, but the planned community shall not be subject to the Act pursuant to Chapter 36B, Article I, Section 203(2) of the Act except Article I, Sections 105, 106, 107, and 114 of the Act.

### Article I Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any Neighborhood become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public right-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the articles of Incorporation of Spring Mills Subdivision Unit Owners Association, Inc., as filed with the Secretary of State of the State of West Virginia.

Section 3. "Association" shall mean and refer to Spring Mills Subdivision Unit Owners Association, Inc., a West Virginia corporation, its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under West Virginia Corporate Law. The use of the term "association" or "associations" in lower case shall refer to any

condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean and refer to assessments levied against all Units in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean and refer to the By-laws of Spring Mills Subdivision Unit Owners Association, Inc., attached hereto as Exhibit "C" and incorporated herein by reference, as they may be amended from time to time.

Section 6. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 7. "Common Area" shall be an inclusive term referring to all General Common Area and all Exclusive Common Area, as defined herein. The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchaser other than a builder or developer holding title for the purpose of development and resale.

Section 8. "Common Expense" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 9. "Community Standard" shall mean the standard of construction quality and design, conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 10. "Concept Plan" shall mean and refer to the Concept Plan for the development of the property described in Exhibit prepared by Allan D. Garnass, ASLA, dated December, 1988, as approved by the Berkeley County, West Virginia Planning Commission, on January 9, 1989, as it may be amended from time to time, a copy of which is annexed hereto as Exhibit "F". The attached Exhibit contains the modification that Phase I is shaded and the addition of the statements "Subject to Development Rights", "Need Not Be Built", "Development Rights Reserved In All Areas".

Section 11. "Declarant" shall mean and refer to Van Wyk Enterprises, Inc., a West Virginia corporation, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purposes of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 12. "Exclusive Common Area" shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods. All costs associated with improvement maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners of Units in only those Neighborhoods which are benefitted thereby as a Neighborhood Assessment, as defined herein. By way of illustration and not limitation, Exclusive Common Areas may include recreational facilities intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments. Initially, any Exclusive Common Areas shall be designated as such and the exclusive use thereof shall be assigned in the deed conveying the Common Area to the

Association. A portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the Neighborhoods to which they are assigned.

Section 13. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 14. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 15. "Mortgage" shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 16. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 17. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 18. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association members, such as location, a common theme, entry feature, development name, and/or common areas and facilities which are not available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, town home development, apartment house development, cluster home development, and single-family detached housing development shall constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3) having jurisdiction over the property within the Neighborhood. Neighborhoods may be divided or combined in accordance with Article III, Section 3, of this Declaration.

Section 19. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

Any Neighborhood Assessment shall be levied equally against all Units in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, or insurance on structures, or replacement and improvement reserves which pertain to particular structures, such assessments for the use and benefit of particular Units shall be levied on a pro rata basis among the benefitted Units.

Section 20. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.



Section 21. "Owner" shall mean and refer to one or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one year and the Lease specifically so provides, then upon filing a copy of the Lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner.

Section 22. "Parcel Developer" means any developer who purchases land within the Properties (as defined in this Article I) for the purpose of development and sale.

Section 23. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 24. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 25. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 5, of this Declaration.

Section 26. "Supplemental Declaration" shall mean any amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Section 27. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties, and shall include those portions of the Properties developed as commercial units as are specifically subjected to this Declaration as part of a mixed-use/residential regime. Commercial Units located outside of Spring Mills Subdivision but which are subject to assessment for road maintenance purposes are included in this definition solely for the purpose of assessment and access for ingress to and egress from such commercial unit. All other rights and privileges pertaining to such commercial units are to be set forth in a separate Declaration for the Commercial Areas in the Spring Mills Development.

The term Unit shall include all portions of the lot owned including any structure thereon. In the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Unit. The term Dwelling Unit as hereinafter used shall mean and refer to any building or portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Dwelling Units designated for such parcel on the Improvement Location Permit issued for such Unit or the site plan approved by Declarant, which ever is more recent.

After construction is completed the Association shall from time to time physically inspect and determine the number of Dwelling Units contained within a Unit:

Section 28. "Voting Member" shall mean and refer to the representative selected by the Members of each Neighborhood to be responsible for casting all votes attributable for Units in the Neighborhood for all matters provided for in this Declaration and in the By-Laws, exclusive of and not including the election of directors, amending this Declaration, merger of the Association and Dedication of Common Area all of which matters and voting rights thereon are reserved to the Members. The Voting Member from each Neighborhood shall be the senior elected officer (e.g., Neighborhood Committee chairman or Neighborhood Association president) from that Neighborhood; the alternate Voting Member shall be the next most senior officer.

## Article II Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, members and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to Article VIII hereof, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Spring Mills Subdivision and Spring Mills Development desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Spring Mills Subdivision and Spring Mills Development.

Access to the Sports and Recreational Complex within or adjacent to the Properties is strictly subject to the rules and procedures established by the respective owners of the Sports and Recreational Complex. No Owner or occupant gains any right to enter or to use those facilities by virtue of ownership or occupancy of a Unit.

The right of the Declarant to dedicate Stonewall Jackson Drive, North Road, South Road, and Jamestown Drive or any one or more of them to the West Virginia State Road Commission to be held and maintained in accordance with law.

## Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the

Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Dwelling Unit in which they hold the interest required for membership under Section 1 hereof; and there shall be only one (1) vote per Dwelling Unit. So long as the Sports and Recreational Complex remains a sports and recreational complex, it shall be designated as containing four (4) Dwelling Units and shall be allocated four votes and four Common Expense Assessments on the basis of containing four (4) Units. If the Sports and Recreational Complex is converted to residential use its voting units shall be determined as hereinbefore stated for Dwelling Units. If the Sports and Recreational Complex is converted into a permitted business use, Business Unit liability for Common Expense and Votes shall be established at the rate of one (1) Dwelling Unit allocation for each one thousand (1,000) square feet of the Business Unit which is under roof. Any square footage in excess of 1,000 square feet or equal multiples thereof shall be rounded upward to the next highest multiple of 1,000 square feet. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be exercised by the Voting Member, as defined in Article I, representing the Neighborhood of which the Unit is a part.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) person seeks to exercise it.

- (b) Class "B". The Class "B" Members shall be the Declarant. The rights of the Class "B" Members, including the rights to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Members shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3, of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" Membership upon the earlier of:
- (i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or
  - (ii) when, in its discretion, the Declarant so determines.

Section 3. Neighborhoods. Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 3, of the By-Laws, to represent the interest of Owners of Units in such Neighborhood.

Each Neighborhood Association or Committee, upon the Affirmative vote, written consent, or a combination thereof, of a majority of Owners within a Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of the Units in such Neighborhood, the cost of which shall be assessed against the benefitted Units as a Neighborhood Assessment pursuant to Article X.

The senior elected officer of each Neighborhood Association or the Neighborhood Committee shall serve as the Voting Member for such Neighborhood and shall cast all votes attributable to Units in the Neighborhood on all Association matters requiring membership vote, unless otherwise specified in this Declaration or the By-Laws. The Voting Member may cast all such votes as he/she, in his/her discretion, deems appropriate.

Initially, each portion of the Properties which is separately designated as a Residential or Multi-Family Residential Area on the Concept Plan and that portion designated on Phase I of Spring Mills Subdivision as the Sports and Recreation Complex shall constitute Neighborhoods unless the Declarant in a written, recorded instrument shall provide otherwise the Declarant reserving the Right to designate Neighborhoods as Supplemental Declarations are filed. The developers of any such Neighborhood may apply to the Board of Directors to divide the parcel constituting the Neighborhood into more than one (1) Neighborhood or to combine two (2) Neighborhoods into one (1) Neighborhood at any time. Upon petition signed by a majority of the Unit Owners in the Neighborhood, Any Neighborhood Association or Neighborhood Committee may also apply to the board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods or to combine two (2) Neighborhoods into one (1) Neighborhood. Any such application shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhoods. A Neighborhood division requested by the Neighborhood or by the developer of the Neighborhood shall automatically be deemed granted unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

#### Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but needs not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Areas,

including, but not limited to, drainage systems, recreation and open space, utilities, traffic control devices, the pedestrian walking path system, such emergency shelters which Declarant or the Association may construct, all private streets within the Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a Common Expense to be allocated among all Units as part of the Base Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Association may, in the discretion of its Board, assume the maintenance responsibilities of a Neighborhood set out in this Declaration or in any Supplemental Declaration or declaration subsequently recorded which creates any Neighborhood Association upon all or any portion of the Properties. In such event, all costs of such maintenance shall be assessed only against the Units within the Neighborhood to which the services are provided. The assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. The provision of services in accordance with this Section shall not constitute discrimination within a class.

A Neighborhood Association or the Association shall provide exterior maintenance upon each Town House Unit which is not part of a condominium regime as follows: paint repair, replace and care (including lawn care) for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, yards, grass, walks and other exterior improvements. The Common Expenses associated with the costs of such exterior maintenance shall be assessed to the Town House Unit and Units upon which maintenance is done and shall be added to and become a part of the Neighborhood Assessment to which such Unit or Units are subject.

The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Any person authorized by the Association shall have the right of access to all portions of the Properties for the purpose of performing exterior maintenance; for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, meters, wires and equipment, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, and with such force as is apparently necessary to gain entrance, whether or not the Unit Owner is present at the time.

Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements. If such expense is caused

by misconduct, it will be assessed following notice and hearing. In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Unit Owner for any damages caused to the Unit in gaining entrance to the Unit or in otherwise responding to the emergency. The Unit Owner shall be responsible for making all repairs to the Unit which result from the emergency and shall hold the Association harmless from any damages resulting therefrom.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood Association or Neighborhood Committee pursuant to any additional declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the owner thereof in accordance with Article X, Section 5, of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, buildings and amenities within the Neighborhood, the costs of maintenance of any right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to a declaration of covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional declaration, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Article X, Section 5 of this Declaration.

