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DECLARATION OF COMMON INTEREST COMMUNITY FOR WOOD CREST SUBDIVISION

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DECLARATION OF COMMON INTEREST COMMUNITY
FOR
WOOD CREST SUBDIVISION

THIS DECLARATION, effective the __th day of ____, 1995, by Michael D. Walls and Bonnie L. Walls, husband and wife, (hereinafter referred to as "DECLARANTS"), the owners of certain real estate and improvements thereon and appurtenances thereto, as designated on the plat attached hereto, as for themselves, and their grantees and assigns, hereby make the following declaration:

I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP

DECLARANTS do hereby submit as a Planned Community the real estate as described herein, together with all roadways, improvements and other permanent fixtures now and later situated thereon and thereof and all rights and privileges pertaining thereto (hereinafter referred to as "SUBDIVISION") to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act").

II. CIC NAME AND LOCATION

The name by which this CIC is to be identified is Wood Crest Subdivision. The property comprising the Subdivision is located in Morgan District, Monongalia County, West Virginia.

III. THE LAND

The land submitted to the CIC form of ownership by this instrument is to be known and designated as "Wood Crest Subdivision," (sometimes hereinafter referred to as "Wood Crest", "Subdivision" or "CIC") as more fully shown on the Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 2, Envelope No. 457-A. Said plat reference and any later additions, amendments and subsequent plats as may be from time to time recorded are hereby made a part for all pertinent

purposes, and being part of the same parcel of real estate conveyed to the Declarants by a deed of conveyance from Kathryn Louise Smith, Executrix of the Estate of Myrtle A. Workman, by deed dated the 27th day of April, 1981, and recorded in the aforesaid County Clerk's Office in Deed Book No. 853, at Page 127. The legal description of the SUBDIVISION real estate being as more fully set forth on the aforesaid plats, and further delineated and described as follows:

Beginning at a 1/2 inch reinforcing rod (set) standing on the Southern right-of-way limits of West Virginia Secondary Route 64/2, standing as a corner to Parcel "A" of this survey and standing as the Northwest corner to a parcel conveyed to Paul J. and Carol S. Douglas by deed recorded in Deed Book 791 at Page 69;

Thence with two (2) lines with said Douglas parcel, South 01° 23' 20" West 309.12 feet to a 1/2 inch reinforcing rod (set);

Thence South 88° 36' 40" East 159.01 feet to a 1/2" iron pipe (found), said pipe strands in a line of a parcel conveyed to Seymour R. Newbrough by deed recorded in Deed Book 743 at Page 327;

Thence with said Newbrough parcel and a parcel conveyed to Julia M. Poole by deed recorded in Deed Book 655 at Page 598 and a parcel conveyed to Patricia S. and Ronald N. Malott by deed recorded in Deed Book No. 895 at Page 39, South 01° 23' 20" West 417.23 feet to a 1/2 inch reinforcing rod (found), said rod stands in a line of a parcel conveyed to St. Markella Greek Orthodox Church of Sabraton by deed recorded in Deed Book No. 506 at Page 174;

Thence with said Greek Orthodox Church parcel and a parcel conveyed to Evelyn V. Prager by deed recorded in Deed Book No. 431 at Page 155, South 80° 05' 50" West 528.00 feet to a 1/2" reinforcing rod (set), said rod stands as a corner to a parcel conveyed to Mike and Beatrice Hudak by deed recorded in Deed Book 633 at Page 412;

Thence with said Hudak parcel, North 08° 00' 00" West 704.00 feet to a 1/2 inch reinforcing rod (set), said rod stands on the said limits of Route 64/2 and as a corner to said Parcel "A";

Thence with nine (9) lines with said limits of Route 64/2 and Parcel "A", South 88° 54' 10" East 26.27 feet to a 1/2 inch reinforcing rod (set);

Thence North 88° 49' 40" East 125.70 feet to a 1/2 inch reinforcing rod (set);

Thence North 81° 02' 50" East 68.44 feet to a 1/2 inch reinforcing rod (set);

Thence North 66° 45' 30" east 62.30 feet to a 1/2 inch reinforcing rod (set);

Thence North 53° 51' 20" East 71.95 feet to a 1/2 inch reinforcing rod (set);

Thence North 45° 59' 00" East 56.94 feet to a 1/2 inch reinforcing rod (set);

Thence North 68° 04' 10" East feet to a 1/2 inch reinforcing rod (set);

Thence South 87° 16' 30" East 18.75 feet to a 1/2 inch reinforcing rod (set);

Thence South 71° 09' 10" East 39.58 feet to the Beginning, containing 8.5010 acres more or less, a plat of the parcel described above is attached hereto and is made a part of this description.