## Article V Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the Common Area, the Association may, upon request of a Neighborhood, but shall not under any circumstance be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance, if



reasonably available, and if not reasonably available, then at a minimum, fire and extended coverage, in such form as the Board of Directors deems appropriate for one hundred (100%) percent of the replacement cost of all structures located on Units within the Neighborhood and/or common property of the Neighborhood Association, and charge the costs thereof to the Owners of Units within the benefitted Neighborhood as Neighborhood Assessments, as defined in Article I hereof.

The Association shall have no insurance responsibility for any part of any Sports and Recreational Complex or Business Complex within the Properties.

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall at a minimum comply with the applicable provisions of this Section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a Two Million (\$2,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Five Million (\$5,000,000.00) Dollar limit per occurrence, if reasonably available, and One Million (\$1,000,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Area shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article I and as more particularly described in Article X, Section 1; provided, in the discretion of the Board of Directors, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood benefitted thereby. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in West Virginia which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
- (b) All policies on the Common Area shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Area; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of the Units within the Neighborhood and their Mortgagees, as their interests may appear.

- (c) Exclusive authority to adjust losses under policies by the Association on the Properties shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.
- (e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction costs in Berkeley County, West Virginia.
- (f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
  - (iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;
  - (v) that any "other insurance" clause in any policy excludes the individual Owners' policies from consideration; and
  - (vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than twelve (12) months; assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least



thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit which is subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Common Area, unless the Association at the request of the Neighborhood Committee or the Neighborhood Association for the Neighborhood in which the Unit is located carries such insurance (which they are not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

A Neighborhood Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units subject to its jurisdiction and the standard for returning the Units to their natural state in the event the structures are not rebuilt or reconstructed.

Section 3. Damage and Destruction.

- (a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.
- (b) Any damage or destruction to the Common Area or to the common property of any Neighborhood Association shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, if Common Area, or the Unit Owners representing at least seventy-five (75%) percent of the total vote of the Neighborhood Association whose common property is damaged, if common property of a Neighborhood Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided,

however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of a Neighborhood Association shall be repaired or reconstructed, except for access streets and ways within the Properties; provided, however, this provision shall not apply to construction Mortgages providing construction financing for such damaged property.

- (c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, or the Neighborhood Association, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against all Owners on the same basis as provided for Base Assessments, provided, if the damage or destruction involves the common property of a Neighborhood Association, only the Owners of Units in the affected Neighborhood Association shall be subject to assessment therefor. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

#### Article VI No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provision of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## Article VII Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## Article VIII Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2005, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof. Such annexation shall be accomplished by filing in the public records of Berkeley County, West Virginia, an amendment to this Declaration annexing such property. Such Supplemental Declaration shall be executed by the Declarant and shall not require the consent of Members or Voting Members. Any such annexation shall be effective upon the filing for record by Declarant of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the expiration of the right in Section 1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such

annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Berkeley County, West Virginia, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" hereof.

Section 5.1. Development Rights. The Declarant, by way of explanation and not limitation, reserves fully, completely, and to the maximum the following Development Rights:

- (a) The right by amendment to add real estate to the Properties. The real estate to which this development right applies is set forth in Exhibit "B".
- (b) The right by amendment to create Units, Common Area, and General Exclusive Area within the Properties.
- (c) The right by amendment to subdivide and combine Units or convert Units into Common Areas.
- (d) The right by amendment to withdraw real estate from the Properties.
- (e) The right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Properties for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the land designated Subject to Development Rights on the Concept Plan. The Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Properties not occupied by buildings, for the above-mentioned purposes.

Section 5.2. Limitations on Development Rights.

- (a) The Development Rights reserved in this Article must be exercised within fifteen (15) years after the recording of the initial Declaration.

- (b) Not more than Four Thousand (4,000) Dwelling Units may be created under the Development Rights.
- (c) All Units and Common Areas created pursuant to the Development Rights will be as more fully set forth and defined in Article XII restricted to residential use, but all Units will not be single family detached Units. Future Units will consist of an undetermined mix, number, quality, size, location and density of various types of residential housing including single family detached, town house, apartment buildings, and condominium buildings. Access and utilities to surrounding commercial areas in Spring Mills Development may be over North Road, South Road, Jamestown Drive, and Stonewall Jackson Drive.
- (d) The quality of construction of any single family detached building to be created on the Property shall be consistent with the quality of the residences erected in the initial phase of the Properties. Styles of Architecture and Design may change.
- (e) There are no limitations on the styles, size, location, design, height, and quality of construction of town houses, apartments, and condominiums.

Section 5.3. Phasing of Development Rights. Any of the Development Rights set forth in Section 5.1 above may be exercised with respect to different parcels of real estate within the Properties at different times, and at different locations. However, no assurances are made by the Declarant as to when, where, or the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

Section 5.4. Special Declarant Rights. The Declarant fully and completely reserves the following Special Declarant Rights anywhere within the Properties:

- (a) To complete any and all Improvements (including by way of explanation and not limited to streets, roads, walking paths, utilities, residences, town houses, apartment houses and condominiums) indicated on Plats and Plans filed with the Declaration, any Supplemental Declaration or reasonably anticipated and implied from the nature of the development;
- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Properties and Spring Mills Development and models;
- (d) To use easements through the Common Area for the purpose of making Improvements within the Properties or within real estate which may be added to the Properties, or within Spring Mills Development.
- (e) To appoint or remove an officer of the Association or a Board member during the period of Class "B" Control Period.
- (f) The real estate to which the Special Declarant Rights specified in Sections (a) through (f) above apply is shown on Exhibit "B".

Section 5.5. Models, Including Model Homes and Homesites, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Area as a model Unit or sales office or management office. The Declarant is also a West Virginia licensed Real Estate Broker and Declarant's right to maintain a sales office shall also include the right to offer general real estate sales services on all property whether or not located within the Properties.

Section 5.6. Construction: Declarant's Easement. The Declarant reserves the right to perform initial building and construction work, warranty work, repairs and construction work, and to store materials in secure areas, in Units and in Common Area, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has such an easement through the Common Area as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development Rights or Special Declarant Rights, whether or not specifically reserved in this Declaration such easement including the right to convey utility and drainage easements to public utilities, municipalities, counties, and the State, to fulfill the plan of development.

Section 5.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Area to promote sales of Units, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 5.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the Properties promptly after the sale of the last Unit permitted under the Declaration any and all goods and improvements used in development, marketing, construction and maintenance, whether or not they have become fixtures.

Section 5.9. Declarant Control of the Association.

- (a) There shall be a period of Declarant control of the Association as more fully set forth and defined in this Declaration and Article III, Section 2, of the By-Laws, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board and have all other such rights of control as are set forth in this Declaration and the By-Laws.

Section 5.10. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right specified in Sections 5.4, 5.5, 5.6, 5.7, and 5.8 may be exercised by the Declarant until the earlier of the following: so long as the Declarant (i) is obligated under any warranty or obligation, (ii) holds a Development Right to create additional Units or Common Area, (iii) owns any Unit; or (iv) owns any Security Interest in any Units; or (v) for fifteen (15) years after recording this Declaration, whichever is earliest.

Section 5.11. Interference with Development Rights or Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Development Rights or Special Declarant Right without the prior written consent of the Declarant.



SPRING MILLS SUBDIVISION IS BEING DEVELOPED BY DECLARANT IN CONJUNCTION WITH ADJOINING REAL ESTATE OWNED AND CONTROLLED BY DECLARANT AND WHICH DECLARANT EXPECTS AND INTENDS TO DEVELOP AS A MULTI-FACETED AND PHASED BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC COMPLEX CONTAINING A BROAD RANGE OF BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC ENTERPRISES AND ACTIVITIES INTENDED TO SERVE THE ENTIRE COMMUNITY, MEANING ALL OR PARTS OF BERKELEY COUNTY AND NEIGHBORING COUNTIES AND STATES AND TO DRAW CUSTOMERS FROM A WIDE TRADE AREA FAR IN EXCESS OF THE PROPERTIES. IT IS FURTHER ANTICIPATED AND EXPECTED THAT THE BUSINESS, COMMERCIAL, OFFICE PUBLIC AND SEMI-PUBLIC AREA WILL CONTAIN A BROAD MIX OF HIGH RISE AND LOW RISE BUILDINGS OF VARYING ARCHITECTURAL STYLES AND DESIGNS, AND THAT THE AREA WILL BE BUILT IN MULTIPLE PHASES. IN ADDITION, THE CONCEPT PLAN APPROVED BY THE BERKELEY COUNTY PLANNING COMMISSION REFLECTING BROAD CONCEPT AND DYNAMIC DESIGN FOR THE DEVELOPMENT AND SUBDIVISION OF THE DECLARANT'S ENTIRE LAND HOLDINGS IN THE AREA INTO VARIOUS SINGLE FAMILY DETACHED AND TOWN HOUSE ATTACHED RESIDENTIAL, MULTI-FAMILY RESIDENTIAL AND COMMERCIAL AREAS IS A FLEXIBLE DESIGN WHICH WILL BE REGULARLY MODIFIED AND AMENDED FROM TIME TO TIME. IT IS NOT INTENDED AND THE DECLARANT DOES NOT GUARANTEE AND SHALL NOT BE BOUND TO DEVELOP THE PROPERTY AS OUTLINED ON THE CONCEPT PLAN, THE DECLARANT SPECIFICALLY RESERVING THE RIGHT TO AMEND THE GENERAL PLAN OF DEVELOPMENT SET FORTH IN THE CONCEPT PLAN IN RESPONSE TO CHANGES IN THE TECHNOLOGICAL, ECONOMIC, ENVIRONMENTAL, SOCIAL AND GENERAL MARKET CONDITIONS RELATING TO THE DEVELOPMENT OR MARKETING OF THE DECLARANTS LAND HOLDINGS SET FORTH ON THE CONCEPT PLAN OR TO CHANGES IN REQUIREMENTS OF GOVERNMENTAL AGENCIES OR FINANCIAL INSTITUTIONS. THE ASSOCIATION AND UNIT OWNERS WILL HAVE NO CONTROL OVER THE DECLARANT'S DEVELOPMENT PLANS, AND EXCEPT FOR DECLARANT'S COMMITMENTS (1) TO NOT EXCEED A TOTAL OF FOUR THOUSAND (4,000) RESIDENTIAL UNITS, (2) TO ENSURE THAT THE AREA BETWEEN STONEWALL JACKSON DRIVE ON THE EAST, PORTERFIELD LANE ON THE WEST, NORTH ROAD ON THE NORTH AND SOUTH ROAD ON THE SOUTH WILL BE USED EXCLUSIVELY FOR MULTI-FACETED RESIDENTIAL PURPOSES WITH THE EXCEPTION OF THE SPORTS AND RECREATIONAL COMPLEX, AND (3) TO ENSURE THAT ANY LOT IN THESE AREAS HEREAFTER DESIGNATED BY DECLARANT AS BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC AREAS WILL BE RESTRICTED TO AND SHALL INCLUDE ALL OF THE RESIDENTIAL, BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC USES AND PURPOSES PRESENTLY PERMITTED IN A COMMUNITY BUSINESS DISTRICT (BC), WHETHER OR NOT THEY ARE THEREIN SUBJECT TO EITHER DESIGN REGULATIONS OR SITE PLAN REVIEW, UNDER THE PRESENT CITY OF MARTINSBURG, WEST VIRGINIA 1954 ZONING ORDINANCE AS NOW AMENDED (TO MEAN ALL USES DESIGNATED, P, S, AND E UNDER THE BC COLUMN ON EXHIBIT "E") A COPY OF WHICH USES ARE ATTACHED AS A PART OF EXHIBIT "E", DECLARANT, IS TOTALLY FREE TO AND RESERVES THE RIGHT TO INCREASE OR DECREASE THE SIZE OF RESIDENTIAL AREAS AND THE DENSITY OF POPULATION THEREIN AND THE RIGHT TO INCREASE OR DECREASE THE SIZE OF BUSINESS, COMMERCIAL, AND OFFICE AREAS AND TO CHOOSE AND SET THE DENSITY OF POPULATION AND USES THEREIN. THERE ARE NO DESIGN REGULATIONS UPON OR SITE PLAN REVIEW OF THE DECLARANT DEVELOPMENT OF THE BUSINESS, COMMERCIAL, OFFICE, PUBLIC AND SEMI-PUBLIC AREAS.

Article IX  
Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. Fines shall constitute a lien against Units.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances or permit Berkeley County to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privileges given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. The Association shall permit the Declarant reasonable authority to designate sites within the properties for fire, police, water, sewer, cable t.v. facilities, and other necessary services and utilities.

#### Article X Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 8 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expense for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood; and (c) Special Assessments as described in Section 5 below.

Base Assessments shall be levied equally on all Units, except as provided in Section 4 below. Parcel Developers shall pay 100% of the Base Assessment levied upon the Units designated for such parcel on the site plan approved by Declarant or on the Improvement Location Permit, whichever is more recent, on the date the budget is adopted, such amount to be adjusted at least annually to reflect single family detached home Units platted and multi-family Units platted, constructed or under construction. Except as provided in Section 4 below, Neighborhood Assessments shall be levied equally on all Units within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in Section 3 below. Special Assessments shall be levied as provided in Section 5 below. Each Owner, by acceptance of a deed or recorded contract of sale to any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate not to exceed the highest rate allowed by West Virginia law as computed



from the date the delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee, nominee of the Mortgagee, or third party purchaser who obtains title to a Unit pursuant to the remedies provided in the Mortgage, or third party purchaser who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or management agent of the Association setting forth whether such assessment has been paid for any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Base Assessment and any Neighborhood Assessment for delinquents. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be paid in annual installments.

No Owner may waive or otherwise exempt himself from liability for assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant shall either pay the Base Assessments on its unsold Units or in the alternative and in lieu of paying Base Assessments on its unsold Units the Declarant shall be obligated for the difference between the amount of assessments levied on all Units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. The Declarant from year to year may alternate its manner of payments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated

Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget.

The Base Assessment to be levied for the coming year against each Unit subject to assessment under Section 8 below shall be computed by dividing the budgeted Common Expenses by the total number of Units then subject to assessment under this Declaration and any Supplemental Declaration. The Board shall cause a copy of the Common Expense budget and notice of the amount of Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members by the vote of seventy (70%) percent of the total Class "A" vote in the Association, and by the Class "B" Member, if such membership exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Article II, Section 4, of the By-Laws.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the dues per Unit in effect for the immediately preceding year shall continue for the current year, with the Board having the authority to allocate the total budget funds to the various budget categories.

Section 3. Computation of Neighborhood Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration or the By-Laws specifically authorized the Board to assess certain costs as a Neighborhood Assessment. The Neighborhood Association or Committee for each Neighborhood may request that additional services or a higher level of services may be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment. The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a seventy (70%) percent of the Owners of Units in the Neighborhood to which the Neighborhood Assessments applies; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten (10%) percent of the Units in such Neighborhood. Meetings of Neighborhood Committees, if called, shall be conducted in accordance with Article V, Section 3 of the By-Laws.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Assessments for the Designated Business Units in Spring Mills Subdivision. Notwithstanding anything to the contrary contained herein, the assessment to be levied on the designated business Units in the Spring Mills Subdivision shall be established at the rate of one (1) assessment unit (amount a residential Unit will pay) for each one thousand (1,000) square feet of business property under roof. Any square feet in excess of 1,000 square feet or multiples thereof shall be rounded to the next highest multiple of 1,000 square feet.

Section 5. Special Assessment. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments from time to time; provided, such assessment shall have the affirmative vote or written consent of Voting Members or their alternates representing at least fifty-one (51%) percent of the Class "A" vote in the Association and the affirmative vote or written consent of the Class "B" Member, if such exists. The obligation to pay Special Assessments shall be computed on the same basis as for Base Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, with Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood Association or Neighborhood Committee and an opportunity for a hearing.

Section 6. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 7. Capital Budget and Contribution. The Board of Directors shall annually in preparing the Base Assessment Budget prepare as a part thereof a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall

be fixed by the Board and included within and distributed with the Base Assessment budget and assessment, as provided in Section 2 of this Article.

Section 8. Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Unit on the first day of the first month following (i) the date of conveyance of the Unit by Declarant, or (ii) the effective date of the first budget, whichever is later. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 9. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of West Virginia Law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage, or transfer to a first Mortgagee or third party pursuant to a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expense or assessment shall be deemed to be Common Expenses collectible from Owners of all Units, including such acquirer, its successors, and assigns.

Section 10. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempted from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

Section 11. Assessment Limitation. Notwithstanding anything herein to the contrary, the annual average Common Expense liability of all Units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed One Hundred (\$100.00) Dollars as adjusted pursuant to Section 114 of Article I, Chapter 36B of the West Virginia Code (titled Uniform Common Interest Ownership Act). Common Expense liability as used in this Section 11 is not intended to include and shall not include fines and penalties permitted and levied against Owners and Units for violations of this Declaration, the By-Laws and the Rules and Regulations of the Association; Assessments permitted and levied against Owners and Units for failure to maintain their Units as required by this Declaration, the By-Law and Rules and Regulations of the Association; Assessments permitted and levied against Owners and Units due to an Owner's willful or negligent damage to the Common Area or other Units as permitted by this Declaration, the By-Laws and Rules and Regulations of the Association, and other similar Assessments permitted and levied against Owners and Units pursuant to this Declaration, the By-Laws, and the Rules and Regulations of the Association other than the normal annual Base Assessments, normal, annual Neighborhood

Assessments, Special Assessments levied by appropriate affirmative vote, and normal annual Capital Budget and Contributions permitted by this Declaration.

## Article XI Architectural Review

Section 1. Applicability. All architectural review shall be performed by the Board, or a committee appointed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee to perform the architectural review functions, there shall be no less than three (3) members and no more than seven (7) members, all of whom must be Owners. The terms of office shall be as designated by the Board. Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Unit is required to obtain the approval of the Board pursuant to this Article prior to making any such alteration or addition. Any owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board, upon its own motion, shall proceed as though the Owner gave the notice of completion as specified in Section 11.8.1. Nothing in this Article shall be deemed to relieve any owner from obtaining all necessary consents and permits and otherwise complying with all applicable State and local laws and ordinances.

Section 2. Duties. The Board shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may impose architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration and the Community Standard by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration, and the Community Standard. The Architectural Standards shall be accepted as Rules when adopted in accordance with the provisions of the By-Laws.

Section 3. Application for Approval of Improvements. Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board.

Section 4. Basis for Approval of Improvements. The Board may approve the proposals only if the Board finds that (i) the plans and specifications conform to this Declaration, the Community Standard and to the Architectural Standards in effect at the time the proposal was submitted; (ii) the proposed alteration or addition will be consistent with the standards of the Properties, the Community Standard, the provisions of this Declaration, and the Architectural Standards as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures, environment location with respect to topography and finished grade elevations; and (iii) the proposed alteration or Improvement is in conformance with conditions imposed by any municipal or county ordinance having jurisdiction.

Section 5. Form of Approval and Denials. All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has

not been rejected in writing within forty-five (45) days from the date of submission shall be deemed approved.

Section 6. Proceeding With Work. Upon approval of the Board the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

Section 7. Failure to Complete Work. Completion of the work approved must occur in the twelve (12) month period following the approval of the work unless the Board determines the completion would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If Owner fails to complete the work within the one (1) year period, the Board shall proceed in accordance with the provisions of Section 11.8.2 below.

Section 8. Determination of Compliance. Any work performed, whether or not the Owner obtained the proper approvals, shall be inspected and a determination of compliance shall be made as follows:

Section 8.1. Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

Section 8.2. Within Thirty (30) days the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

Section 9. Failure to Remedy the Non-Compliance. If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner and constitutes a lien upon the involved Unit.

Section 10. Waiver. Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.



Section 11. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. This certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

Section 12. Liability. If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Section 13. Non-Applicability to Declarant. The provisions of this Article shall not apply to any Unit owned by Declarant or prior to his first conveyance of a Unit to an Owner.

Section 14. General Exterior Painting. Paint colors for the exterior painting of single family detached dwellings shall not be subject to Architectural Review.