Being part of the same lands conveyed to said Michael D. Walls and Bonnie L. Walls by deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 853 at Page 127.

IV. DEFINITIONS

Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless, as used elsewhere, the text or context in which such term is used indicates another definition:

- A. Association: Wood Crest Property Owners Association, Inc., a non-profit corporation, and any wholly-owned subsidiary thereof, its successors and assigns, which Association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the CIC.
- B. Board: The Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with this Declaration.
- C. Building Control Committee: The Committee appointed by the Board of Directors and composed of two (2) members with Declarants or the designee as at least one or possibly all of such members. The Committee shall approve or

- disapprove plans and specifications, including color, for all buildings, structures and improvements erected or placed on any Unit.
- D. By-Laws: The By-Laws of Wood Crest Property Owners Association, Inc. as the same may be amended from time to time.
- E. Common Elements: All of the CIC property other than the Units, including, without limitation, the land and all the improvements and appurtenances thereto, central utilities and services, and areas of common use, being ALL PORTIONS OF THE CIC EXCEPT THE INDIVIDUAL UNITS. References to "Common Elements" on the Plat are solely for general information, and do not define or limit the Common Elements.
- F. Common Expenses: Expenditures made by, or financial liabilities of, the Association, including assessments due the Association, together with any allocations to reserves, a portion of which may be assessed to individual Unit Owners as set forth hereafter. Maintenance of town houses shall only be a Common Expense of the town houses and shall not be a Common Expense of the remainder of the Common Interest Community.
- G. Common Interest Community: The real estate with respect to which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of other real estate described in this Declaration. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options.
- H. Declarants: Michael D. Walls and Bonnie L. Walls, husband and wife, and their successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns. Declarants have reserved Special Declarants Rights as set forth in Article VIII B(1)(C), and elsewhere herein.
- I. Declaration: This Document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West

Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC.

- J. Development Rights: Any rights or combination of rights reserved by Declarants in the Declaration to (1) add real estate to a common interest community; (2) create Units and Common Elements within a CIC; (3) subdivide Units or convert Units into Common Elements; (4) add real estate to, or withdraw real estate from, the CIC, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.
- K. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.
- L. Member: Any and every person or entity holding membership in the Association in accordance with Article V hereof.
- M. Plats: Those plats of survey and plans of the CIC heretofore described and recorded in the aforesaid Clerk's Office in Map Cabinet No. 2, Envelope No. 451-A, together with those plats of the CIC hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.
- N. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described. A Unit shall be one lot, provided however, that in the event that town houses are constructed, then a Unit may be either a town house or a Lot. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS, AS DETERMINED BY ARTICLE VIII B(1)(g).
- O. Unit Owner: Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding an interest merely as security for performance of an obligation, and including, in respect to all unsold Units, as a Unit Owner the Declarants.

- P. Special Declarants Rights: Rights expressly reserved for the benefit of a Declarants to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and signs advertising the CIC and models; (iv) use easements through the Common Elements for the purpose of making improvements within the CIC or within real estate that may be added to the CIC; (v) merge or consolidate a CIC with another CIC of the same form of ownership; (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarants control; and (vii) to construct town houses on lot nos. 15, 16 17, and/or 18.