#### Article XII Restrictions on Use, Alienation and Occupancy

Section 1. Primary Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved under Article VIII, the following use and occupancy restrictions apply to all Units and, where applicable, to the Common Areas:

- (a) Primary Residential Use. Except for the two and thirty-two one hundredth (2.32) acre Sports and Recreational Complex (reflected upon Exhibit "A" as "Parcel Reserved By Declarant for Commercial/Recreational Uses") and except as permitted by Article XII, Section (c), Units shall be used for residential purposes only. In those areas designated for single family detached residences, no building shall be erected, altered, placed or permitted to remain on any Unit so designated other than one (1) single family detached dwelling and a private garage attached to the dwelling. In those areas designated by Declarant as multi-family residential, town houses, apartment buildings and condominium buildings containing two or more Dwelling Units shall be permitted.
- (b) Permitted Business Use. In the event the two and thirty-two one hundredth (2.32) acre Sports and Recreational Complex or subdivisions thereof ceases to be used for a swimming, tennis club or other similar sports/recreational purposes, residential and limited commercial uses shall be permitted. Business/commercial purposes permitted are established to provide for the development of commercial and retail businesses, trades, services, and professions supplying commodities or performing services primarily for the

residents of the surrounding area. Business/Commercial Uses permitted shall include all of the business, commercial, and professional uses presently permitted in a Local Business District (BL), whether or not they are therein subject to either design regulations or site plan review, under the present City of Martinsburg, West Virginia, 1954 Zoning Ordinance as now amended (to mean all uses designated P, S, and E under the BL column on Exhibit "E"), a copy of which uses are attached as a part of Exhibit "E". Permitted uses are not subject to any site plan review or design regulations, other than these herein stated as follows:

The size, shape, design and location of all business structures shall be controlled under Article VIII. The business structures shall be designed and built with good architectural treatment and shall be designed with ample parking facilities for cars of the patrons with reasonable safety provisions for pedestrians and with adequate drainage, lighting and directory signs. Business structures shall not be located closer to Jamestown Drive than forty (40) feet or closer or nearer to any other side or rear Lot lines than five (5) feet. Parking areas shall not be subject to the front, side or rear yard requirements. Lighting shall be arranged so as not to reflect or cause excessive glare into abutting residential Units or adjacent streets, and attractive screening, fences or walls or dense evergreen plantings shall be installed and maintained along the Common Lot lines between Business Units and Residential Units. Business structures may be divided into one or more Business Units and the uses or businesses permitted shall be typical shopping center businesses such as food or grocery stores or markets, drug stores, variety stores, beauty shops, barber shops, bookstores, clothing stores, office supply stores, restaurants, professional offices, for such persons as engineers, insurance agents, accountants, real estate sales, doctors, dentists, lawyers, or surgeons or any similar service or retail office use. No manufacturing business shall be permitted, no businesses emitting toxic or noxious fumes or gases shall be permitted and all cleaning establishments, restaurants, food establishments and like businesses shall be so located and so designed so that the fumes and vapors emitted thereby do not constitute a nuisance to surrounding residential neighborhoods. Convenience stores may provide gas services, but no gasoline stations, garages, auto repair or other like facilities shall be permitted within the Business Area. Grocery stores, markets or restaurants may sell such beer, wine or liquors as are authorized by law and under proper license. No clubs oriented primarily to the sale of alcohol beverages or entertainment shall be permitted.

- (c) Business Use in Residential Units. No trade or business may be conducted in or from any Residential Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance,



or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" or "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; and (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

Notwithstanding the above or any other provision herein, the business use of the permitted commercial units on the Sports and Recreational Complex in the Spring Mills Subdivision shall be a conforming use and not in violation of this Declaration.

Section 2. Other Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved under Article VIII the following use and occupancy restrictions apply to all Units and the Common Area:

(a) SUBDIVISION OF LOTS.

No Units shall be divided, subdivided or partitioned in any way by sale, gift, devise, or other method of conveyance, except to allow for nominal boundary line adjustments. No Unit shall be combined or merged with any other Unit without the prior written approval and consent of the Board or the Architectural Control Committee.

(b) PROPERTY MAINTENANCE.

Each owner shall keep their Unit and improvements thereon in a safe, clean, neat, and well maintained condition, and shall comply with all applicable safety, health, police and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be permitted to remain exposed on any Unit except as necessary during the construction period. Rubbish, leaves, and trash shall not be disposed of in the Properties by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be stored out of view from neighboring Units, roads, or streets, except at times of scheduled garbage or trash pickup.

(c) NUISANCE.

No noxious, illegal, hazardous, dangerous or offensive use, construction or activity shall be conducted on any Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners, tenants or occupants of other Units within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise. No Unit shall be used in whole or in part for the storage of rubbish of

any character whatsoever, nor for the storage of any property or thing that will cause such Unit to appear in an unclean or untidy condition or that will be obnoxious to the eye.

(d) UNREGISTERED VEHICLES.

No unregistered vehicles of any kind, including, but not limited to, automobiles, trucks, pickups, buses, motorcycles, vans, motor homes, trailers, boats, farm tractor and equipment, or recreational vehicles shall be parked, stored, or in any way maintained on any street, right-of-way or Common Area or on any Unit, except within a garage or other permitted improvement on the Unit.

(e) PETS.

Only common domestic house pets shall be allowed on any Unit or the improvements thereon, provided they are not kept or bred for any commercial purpose. Pets shall not be allowed to roam at large, and pets shall not be housed, fenced or otherwise maintained on a regular basis outside of the primary Dwelling Unit on any Unit. Kennels, dog runs, dog houses, and other similar pet facilities are prohibited. No farm animals, livestock, or poultry of any kind shall be kept, maintained or in any way allowed on any Unit. The Unit Owners Association shall have absolute authority to prohibit unusual or exotic animals, birds, or reptiles from being kept on a Unit or in an improvement located thereon, and shall have the authority to prohibit or regulate loud and noisy pets.

(f) PARKING.

Each residential Unit shall provide an off street parking area for at least two (2) 6' X 18' vehicles. All driveways shall be black topped or concreted and shall include at the street entrance an appropriate drainage culvert or depression as needed. Except for temporary and unusual irregular overflow parking from the garage and driveway of any Unit, no parking shall be permitted on any street or road within the Properties. No Unit owner shall park on a regular or continuing basis more than two (2) registered vehicles on the Unit, other than inside any improvement thereon. Motor homes, recreational vehicles less than 20 feet in length, or boats on trailers may be parked or maintained on a Unit provided that they are kept in a garage. Subject to such Rules, Regulations and Fines adopted by the Association, a recreational vehicle or motor home may be parked on the driveway of a Unit for a period of not to exceed three (3) consecutive days for the purpose of and the sole purpose of preparing the vehicle for a trip. No Member may park such a vehicle on their Unit for such purposes more than six (6) times in any calendar year.

(g) SNOWMOBILES, TRAIL BIKES AND SIMILAR VEHICLES.

No snow mobiles, trail bikes, mini-bikes, all terrain vehicles, or other similar vehicles shall be permitted to operate within the Properties. No motorized vehicle shall be permitted in any park or on any walking paths.

(h) FIREARMS.

The discharge of firearms shall not be permitted within the Properties. No hunting shall be allowed within the

Planned Community. The term "firearms" include "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(i) CONSTRUCTION.

During construction, Units shall be kept free and clear of unnecessary and unsightly debris. All trash, rubbish and debris shall be cleaned from the Unit on a reasonable, periodic basis during construction and all trash, rubbish and debris shall be promptly removed from the Unit after construction is completed. Existing storm water and runoff drainage patterns for each Unit shall be protected at all times both during and after construction. During construction, reasonable measures shall be taken to prevent erosion by wind and water.

(j) COMMERCIAL VEHICLES, EQUIPMENT, ETC.

Except during periods when construction is taking place on the Unit, no trucks larger than three-quarter (3/4) ton capacity, no commercial vehicles, camper tops, construction, or like equipment or mobile or stationary trailers of any kind shall be placed or permitted to remain on any Unit.

(k) BUILDING SETBACK REQUIREMENTS.

The minimum building setback line for all improvements constructed on any Residential Unit shall be as follows:

1. The boundaries of each Unit created by the Declaration are shown on Exhibit "A" as numbered lots on the plat, together with the ground beneath each such lot and the airspace above each such lot. The identifying number of each Unit is shown on Exhibit "A" of the Declaration. Each Unit in Phase I is a single family detached residence.

(i) The minimum building set back line for all improvements constructed on any Unit shall be as follows:

(a) All Single Family Detached Home Lots: Twenty feet from the front property line and six feet from the rear and side property lines. The front property line is defined as the property line fronting on the street from which access to the lot is provided as shown on the plat of Spring Mill Subdivision.

(b) Townhouses: Zero feet from the common Unit lines between Units, 10 feet from the rear Unit line and twenty (20) feet from the front Unit property line.

(ii) The setback lines reflected on the recorded plats of the Units shall control and minor variances, not exceeding 50% of the required setback, of setbacks are permitted from Unit to Unit to avoid hardship due to the size, shape or topography of a particular Unit, fronts not less than 20%. Front set back lines from streets shall in no case be less than twenty (20) feet.

(iii) A side line setback shall not apply to a common property line between the two Units in single ownership when a permitted residence is built straddling the common Unit property line and overlapping both Units.

(iv) Setback for apartment buildings and condominium buildings in multi-family neighborhoods shall be determined by

the Declarant, but shall in no case be less than twenty (20) feet from the front property line.

(l) UTILITY LINES.

All utility service lines, including but not limited to, electric, telephone, natural gas, cable television, water and sewer lines shall be buried underground, excluding all required pedestals, transformer boxes, and other required above ground improvements.

(m) OUTDOOR LIGHTING.

Outdoor lighting shall be of a type and installation such that no direct glare is visible from adjoining properties.

(n) MAIL BOXES.

The Architectural Control Committee may determine the location, color, size, design, lettering, and all of the particulars of all mail or paper delivery boxes, and standards and brackets and name signs for the boxes in order that the area be strictly uniform in appearance with respect to these items.

(o) STORAGE TANKS.

All storage tanks for use in connection with any residence, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring Units, roads, or streets.

(p) SIGNS.

No signs of any character shall be erected, placed, permitted or maintained on any Unit or improvement except normal and reasonable address identification signs and normal and reasonable "For Sale" signs, except with the prior written approval and consent of the Architectural Control Committee.

(q) CENTRAL WATER AND SEWER.

All residences or other improvements on the Units shall be connected to the public central water and sewer systems serving the Properties, and no residence or other improvement shall be occupied until such time as it is connected to the public central water and sewer system. No private water well or septic system shall be permitted on any Unit.

(r) BEVERAGE RESTRICTION.

No beer, wine, liquor or any other intoxicating beverages of any type or nature will be sold or stored for sale on any residential Unit.

(s) RESTRICTION ON RESIDENCE TYPES

No structure of a temporary character, trailer, house trailer, mobile home, mobile double wide, basement, tent, shack, garage, barn or other out building shall be used on any Unit at any time as a residence, either temporarily or permanently.

(t) FENCES.

Fences shall not be permitted in the front lawn or front yard of any Lot. Fences are permitted on the back lawn or back yard of any Lot provided that such fence does not exceed four (4) feet in height. Permitted swimming pool fencing shall not exceed five (5) feet in height. Chain link, American Wire and Barb Wire fences are entirely strictly prohibited.

(u) RESIDENTIAL UNIT SIZE:

1. No Unit designated for occupancy by a single family detached residence shall contain less than eight thousand five hundred (8,500) square feet and no Unit occupied by a Town House Unit shall contain less than one thousand (1,000) square feet. The ground floor area of all single-family, single-level residences erected on any Unit designated for occupancy by a single family detached residence shall contain a minimum area of one thousand four hundred forty (1,440) square feet of which three hundred (300) square feet may be contained in the garages and all other residences shall contain a minimum area of one thousand nine hundred (1,900) square of which two hundred (200) square feet may be contained in the garage. The ground floor area of a single story Town House improvement shall contain a minimum area of nine hundred (900) square feet, exclusive of porches and garages, and the ground floor area of any two story Town House improvement shall contain at least five hundred (500) square feet. Dimensions stated shall be exterior wall dimensions excluding decks, porches, eaves, and other similar extensions and overhangs.

2. Unit size, designs, architecture, and location for apartments and condominiums are undetermined and unrestricted.

- (v) Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, agents and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

- (w) Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, or other signals of any kind shall be place, allowed, or maintained upon any portion of the Properties, including any Unit, without prior written consent of the Board. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Declarant or the Association and require such exterior apparatus. Such system may be provided by the Declarant or the Association through an independent Vendor.

- (x) Pools. No above-ground pools shall be erected, constructed or installed on any Unit.
- (y) Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may change or re-channel the drainage flow after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow.
- (z) Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.
- (aa) Artificial, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similarly items must be approved in accordance with Article XI of this Declaration.
- (bb) Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.
- (cc) General Storage. All permitted personal property, including but not limited to garbage containers, grills, bicycles, toys, yard equipment, lawn mowers, and all other household personal property shall be stored within any permitted residence.
- (dd) No immoral, improper, offensive, or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of West Virginia and all ordinances, rules and regulations of the County of Berkeley. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

### Section 3. Restrictions on Alienation.

- (a) A Unit may not be conveyed pursuant to a time-sharing plan.
- (b) A Unit may not be leased or rented for a term of less than 30 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

The Association, acting through its Board of Directors, shall have the authority to make and enforce standards and

restrictions governing the use of the Properties in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private roads within the Properties. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a Majority if the total Class "A" votes in the association and by the vote of the Class "B" member, so long as such membership shall exist.

#### Article XIII Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder" ), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Voting Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied

against a Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Area losses for other than repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice of Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Unit.

Section 5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or West Virginia corporate law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Section 8. Development Rights. No Development Rights or Special Declarant Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.



Article XIV  
Additional Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the public records of Berkeley County, West Virginia. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units within the Properties and all permitted additions thereto shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models, sales offices, and for lodging and entertainment, respectively, of sales prospects and other business invitees.

As long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

So long as Declarant continues to have rights under this Paragraph, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale and other closing documents for the subdivision and sale of property in the Properties by any Parcel Developer shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver notice to any Parcel Developer of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Parcel Developer within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this article shall terminate upon the earlier of (a) December 31, 2005, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XV  
Sports and Recreational Complex

Section 1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use the Sports and Recreational Complex. Rights to use the Sports and Recreational Complex will be granted only to such persons and on such terms and conditions, as may be determined from time to time by the respective owners of the Sports and Recreational Complex. The owners of the Sports and Recreational Complex shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Sports and Recreational Complex, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Conveyance of Sports and Recreational Complex. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other person with regard to the continuing ownership or operation of the Sports and Recreational Complex as depicted upon the Concept Plan, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment hereto executed or joined into by the Declarant. Further, the ownership operational duties or uses of and as to the Sports and Recreational Complex may change at any time and from time to time by virtue of, but without limitation the sale or assumption of operations of the Sports and Recreational Complex or of other permitted business uses by/to an independent Person, or the conveyance pursuant to contract, option, or otherwise, of the Sports and Recreational Complex to one or more affiliates, shareholders, employees, or independent contractors of Declarant or subsequent Owners. The Declarant acting alone may convert all or a part of the Sports and Recreational Complex to other permitted business uses. As to any of the foregoing or any other alternative, no consent of the Association, any Neighborhood, or any Owner shall be required to effectuate such transfer. Notwithstanding the above, under no circumstances shall any Sports and Recreational Complex be conveyed to the Association and no Owner shall have any right or interest in the Sports and Recreational Complex by virtue of ownership or occupancy of a Unit.

Section 3. Rights of Access and Parking. The Sports and Recreational Complex, their members (regardless of whether such members are Owners hereunder), guests and invitees, and the employees, agents, contractors, and designees of the Sports and Recreational Complex, shall at all times have a right and non-exclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel from/to the entrance to the Properties to/from the Sports and Recreational Complex, respectively, and, further, over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Sports and Recreational Complex.

Section 4. Limitation on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Sports and Recreational Complex no amendment to this Article, or those portions of Article XII permitting certain limited businesses in said Complex, and no amendment in derogation hereof or to any other provisions of this Declaration, which affects the Sports and Recreational Complex, may be made without the written approval of the affected Sports and Recreational Complex. The foregoing shall not apply, however, to amendments made by the Declarant.

Section 6. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Sports and Recreational Complex shall cooperate to the maximum extent possible in the operation of the Properties and the Sports and Recreational Complex. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Community Development Code and Land Use Standards. Except as specifically provided herein or in the By-Laws, the Association shall have no power to promulgate rules and regulations affecting activities on or use of the Sports and Recreational Complex without the prior written consent of the affected Sports and Recreational Complex.

ARTICLE XVI  
Easements, Rights-of-Way, and Licenses

Section 1. Easement for Access. Declarant reserves unto itself, its successors and/or assigns and invitees a perpetual and non-exclusive easement or right-of-way for ingress, egress and access of all kinds over and across all of the Common Areas and General and Exclusive Common Areas of the Properties to and from all points within the Properties for all purposes.

Section 2. Utility Easements. Declarant reserves unto itself, its successors and/or assigns, a perpetual and non-exclusive easement or right-of-way over, through and under the Common Areas within the Properties for the purpose of constructing, installing, operating and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities including drainage easements and slope control easements for the purpose of furnishing utility and related services within the Properties. The Declarant further reserves unto itself, its successors and/or assigns, all those utility easements, drainage easements and slope control easements shown on the plats of the Properties for the purpose of constructing, installing, operating, and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Properties. The term "utilities" as used in this paragraph includes, but is not limited to, gas, electric, telephone, water, sewer and cable television. To the extent, in the Declarant's sole discretion, it is reasonably possible easements shall be kept within ten feet of Unit front and rear lines and ten (10) feet of Unit side lines. Within all reserved easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of or the flow of drainage channels or which may obstruct or retard the flow of water through drainage easements.

Section 3. Walking Path or Trail Easements. The Declarant reserves unto itself, its successors and/or assigns, and invitees those Walking Path or Trail easements shown on the aforesaid Final Plat of Phase I, Spring Mills Subdivision and any additions thereto, for the purpose of (a) maintaining walking areas for residences of the Properties, (b) constructing, installing, maintaining and using walks or pathways within the boundaries of said easements for access and recreational purposes. Declarant reserves the right to convey such walks or pathways, if constructed, to the Association, in which case they would become Common Areas or Exclusive Common Areas.

Section 4. Jamestown Drive Easement. Declarant reserves unto itself, its successors and/or assigns a perpetual and non-exclusive access and utility easement or right-of-way over Jamestown Drive and over all other streets, ways and Common Areas within Phase I of Spring Mills Subdivision and all other streets and ways in any future Phase or addition to the Properties of Spring Mills Subdivision for purposes of ingress to egress from

all of Declarants surrounding and adjacent real estate which is subject to Development rights pursuant to this Declaration and for purposes of providing all forms of utility services to said real estate. In the event Declarant does not add all or part of the lands subject to Development rights, to the Spring Mills Subdivision Properties, and provides access to such un-annexed property over any street or ways in Spring Mills Subdivision, Declarant shall subject such un-annexed property to a Covenant to share costs as set forth in Exhibit "D".

Section 5. Stonewall Jackson Drive, North Road and South Road Easement. Declarant reserves unto itself its successors and/or assigns a perpetual and non-exclusive access and utility easement or right-of-way over those streets or ways shown on the Concept Plan attached hereto as Schedule "F" as Stonewall Jackson Drive, North Road and South Road, lying with other lands of Declarant subject to Development Rights and which need not be built or added to the Spring Mills Subdivision Properties for purposes of ingress to and egress from all of Declarants surrounding and adjacent lands lying north of North Road, south of South Road, and east of Stonewall Jackson Drive, as shown and reflected on Schedule "F" and for purposes of providing all forms of utility services to said real estate. If the Declarant does not subject all of the within described property to Spring Mills Subdivision Properties, and provides access to such property over Stonewall Jackson Drive, North Road or South Road or all of them, Declarant shall subject such property over which access is provided to a Covenant to Share Costs as set forth in Exhibit "D" for purposes of maintaining the affected streets and ways.