V. THE ASSOCIATION

- A. Membership: Every person or entity who is an owner of a fee interest in any Unit, shall, by reason of ownership, automatically be a Member of the Wood Crest Property Owners Association, Inc., and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of Incorporation of the Association, the By-Laws of the Association, and further subject to all rules and regulations promulgated or adopted by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the CIC, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder. Membership as defined in the By-Laws shall not be inconsistent with the provisions of this Article.
- B. Powers of the Association: Subject to other provisions of the Declaration, the Association may:

- (1) Adopt and amend By-Laws and Rules and Regulations;
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expense from Unit Owners;
- (3) Hire and discharge managing agents and other employees, agents and independent contractors;
- (4) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the CIC;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (7) Cause additional improvements to be made as a part of the Common Elements;
- (8) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the CIC may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
- (9) Grant easements, leases, licenses and concessions through or over the Common Elements;
- (10) Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;
- (11) Cause to be placed or kept in effect liability insurance on Common Elements;
- (12) Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association;
- (13) Impose reasonable charges for the preparation and recordation of

- Amendments to the Declaration or statements of unpaid Assessments;
- (14) Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
 - (15) Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent this Declaration expressly so provides;
 - (16) Exercise any other powers conferred by this Declaration or By-Laws;
 - (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
 - (18) Exercise any other powers necessary and proper for the governance and operation of the Association, and;
 - (19) Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

C. Board Members: Subject to other provisions of the Declaration, the Board of Directors (hereinafter "Board") shall be generally empowered as follows:

- (1) Except as otherwise provided in this Declaration or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the members of the Board are required to exercise (i) if appointed by the Declarants, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.
- (2) The Board may not act on behalf of the Association to amend the Declaration, to terminate the CIC or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.
- (3) Within thirty (30) days after adoption of any proposed budget for the CIC, the Board shall provide a summary of the budget to all the Unit

Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting of Unit Owners a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

- (4) Subject to subsection (5), there shall be an initial period of Declarants control of the Association during which Declarants or persons designated by them, may appoint and remove any and all members of the Association's Board. The period of Declarants control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five per cent (75%) of the Units that may be conveyed to Unit owners other than Declarants; (ii) Two years after Declarants have ceased to offer Units for sale in the ordinary course of business; or (iii) Two years after any right to add new Units was last exercised. Declarants may voluntarily surrender the right to appoint and remove members of the Board before termination of that period, but in that event, Declarants may require for the duration of the period of Declarants control that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarants, be approved by the Declarants before it becomes effective.
- (5) Not later than sixty (60) days after conveyance of twenty-five per cent (25%) of the Units which may be conveyed to Unit Owners other than Declarants, at least one member and not less than twenty-five per cent (25%) of the members of the Board must be elected by Unit Owners other than the Declarants. Not later than sixty (60) days after con-

veyance of fifty per cent (50%) of the Units which may be conveyed to Unit Owners other than Declarants, not less than thirty-three and one-third per cent (33-1/3%) of the members of the Board must be elected by Unit Owners other than the Declarants.

- (6) Except as otherwise provided in this Declaration, not later than the termination of any period of Declarants control, the Unit Owners shall elect a Board of six (6) members, at least a majority of which must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election.
- (7) Notwithstanding any provision of this Declaration or By-Laws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarants.
- (8) If entered into before the Board elected by the Unit Owners pursuant to subsection (6) takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarants; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to subsection (6) takes office upon not less than ninety (90) days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the CIC or reduce its size; or (ii) a proprietary lease.
- (9) Unless the By-Laws or Declaration specify a larger percentage, a quorum is deemed present throughout any meeting of the Board if per-

sons entitled to cast fifty per cent (50%) of the votes on that Board are present at the beginning of the meeting.

D. By-Laws: The By-Laws of the Association, and all amendments thereof, in addition to other matters, provide and shall provide:

- (1) That the number of members of the Board is to be two (2) in number until Declarants control is relinquished, then the Board shall consist of six (6) members;
- (2) Election by the Board of a president, treasurer, secretary and other officers of the Association;
- (3) The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;
- (4) The delegation by the Board or officers of duties to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify and record Amendments to this Declaration on behalf of the Association; and,
- (6) A method for amending the By-Laws.

E. CIC Upkeep: Except to the extent otherwise provided by this Declaration, the Association is responsible for maintenance, repair, replacement and upkeep of the Common Elements. The Declarants alone are liable for all expenses in connection with real estate subject to the development rights. No other Unit Owner and no other portion of the CIC is subject to a claim for payment of those expenses.

F. Association Meetings: A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president; a majority of the Board; or by Unit Owners having twenty per cent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the By-Laws

shall cause notice to be hand-delivered or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove an officer or member of the Board.

G. Association Meeting, Quorum and Voting: Unless the By-Laws or Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast twenty per cent (20%) of the votes that may be cast for election of the Board are present in person or by proxy at the beginning of the meeting. Voting at a meeting where a quorum is present shall be cast as follows:

- (1) Members of the Association shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated on the principle of "one vote for one Unit." In the event that town houses are constructed on one or more lots then each town house shall have one vote with the total number of votes per any non-town house lot equal to the total number of votes for any lot containing town houses.
- (2) If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the Owners are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.
- (3) The vote allocated to a Unit may be cast pursuant to a proxy duly exe-

cuted by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly-executed proxy. A Unit Owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after that date, unless it specifies a shorter term.

- (4) Any Unit held by the Association shall not be entitled to vote. Voting rights of Members as set forth in the By-Laws may not be inconsistent with the provisions of this Article.
- (5) Only Members in good standing shall be entitled to vote. A Member shall lose his good standing status should any Association assessments or fines remain delinquent when due for a period of ninety (90) days.

H. Tort and Contract Liability: An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong occurred during any period of Declarants' control and the Association gives Declarants reasonable notice of, and an opportunity to defend against the action, Declarants are then liable to the Association or to any Unit Owner for (i) all other losses not covered by insurance suffered by the Association or that Unit Owner, and (ii) all costs that the Association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever Declarants are liable to the Association under this section, Declarants is also liable for all expenses of litigation, including reasonable attorney's fees incurred by the Association. Any statute of limitation affecting the Association's right of action under this section is tolled until the termination of Declarants control. A Unit Owner is not precluded from maintaining an action contemplated by this section because he is a Unit Owner, member or officer of the Association.

I. Association Conveyance or Encumbrance of Common Elements:

- (1) Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty per cent (80%) of the votes in the Association, including eighty per cent (80%) of the votes allocated to Units not owned by Declarants agree to that action.
- (2) An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed, by the requisite number of the Unit Owners.
- (3) The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements pursuant to subsection I (1), but the contract is not enforceable against the Association until approved pursuant to subsections I (1) and I (2). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- (4) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the CIC is void.
- (5) A conveyance or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access or ingress, egress and regress across the roads and ways as designated upon the recorded plats of the Subdivision.
- (6) A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

J. Insurance:

- (1) Commencing not later than the time of the first conveyance of a Unit to a person other than Declarants, the Association shall maintain, to the extent reasonably available:
 - (a) Property insurance on the Common Elements against fire and extended coverage perils for undeveloped Units. The total amount of insurance after application of any deductibles must be not less than eighty per cent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and,
 - (b) Liability insurance, including medical payments insurance, in limits of \$300,000/\$1,000,000 and thereafter, in an amount determined by the Board so to cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.
- (2) If the insurance described in subsection J (1) is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.
- (3) Insurance policies carried pursuant to subsection J (1) must provide that:
 - (a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
 - (b) The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

- (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy; and,
 - (d) If, at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- (4) The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of subsection (7), the proceeds must be disbursed first for the repair or restoration of the damaged property and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the CIC is terminated.
- (5) An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.
- (6) An insurer which has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.
- (7) Any portion of the CIC for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the CIC is terminated; (ii) repair or

replacement would be illegal under any State or local statute or ordinance governing health or safety; or (iii) eighty per cent (80%) of the Unit Owners, including every owner of a Unit, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire loss is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the CIC. Any surplus insurance proceeds shall be credited to the Common Expense for the benefit of the Unit Owners who were members of the Association at the time of the loss.

VI. ASSESSMENTS, LIENS AND RECORDS

- A. Initial Assessment Deposit: The initial purchaser of any Unit in Wood Crest Subdivision shall, on the date of purchase, pay to the Association the sum of Two Hundred Dollars (\$200.00), as required by Section 3.04 of the By-Laws of said Association.
- B. Assessment for Common Expenses:
 - (1) Until the Association makes a Common Expense Assessment, the Declarants shall pay all Common Expenses. After an Assessment has been made by the Association, Assessments must be made at least annually based on a budget adopted at least annually by the Association.
 - (2) Except for assessments under subsections (3), (4) and (5), all Common Expenses must be assessed against all the Units in accordance with allocations set forth in Article VIII B(1)(g) of this Declaration. Any past due Common Expense Assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen per cent (18%) per year.
 - (3) It is further required that, to the extent reasonably determinable, any

Common Expense or portion thereof exclusively benefiting either one or more town houses or fewer than all of the Units must be assessed exclusively against the Units benefited.