Section 6. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units or any unit, including such Units as contains recreational and commercial uses, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restriction) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 7. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B", the Association, and the designees of each (which may include, without limitation, Berkeley County, West Virginia, and any utility), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Units for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar system, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Berkeley County, West Virginia, or to any other local, state, or federal government entity, subject to such approval requirements as may be contained in Article XIII, Section 2 of this Declaration.

Section 8. Easement for Access Over Private Streets. There is hereby reserved to the general public an easement for ingress, egress and access over all private streets within the Properties, subject to such rules and regulations as may be promulgated by the Board of Directors.

## Article XVII General Provision

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the then Owners of two-thirds (2/3) of the Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Exhibits "A" and "B" for development as part of the Properties, and so long as the amendment has no material adverse effect upon any right of any Owner. No amendment required by any state, federal or county agency or the Federal Home Loan Mortgage Corporation will be deemed material. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Berkeley County, West Virginia.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may be made during the Declarant Class "B" Control Period without the written consent of Declarant or the assignees of such right or privilege. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or

privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impair the rights granted to the Mortgagees herein without the prior written consent of such Mortgagees.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee member shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonable available.

Section 4. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 5. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the association unless approved by a vote of seventy-five (75%) percent of the Voting Members. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Association to the contrary, a Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five (75%) percent of all members of the Neighborhood represented by the Voting Member. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made



by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood Association and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Association shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 8. Use of the Words "Spring Mills", "Spring Mills Subdivision", "Spring Mills Development", or "Spring Mills Unit Owners Association". No person shall use the words "Spring Mills", "Spring Mills Subdivision", Spring Mills Development, or "Spring Mills Unit Owners Association" or any derivative thereof in any printed or promotional material without the proper written consent of the Declarant. However, Owners may use the terms "Spring Mills" or "Spring Mills Unit Owners Association" in printed or promotional matters where such term is used solely to specify that particular property is located within Spring Mills Subdivision.

Section 9. Nonresidential Properties; Easement and Covenant to Share Cost. The Properties may be adjacent to certain nonresidential areas, including, without limitation, retail neighborhood business, office buildings and general commercial areas, which are not dedicated to the public and are neither Units nor Common Area as defined in this Declaration (hereinafter "Nonresidential Properties"). The owners of such properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article X of this Declaration. The owners of adjacent Nonresidential Properties shall be obligated to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility and shall be subject to assessment by the Association therefor, all as more particularly provided in that certain Declaration of Easements and Covenants to Share Costs attached hereto as Exhibit "D" and incorporated herein by this reference. The owners of the Nonresidential Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

Section 10. Security. Spring Mills Subdivision Unit Owners Association, will strive to maintain Spring Mills as a safe, secure residential environment. HOWEVER, NEITHER SPRING MILLS UNIT OWNERS ASSOCIATION, NOR VAN WYK ENTERPRISES, INC. SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGES THAT THE SPRING MILLS UNIT OWNERS ASSOCIATION, INC. AND VAN WYK ENTERPRISES, INC., AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANTS, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT VAN WYK ENTERPRISES, INC. HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.



IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants, Conditions, and Restrictions this 29th day of December, 1989.

VAN WYK ENTERPRISES, INC., a  
corporation

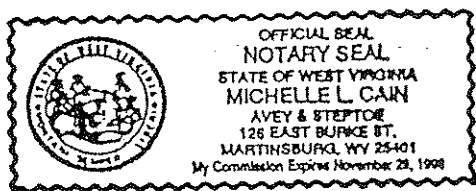
By

*Bruce M. Van Wyk*  
President

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this 29th day of December, 1989, by BRUCE M. VAN WYK, President of Van Wyk Enterprises, Inc., a corporation, in my said County and State.



*Michelle L. Cain*  
Notary Public

My commission expires:

November 29, 1999

Prepared by J. Lee Van Metre, Jr., Attorney at Law, 126 East Burke Street, Martinsburg, WV 25401.

SPRINGMI.DEC  
File No. 89-RE-527

EXHIBIT "A"

Lots 1 through 21, Lots 40 through 57, and Lots 100 through 102, of Phase I, Spring Mills Subdivision, together with the 5.892 acre Passive Park and Open Space parcel, the 2.32 acre parcel reserved by Van Wyk Enterprises, Inc., for Commercial/Residential uses, all of Oak Grove Lane between Porterfield Lane and Lots 12 and 13, part of Jamestown Drive between Oak Grove Lane and the Northeast corner of Lot 57, all of Ambler Lane between Jamestown Drive and Lots 48 and 49, and all of the walking areas, all as more fully shown upon a plat thereof prepared by Fox & Associates, Inc., dated the 23rd day of October, 1989, and recorded in the Office of the clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet No. \_\_\_, at Slide No. \_\_\_\_\_.

SPRINGMI.EXA

## EXHIBIT "B"

Land Subject to Annexation

Situate along the north side of West Virginia Secondary Route 8, along the south side of West Virginia Route 901 and along the west side of Interstate 81, in Falling Waters District, Berkeley County, West Virginia, and being more particularly described as follows:

Beginning at a rebar in the north right-of-way line of West Virginia Secondary Route 8 and being at the southeast corner of a parcel of land owned by Charles Everhart, by deed recorded in Deed Book No. 391, at page 225, among the land records of Berkeley County, thence leaving said road and running back therefrom and binding on said lands of Everhart N 08° 36' 42" E 143.98' to a rebar; thence continuing with lands of Everhart and also binding on lands of William H. Miller (DB 204, p. 302) N 79° 44' 54" W 312.75' to a fence post; thence with and along an existing fence and continuing with lands of Miller and also binding on lands of Bruce Canby (DB 407, p. 564) N 27° 37' 42" W 570.75' to a rebar; thence binding on lands of Lawrence Jordan N 45° 22' 01" E 608.85' to a rebar, thence binding with lands of Lawrence Jordan (DB 211, p. 587), Harry F. Smith (DB 269, p. 66), and the Knipetown Colored Church lot and crossing Porterfield Lane N 67° 04' 36" W 573.54' to a railroad spike on the west side of Porterfield Lane; thence binding on lands of Max Fisher (DB 429, p. 344), the two (2) following courses N 08° 19' 11" E 980.18' to a rebar, thence N 65° 12' 48" W 8.28' to a railroad spike; thence binding on lands of Bush Brothers Limited Partnership (DB 334, p. 582) N 24° 43' 19" E 2933.19' to an angle iron at the base of a corner post; thence binding on lands of James W. Dunham (DB 281, p. 501) N 24° 44' 18" E 1367.35' to a post; thence binding on lands of Oliva M. Rinker (DB 285, p. 626) N 24° 20' 13" E 236.59' to an iron pipe; thence binding on lands of James W. Dunham (DB 281, p. 501) crossing West Virginia Route 901 and lands of Martin C. Grim (DB 269, p. 609 & DB 226, p. 91) N 24° 34' 13" E 364.52' to a rebar; thence binding on lands of Donald L. Williams (DB 246, p. 601) crossing West Virginia Secondary Route 3/1 and lands of Alexander Hassan (DB 222, p. 217) S 65° 00' 31" E 386.39' to a railroad spike; thence crossing Route 901 and binding on lands of Austin J. Weber the three (3) following courses S 15° 02' 45" W 601.91' to a rebar in concrete; thence S 74° 58' 00" E 519.42' to a rebar in concrete; thence N 16° 20' 57" E 492.47' to a rebar in the aforementioned south right-of-way line of Route 901; thence with said right-of-way the ten (10) following courses S 61° 36' 40" E 127.42' to a point; thence with a curve to the right having a radius of 516.36', an arc length of 192.11', and a chord bearing and distance of S 50° 57' 11" E 191.00' to a point; thence S 40° 17' 41" E 136.13' to a point; thence with a curve to the left having a radius of 949.26', an arc length of 169.77', and a chord bearing and distance of S 45° 25' 06" E 169.55' to a point; thence S 50° 32' 31" E 47.07' to a point; thence S 39° 27' 29" W 21.56' to a point; thence with a curve to the left having a radius of 994.93', an arc length of 274.65', and a chord bearing and distance of S 58° 27' 01" E 273.78' to a point; thence S 66° 21' 31" E 95.82' to a point; thence S 36° 27' 25" E 80.00' to a rebar; thence S 36° 27' 25" E 133.71' to a point; thence with the west right-of-way line of I-81 the four (4) following courses S 02° 49' 17" E 524.13' to a point; thence S 05° 41' 21" W 262.79' to a point; thence S 23° 03' 29" W 816.41' to a point; thence with a curve to the right having a radius of 11334.16', an arc length of 1287.76', and a chord bearing and distance of S 26° 53' 47" W 1287.07' to a point; thence leaving said right-of-way line and running back therefrom and binding on Parcel A (Sewage Treatment Plant site) the seven (7) following courses N 65° 54' 11" W 277.52' to a point; thence S 24° 53' 49" W 197.63' to a point; thence N 62° 20' 00" W 392.74' to a point in the east right-of-way of proposed

Stonewall Jackson Drive; thence with said right-of-way line with a curve to the right having a radius of 2894.79', an arc length of 25.00', and a chord bearing and distance of S 27° 40' 00" W 25.00' to a point; thence leaving said right-of-way S 62° 20' 00" E 393.95' to a point; thence S 24° 53' 49" W 298.90' to a point; thence S 52° 48' 18" E 215.24' to a point in the west right-of-way line of Interstate 81; thence with said right-of-way line the eight (8) following courses S 53° 21' 22" W 570.33' to a point; thence S 36° 18' 34" W 194.59' to a point; thence S 19° 48' 51" W 585.57' to a point; thence S 39° 38' 29" W 1383.59' to a rebar; thence N 50° 21' 31" W 35.00' to a rebar; thence S 39° 38' 29" W 423.00' to a rebar; thence S 76° 08' 40" W 32.19' to a rebar; thence S 53° 03' 12" W 24.30' to a rebar in the north right-of-way line of West Virginia Secondary Route 8; thence with said right-of-way line N 63° 59' 01" W 120.00' to the point of beginning, containing 306.61 acres, more or less.