- (4) Assessments to pay a judgment against the Association may be made only against the Units in the CIC at the time the judgment was entered, and in proportion to their Common Expense liability.
- (5) If any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against such Unit Owner's Unit.
- (6) Expenses incurred in the maintenance and up-keep of town houses shall only be assessed against town houses and shall not be assessed to any non-town house lot.

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

D. Lien for Assessments:

- (1) The Association has a lien on a Unit for any Assessment levied against that Unit or fines imposed against its Unit Owner from the time the Assessment or fine becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.
- (2) A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the Assessment sought to be enforced becomes delinquent; and (iii) liens for real estate taxes and other governmental

assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, curtesy or other like exemptions.

- (3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.
- (4) This section does not prohibit actions to recover sums for which subsection (1) creates a lien or prohibits the Association from taking a deed in lieu of foreclosure.
- (5) A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.
- (6) The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit Owner's interest in real estate. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board and/or every Unit Owner.
- (7) For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the Assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless

the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. The notice shall contain:

- (a) A legally-sufficient description of the Unit;
 - (b) The name or names of the Owners of the Unit;
 - (c) The amount of unpaid Assessments due, together with the date when each became due; and,
 - (d) The date of recordation.
- (8) The Clerk of the County Commission in whose office the notice is recorded shall index the notice in the appropriate lien books in the names of the Unit Owners as debtors and in the name of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.
- (9) Upon payment of the Assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense of the Unit Owner in the office of the Clerk wherein the notice of the lien was filed.

E. Other Liens:

- (1) Except as provided in subsection (2), a judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the CIC at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association.
- (2) If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to Article V, Section I, the holder of that security interest shall exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.

- (3) A judgment against the Association must be indexed in the name of the CIC and the Association; and when so indexed, provides notice of the lien against the Units.

F. Association Records: The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing CIC assets and to permit the Association to provide, upon request, for a Fifty Dollars (\$50.00) fee relative to each Unit, a Unit Resale Summary setting forth information required to be submitted to a Purchaser by a Unit Owner to lawfully convey his Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended.

VII. THE PLATS

The Plats set forth the measurements, locations and other required data with respect to (1) the parcel and its exterior boundaries; and (2) the Common Elements. Declarants reserve the right to, and may cause to be recorded, from time to time amended plats or plans showing the actual locations and dimensions of the boundaries of the CIC, for which amended plats or plans are completed after the date hereof. In this Declaration, whenever the terms "plats" or "plans" appear, they shall be deemed to include such amended plats or plans as may hereafter be recorded pursuant to this paragraph.

VIII. THE UNITS - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS

A. Legal Description: The legal description of each Unit is generally designated by the identifying number of such Unit as shown on the Plats of the CIC. No Unit Owner shall, by deed, plat, court decree or otherwise, sub-divide or in any other manner cause his Unit to be separated into any lots, tracts or parcels different from the whole Unit as shown on the Plat. Notwithstanding any other provision contained in this Declaration, with the written consent first obtained from the Building Control Committee, two or more Units may be used as a single family residential building site. Upon the granting of such right of

construction, the easements along the contiguous sides of the Units, as reserved in this Declaration and as may be designated upon the recorded plats of the CIC, shall be null and void so as a single family residential dwelling and attached appurtenances may be constructed across a Unit boundary line; however, all exterior set back lines shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements and the Common Expenses shall be on a Unit basis as a Unit is defined in this Declaration and as designated upon the recorded plats of the CIC. The identifying number for each Unit shall always be deemed to include all of that Unit's appurtenant ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth or referenced.