SAVING AND EXCEPTING THEREFROM, HOWEVER, 3.33 acres conveyed by Van Wyk Enterprises, Inc. to Spring Mills Public Service, Inc., by Deed dated May 5, 1989, and recorded in the aforesaid Clerk's Office in Deed Book No. 448, at Page 555.

AND BEING a part of the same real estate conveyed to Van Wyk Enterprises, Inc., by the Potomac Edison Company, by Deed dated April 13, 1989, and recorded in the aforesaid Clerk's Office in Deed Book No. 447, at Page 395, and by Deed of Confirmation dated April 25, 1989, and recorded in the aforesaid Clerk's Office in Deed Book No. 448, at Page 115; AND BEING a part of the same real estate conveyed to Van Wyk Enterprises, Inc., by Irma R. Porterfield, et al, by Deed dated April 1, 1989, and recorded in the aforesaid Clerk's Office in Deed Book No. 448, at Page 104.

EXHIBIT "C"

BY-LAWS  
OF  
SPRING MILLS SUBDIVISION UNIT OWNERS ASSOCIATION, INC.

AVEY & STEPTOE  
Attorneys at Law

126 East Burke Street  
Martinsburg, WV 25401  
(304) 263-6991

104 West Congress Street  
Charles Town, WV 25414  
(304) 725-1414

# TABLE OF CONTENTS

	<u>Page</u>
I. NAME, PRINCIPAL OFFICE, AND DEFINITIONS	4
1. Name . . . . .	4
2. Principal Office . . . . .	4
3. Definitions. . . . .	4
II. ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES	4
1. Membership . . . . .	4
2. Place of Meetings. . . . .	4
3. Annual Meetings. . . . .	4
4. Special Meetings . . . . .	4
5. Notice of Meetings . . . . .	5
6. Waiver of Notice . . . . .	5
7. Adjournment of Meetings. . . . .	5
8. Voting . . . . .	6
9. Proxies. . . . .	6
10. Majority . . . . .	6
11. Quorum . . . . .	6
12. Conduct of Meetings. . . . .	6
13. Actions Without a Meeting. . . . .	7
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS	7
A. <u>Composition and Selection.</u>	7
1. Governing Body; Composition. . . . .	7
2. Directors During Class "B" Control Period. . . . .	7
3. Right to Disapprove Actions. . . . .	7
4. Number of Directors. . . . .	8
5. Nomination of Directors. . . . .	9
6. Election and Term of Office. . . . .	9
7. Removal of Directors and Vacancies . . . . .	10
B. <u>Meetings.</u>	11
8. Organizational Meetings. . . . .	11
9. Regular Meetings . . . . .	11
10. Special Meetings . . . . .	11
11. Waiver of Notice . . . . .	12
12. Quorum of Board of Directors . . . . .	12
13. Compensation . . . . .	12
14. Conduct of Meetings. . . . .	12
15. Open Meetings. . . . .	13

16.	Action Without A Formal Meeting. . . . .	13
C.	<u>Powers and Duties.</u> . . . . .	12
17.	Powers . . . . .	13
18.	Management Agent . . . . .	15
19.	Accounts and Reports . . . . .	15
20.	Borrowing. . . . .	16
21.	Rights of the Association. . . . .	17
22.	Enforcement. . . . .	17
IV.	OFFICERS . . . . .	18
1.	Officers . . . . .	18
2.	Election, Term of Office, and Vacancies. . . . .	19
3.	Removal. . . . .	19
4.	Powers and Duties. . . . .	19
5.	Resignation. . . . .	19
6.	Agreements, Contracts, Deeds and Leases, Checks, Etc. . . . .	19
V.	COMMITTEES . . . . .	19
1.	General. . . . .	19
2.	Covenants Committee. . . . .	20
3.	Neighborhood Committees. . . . .	20
VI.	MISCELLANEOUS . . . . .	21
1.	Fiscal Year. . . . .	21
2.	Parliamentary Rules. . . . .	21
3.	Conflicts. . . . .	21
4.	Books and Records. . . . .	21
5.	Notices. . . . .	22
6.	Amendment. . . . .	22



BY-LAWS

OF

SPRING MILLS SUBDIVISION UNIT OWNERS ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be Spring Mills Subdivision Unit Owners Association, Inc., (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of West Virginia shall be located in Berkeley County. The Association may have such other offices, either within or outside the State of West Virginia, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Spring Mills Subdivision (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two (2) classes of Membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meetings, shall be held within one (1) year from the date of incorporation of the Association. There shall be an annual meetings of Members for the purpose of electing Directors. Subsequent regular annual meetings shall be set by the Board so as to occur at least ninety (90) but not more than one hundred twenty (120) days before the

close of the Association's fiscal year on a date and at a time set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members or Voting Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meetings shall state the date, time, and place of such meetings and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. Special Meetings may be of either Members or Voting Members depending on the reason for the meeting and the matters to be voted on at such meeting.

Section 5. Notice of Meetings, Written or printed notice stating the place, day, and hour of any meeting of the Members or Voting Members shall be delivered, either personally or by mail, to each Member or Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member or Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Member or Voting Members shall be deemed the equivalent of proper notice. Any Member or Voting Member may, in writing, waive notice of any such meeting. Attendance at a meeting by a Member or Voting Member or alternate shall be deemed waived by such Member or Voting Member or notice of the time, date, and place thereof, unless such voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members or Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting at a time not less than five (5) nor more than thirty

(30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members or Voting Members in the manner prescribed for regular meetings.

The Members or Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members or Voting Members to leave less than a quorum, provided that Members or Voting Members or their alternates representing at least twenty-five (25%) percent of the total votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Members may vote by proxy. Voting Members may not vote by proxy but only in person or through their designated alternates. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months and every proxy shall automatically cease and terminate upon sale by the Member of his Unit or other interest in the Properties.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of the Member at a meeting for matters upon which Members vote or the presence in person or by alternate of the Voting Members at a meeting for matters upon which Voting Members vote representing a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorum is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all the meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meetings, as well as a record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members or the Voting Members, or any action taken at a meeting of the Members or the Voting Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Members or Voting Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Members or Voting Members.

### Article III

#### Board of Directors: Number, Powers, Meetings

##### A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to the directors appointed by the Declarant, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation, partnership, or other entity, the person designated in writing to the secretary of the Association as the representative of such corporation, partnership, or other entity shall be eligible to serve as a director.

Section 2. Directors During Class "B" Control. The Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when seventy-five (75%) percent of the Four Thousand (4,000) Units permitted by the Declaration for the property described on Exhibits "A" and "B" of the Declaration have been conveyed to Persons other than the Declarant or builders holding title solely for purposes of development and sale;

(b) December 31, 2005; or

(c) when, in its discretion, the Class "B" Member so determines.

This Section 2 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

Section 3. Right to Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Class "B" Members as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the Board and the Architectural Control Committee, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Members, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board of Directors or Architectural Control Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal deliver at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meeting with Article III, Sections 8, 9, and 10, and these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representative or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Members, its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Members, its representative, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable law and regulations.

Section 4. Number of Directors. The number of directors in the Association shall not be less than three (3) nor more than nine (9), as provided in Section 6 below. The initial Board

shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to directors selected by the Class "B" Members, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. At least one (1) candidate shall be nominated from each Neighborhood, unless a Neighborhood has no person willing to serve or eligible for election. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty-five (25%) percent of the Four Thousand (4,000) Units permitted by the Declaration for the property described in Exhibits "A" and "B" or whenever the Class "B" Member earlier determines, the Association shall call a special meeting at which Members other than the Declarant shall elect one (1) of the three (3) directors. The remaining two (2) directors shall be appointees of the Class "B" Member. The director elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall not be elected for a term of three (3) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's terms expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Member, other than the Declarant or a builder holding title solely for purposes of development and sale, own fifty (50%) percent of the Four Thousand Units permitted by the Declaration for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to nine (9) directors. The association shall call a special meeting at which Members other than the Class "B" Member shall elect four (4) of the nine (9) directors. The remaining

five (5) directors shall be appointees of the Class "B" Member. The directors elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of three (3) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within thirty (30) days after termination of the Class "B" control Period, the Association shall call a special meeting at which Members other than the Class "B" member shall elect five (5) of the nine (9) directors. The remaining four (4) directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within thirty (30) days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class "B" control Period the Members shall elect nine (9) directors. So long as there are at least three (3) Neighborhoods with candidates running for election, no more than four (4) directors shall be elected from any neighborhood. Three (3) directors shall be elected to serve a term of three (3) years; three (3) directors shall be elected to serve a term of two (2) years and three (3) directors shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such director, a successor shall be elected to serve a term of three (3) years. Thereafter, all directors shall be elected to serve three (3) year terms. For the purpose of the election of directors, each Members hall have one (1) equal vote, for each Unit owned by a Member and the Voting Members representing Units owned by the Class "B" Member shall be entitled to vote, except as otherwise provided herein.

At any election of directors, each Member shall be entitle to cast one (1) equal vote for each Unit owned by said Member with respect to each vacancy to be filled. The candidates receiving the largest number of votes shall be elected. The Directors elected by the Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 7. Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any



director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected solely by the votes of the Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Members other than the Declarant. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall serve for the remainder of the term of the director who vacated the position.

#### B. Meetings.

Section 8. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal deliver; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by

telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting of each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time no less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall

be considered as any other meeting, provided all directors are able through telephone connection to hear and to be heard.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Members and Voting Members, but Members and Voting Members other than the directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member or Voting Member may speak.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs, and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members or Voting Members of the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between the meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses and Neighborhood Expenses;

(b) making assessments to defray the Common Expenses and Neighborhood Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in annual installments, each such

installment to be due and payable in advance on the first day of second month following the assessment date;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility.

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Area of Common Responsibility and, where appropriate, providing for the compensation for such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulation;

(g) opening of bank accounts on behalf of the Association and designating the signatories required.

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser a Unit, any Owner of a Units, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current

copies of the Declaration, the Articles of Incorporation the By-Laws, rules governing the Unit and all other books, records, resale certificates and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonable necessary to the ongoing development or operation of the Properties.