B. Use and Occupancy Restrictions: The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon Units in the CIC as shown on the Plat. Said restrictions shall be binding upon all purchasers or any and all other parties having any interest therein, and are intended to be covenants running with the land:

(1) ALL UNITS SHALL ADDITIONALLY BE SUBJECT TO THE FOLLOWING RESTRICTIONS:

- (a) These restrictions shall apply to all Units in the CIC, and any dwelling or appurtenance placed thereon shall only be used for personal residential purposes. These restrictions shall not be applicable to any other property of the Declarants but are restricted solely to the area set forth on the Plat of the Common Interest Community (see Exhibit 1), and any remaining acreage is specifically excluded and excepted from this Declaration and the restrictions set forth herein.
- (b) Any structure or appurtenance placed upon a Unit in the CIC may be used solely for the purpose of a single family residence and

no more than one (1) dwelling shall be erected or maintained on a Unit. Provided, however, that the Declarants may construct up to four town houses on each of Unit Nos. 15, 16, 17 and/or 18 pursuant to their Special Declarants' Rights as set forth herein. Each individual town house must also be a single family dwelling.

C. RESTRICTIVE AND PROTECTIVE COVENANTS:

1. Declarants reserve unto themselves, their successors or assigns, prior to the transfer of title by deed of conveyance of the first Unit within a phase; (1) the right to revoke or modify all or any part of these restrictions and protective covenants as the same relate to Unit boundary sizes and dimensions, and/or minimum square footage requirements for finished living space of any dwelling constructed on a Unit in such phase; (2) the right to vacate and/or modify in size or location any and/or all of the streets, Common Elements, utility easements or drainage rights-of-way now designated on the recorded plat(s) of the Subdivision with respect to such phase.
2. Declarants reserve unto themselves *in perpetuity* the right to (1) extend or enlarge roadways or easements within the Common Elements into areas outside the CIC, (2) increase access for purposes of ingress to and egress from the CIC, (3) to permit others to use the utility rights-of-way for acquiring service, and (4) to withdraw Common Elements or parts thereof and convert the same into Units or parts of a Unit. Declarants, and their successors or assigns, shall not be permitted to reduce the minimum square foot area requirement for finished living space per dwelling in the entire CIC to less than **one thousand five hundred (1,500) square feet**, exclusive of porches, decks and garages. Provided, however, that town houses located on Unit Nos. 15, 16, 17 and/or 18

- may have fewer than one thousand five hundred (1,500) square feet.
3. Declarants, and their successors or assigns shall not revoke or modify the restrictions and protective covenants or vacate, modify or relocate the streets or easements to such extent as would materially change the overall nature of the Subdivision without due cause.
 4. SUBJECT to the foregoing reserved Declarants' rights, no dwelling shall be constructed upon any Unit in the CIC which contains less than **1,500 square footage** of finished living space, exclusive of porches, decks and finished or unfinished garage(s). Provided, however, that town houses located on Unit Nos. 15, 16, 17 and/or 18 may have fewer than one thousand five hundred (1,500) square feet.
 5. Michael D. Walls and Bonnie L. Walls, husband and wife, may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be consistent with the tenor and integrity of those hereinbefore and hereinafter set forth, and in no event shall modifications be made that would alter the residential character of Wood Crest.
 6. Once the plans of a residential dwelling have been approved by the Building Control Committee, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Unit, the improvements must be substantially completed, including the exterior work and grading and landscaping, in accordance with the plans and specifications as approved, within eight (8) months, subject to weather conditions only.
 7. All driveways are to be constructed of concrete or paved with asphalt, and all sidewalks, if required by Declarants, or the Building Control Committee, are to be constructed of concrete and are to be completed

within twelve (12) months of commencement of construction. Further, each dwelling shall have sufficient off-street parking to service the dwelling, and the location and type of construction of all off street parking shall be approved by the Building Control Committee; it being the intention of Declarants to prohibit parking in or along streets in the Subdivision, on lawns or sidewalks.