Section 18. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Boards supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manger.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agents from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association; provided nothing herein shall prohibit the managing agent from earning commissions for services provided by the managing agent in leasing Units on behalf of the Owners of such Units;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the

Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least annually containing;

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the 1st day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying the annual installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (An annual installment of assessment shall be considered to be delinquent on the thirtieth (30th) day following the assessments designated due date unless otherwise determined by the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year; (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of charges in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant; provided, during the Class "B" Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, or restoration of the Area of Common Responsibility without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the board shall obtain Voting Member approval in the same manner provided in Article X, Section 5, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for the fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common

Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one (51%) percent of the Members other than the Declarant and the Declarant's nominees.

Section 21. Rights of the Association. with respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operation, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Declarant control of the Board of Directors unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of directors to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to non payment of assessments. In the event that any occupant of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rules or regulations shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as



contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of deliver, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the Architectural Control Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Architectural Control Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provisions of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupants responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

#### Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it

shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of the President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

#### Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each

committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Architectural Control Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Architectural Control Committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-laws, and resolutions the Board may adopt, the Architectural Control Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings pursuant to Article III, Section 22 of these By-Laws.

Section 3. Neighborhood Committees. In addition to any other committees appointed as provided above, there shall be a Neighborhood Committee for each neighborhood which has no formal organizational structures or association. Such Neighborhood Committees shall consist of three (3) members; provided, however, by the vote of at least fifty-one (51%) percent of the Owners within the Neighborhood this number may be increased to five (5).

The members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners, at which the Owners of Units within that neighborhood holding at least one-third (1/3) of the total votes of Units in the Neighborhood are represented, in person or by proxy. The Owners of Units within a Neighborhood shall have the number of votes assigned to their Units by the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III, Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16, of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be

responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Member from that Neighborhood.

## Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board Resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with West Virginia law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of West Virginia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provision of West Virginia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

### Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the costs of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of

inspection by a Director include the right to make extracts and a copy of relevant documents as the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demand, bills, statements, or other communication under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) If to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board of directors, or the managing agent, at the principal office of the Association, or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws so long as it still owns property described in Exhibits "A" and "B" to the Declaration for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Member. Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall be effective until recorded in the public records of Berkeley County, West Virginia.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien or any Mortgage held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

CERTIFICATION

I, the undersigned, to hereby certify:

That I am the duly elected and acting Secretary of Spring Mills Subdivision Unit Owners Association, Inc., a West Virginia Corporation;

The foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 6th day of December, 1989.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 29th day of December, 1989.

*Stephanie A. Christian*

Stephanie A. Christian, Secretary

SPRINGMI.BYL  
File No. 89-RE-527

EXHIBIT "D"

COVENANT TO SHARE COSTS

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by VAN WYK ENTERPRISES, INC., a West Virginia Corporation ("Declarant").

BACKGROUND STATEMENT

Declarant is the owner of all that property which is subject to the Declaration of Covenants for Commercial Property, recorded in Deed Book \_\_\_\_, Page \_\_\_\_, of the official records of Berkeley County, West Virginia (such Declaration is herein referred to as the "Commercial Declaration" and all the property subject thereto, together with any property which may from time to time be added by amendment, is herein referred to as the "Commercial Property"). Acknowledging that the owners and occupants of the Commercial Property will benefit from the performance by Spring Mills Subdivision Unit Owners Association, Inc. ("Association") of certain of its maintenance responsibilities under the Declaration of Covenants, Conditions, and Restrictions for Spring Mills Subdivision, recorded in Deed Book \_\_\_\_, Page \_\_\_\_, of the official records of Berkeley County, West Virginia (hereinafter referred to as the "Residential Declaration"), Declarant desires to provide for an equitable allocation of the costs of such maintenance between the Association and the owners of the Commercial Property. The Maintenance Property, as defined below, will provide the owners and occupants of the Commercial Property with an aesthetically pleasing environment and attractive approach and access to their property, thereby enhancing the value of the Commercial Property.

NOW, THEREFORE, Declarant hereby declares that all of the Commercial Property shall be held, sold, and conveyed subject to the covenants and conditions contained herein, which are made for the express benefit of the Association and which shall run with the title to the Commercial Property and shall bind all parties having any right, title, or interest in the Commercial Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of the Association and each owner of any part of the Commercial Property.

Article I

Obligation to Share Costs

Section 1. Responsibility for Assessments. Each and every owner of any portion of the Commercial Property, whether or not it shall be express in such owner's deed, covenants and agrees to pay an annual assessment to cover a portion of the costs incurred by the Association in maintaining, repairing, replacing, and insuring the Maintenance Property, as defined below. The obligation of each owner to pay this assessment shall be a separate and independent covenants on the part of each owner, and no diminution or abatement of the assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association to adequately perform such maintenance responsibilities, the sole remedy of each owner for failure of the Association to perform being suit at law or in equity.

Section 2. Maintenance Property. The Maintenance Property, as such term used herein, shall refer to all grass, landscaping, and any entry features which are located at the intersections of South Road and Porterfield Lane, North Road and Porterfield Lane, Stonewall Jackson Drive and Nipetown Road, and Stonewall Jackson Drive and Spring Mills Road, all landscaped medians and rights-of-way, including any surface or other improvements thereon, on

or adjacent to South Road, North Road and Stonewall Jackson Drive located within the planned unit development known as Spring Mills Development which the Association is obligated to maintain and/or insure under the Residential Declaration.

Section 3. Computation of Assessments. On an annual basis, the Association shall determine an estimated budget for maintaining, repairing, replacing, and insuring the Maintenance Property during the upcoming year in a manner consistent with, and to the level of, the Community-Wide Standard established pursuant to the Residential Declaration, which budget shall include an appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall be adjusted to reflect any excess or deficiency in the budget assessed for the immediately preceding year, as compared to actual expenses for that period.

Sixty (60%) percent of the annual budget, as adjusted (hereinafter "Commercial Basis"), shall be used as the basis for computing the total annual assessment obligation for the Commercial Property. The total annual assessment payable by each owner of any portion of the Commercial Property shall be determined by the following formula:

$$\begin{array}{l} \text{Total Land and Building} \\ \text{Points Assigned to} \\ \text{Commercial Owner} \end{array} \quad \times \quad \begin{array}{l} \text{Commercial Basis} \\ \text{(Dollars)} \end{array} = \text{Assessment}$$


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Total Land and Building  
Points Assigned to all  
Commercial Property

For purposes of the above formula, each Units (as defined in the Commercial Declaration) within the Commercial Property shall be assigned one (1) point for each one thousand (1,000) square feet of land ("land points") and one (1) point for each one thousand (1,000) square feet of gross floor area comprising the Unit ("Building points"). Total land and building points shall be added together to determine the numerator of the fraction in the above formula.

Section 3. Payment of Assessments. Within thirty (30) days of receipt of notice of an annual assessment, each owner of any portion of the Commercial Property shall pay to the Association the entire amount due. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Association may from time to time reasonably determine. If the assessment is not paid when due, a lien, as herein provided, shall attach to the property of the delinquent owner within the Commercial Property, as applicable, and, in addition, the lien shall include the late charge, interest (not to exceed the maximum lawful rate) on the principal amount due and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may institute suite to collect such amounts and to foreclose its lien. The lien provided for in this Article shall be in favor of the Association, acting through its Board and on behalf of its members, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments. The initial annual assessment to be levied shall be reduced pro rata based upon the number of months remaining in the fiscal year adopted by the Association after the month in which all or portion of the Commercial Property is first



conveyed by Declarant.

## Article II General

Section 1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Association or to the owner of any portion of the Commercial Property at the address of such property or such other address as is registered with the Association, as applicable. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above; or (b) on the third (3rd) day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

Section 2. Unilateral Annexation by Declarant. As the owner thereof or, if not the owner thereof, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until December 31, 2005, to subject all or any portion of the real property located north of North Road, south of South Road and east of Stonewall Jackson Drive and which was acquired by Declarant from the Potomac Edison Company by Deed recorded in Deed Book No. 477, at Page 395, and from Irma R. Porterfield, et al, by Deed recorded in Deed Book No. 448, at Page 104, to the provisions of this Declaration by filing for record a Supplemental Declaration subjecting such property to the Commercial Declaration. Any such Supplemental Declaration shall be effective upon the filing for record of a Supplemental Declaration unless otherwise provided therein. This Declaration shall not preclude the annexation of property that, at the time that this Declaration is recorded, is not owned by Declarant. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of the then owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any real property annexed by Declarant.

The right reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owners thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 3. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans or any portion of the Commercial Property; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any portion of the Commercial Property; provided, however, any such amendment shall not adversely affect the title to any property unless the

owner thereof shall consent thereto in writing. Further, so long as the Declarant has an option unilaterally to subject additional property to either the Commercial Declaration or the Residential Declaration as provided in those instruments, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any owner or occupant hereunder, nor shall it adversely affect title to the property of any owner without the consent of the affected owner or occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the directors of the Association, and owners of property assigned a majority of the total land and building points assigned to the Commercial Property as whole, and, so long as the Declarant has an option unilaterally to subject additional property to either the Commercial declaration or the Residential Declaration as provided in those instruments, the consent of the Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 4. Duration. The provisions of the Declaration shall run with and bind the land and shall be and remain in effect for a period of thirty (30) years after the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by at least a majority of the directors of the Association, owners of property assigned a majority of the total land and building points assigned to the Commercial Property as a whole, and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration or the Commercial Declaration as provided in those instruments, the consent of Declarant. Every purchaser or grantee of any interest in any portion of the Commercial Property, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

Section 5. Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of every owner of any portion of the Commercial Property, and shall also inure to the benefit of the Association.

Section 6. Interpretation. This Declaration shall be governed by and construed under the laws of the State of West Virginia.

Section 7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section,

are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

The undersigned has executed this Declaration as of the date first above written.

VAN WYK ENTERPRISES, INC.,  
a West Virginia corporation

(CORPORATE SEAL)

By \_\_\_\_\_  
Bruce M. Van Wyk, President

Attest \_\_\_\_\_  
Secretary

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by BRUCE M. VAN WYK, President, and \_\_\_\_\_, Secretary of VAN WYK ENTERPRISES, INC., a West Virginia corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission expires:

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