8. There shall be no commercial vehicles, recreational vehicles, trailers, boats or boat trailers parked in any driveway, streets of the subdivision or yards; all of same must be parked in garages.
9. No residence shall be occupied until the same has been substantially completed.
10. All structures and improvements constructed or placed on any Unit shall be built of new material or approved reconditioned material.
11. No dwelling or building shall be located nearer than twenty-five (25) feet to the front, twenty (20) feet to the rear line or nearer than ten (10) feet to an interior or side Unit line, unless set back lines for construction are otherwise designated on the plats of the CIC or otherwise modified by waiver of the Building Control Committee. However, if a side property line adjoins any street right-of-way, it shall have a five (5) foot set back. For the purpose of this restriction, eaves, balconies and retaining walls shall not be considered as part of the construction; provided, however, that this shall not be construed to merit any portion of a building on said part of ground to encroach upon any adjoining property. Covered porches may be restricted by the set back limits. The Building Control Committee must be consulted regarding size and location. (All of the above set backs are subject to waiver and/or modification upon approval of the Building Control Committee of Wood Crest Property Owners Association, Inc.)

12. No structure of a temporary character, trailer, basement, tent, barn or garage shall be used at any time as a residence, either temporarily or permanently.
13. The fuel used in the dwelling or other structures shall be of the smokeless-type; however, so-called fireplaces and/or wood stoves, in which wood is used as a fuel shall be excepted from this provision.
14. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit, and those pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to other Unit owners or their Unit property. No dog houses of any type are permitted upon the exterior of any Unit. No dogs are permitted to be tied up on the exterior of any Unit. No dogs are permitted to be caged or fenced in on the exterior of any Unit. Dogs must be kept on the interior of dwellings, on leashes while accompanied by their owners, or contained on the unit by electronic means.
15. There shall be no dog breeding or other commercial animal breeding activity allowed upon any Unit.
16. No Unit or any building (or portion thereof) erected thereon shall be used at any time for the purpose of any trade, manufacture or business of any kind or nature, and no junk cars or any noxious, offensive or illegal activities shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
17. No commercial signs, including "For Rent", "For Sale", "Garage Sale", and other similar signs shall be erected, placed or maintained on any Unit or on any common area, except with the written permission of the Building Control Committee or except as may be required by legal

proceedings. No signs of any type may be placed or displayed at or near the entrance of Wood Crest. Provided however, that Special Advertisements and other signs may be erected, placed or maintained by Declarants pursuant to their Special Declarants' Rights, and/or the Exclusive Broker of the Subdivision selected which shall be appointed by the Declarants. This includes "For Sale" or "For Rent" whether by a Unit Owner or by a Real Estate Agent.

18. All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.
19. The exterior walls of all buildings in the CIC shall be required to be of either masonry construction, wood, or attractive vinyl or aluminum siding. Masonry construction shall be limited to that of brick, drive type material, stucco or stone. No building shall have concrete or cinder blocks or concrete masonry exposed in any manner. All of the foregoing is subject to the rights of the Building Control Committee as specified in Paragraph (e) (variances).
20. No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the sanitary sewage system. Storm water shall not be allowed to flow into the sanitary sewage system.
21. No Unit Owner, other than Declarants exercising their Special Declarants Rights, may subdivide a Unit without the written consent of the Building Control Committee.
22. No dwelling of substantially identical architectural design shall be constructed on adjoining or opposite Units in Wood Crest Subdivision. Provided, however, that town houses may maintain continuity of Architecture, style and design with adjoining town houses.

23. (a) No building shall be erected, placed or altered on any lot until the construction plans, specifications and plot plans have been approved in writing by the Declaration Building Control Committee as to the harmony of the exterior design including: 1) type of construction materials and the color of the exterior material to be used, 2) site plan with respect to elevations, topography, finished grades, landscaping, location of structures, driveways, off-street parking, retaining walls, fences, and sedimentation control plan, which said plan, shall conform to the rules and regulations from time to time promulgated or adopted by the West Virginia Department of Environmental Protection, or its successor; (b) nor shall trees be cut down, or any lot excavated, graded or filled, including the movement, placement or removal of dirt. Approval or disapproval must be made in writing within thirty (30) days from the date said plans are submitted to Declarants or the Building Control Committee.
24. All detached buildings and/or garages shall be constructed to match the residential dwellings and must further be reviewed and approved by the aforesaid Declarants or Building Control Committee.
25. Each Unit Owner shall provide receptacles for garbage in a screened area, not visible from the road or neighboring Units, in accordance with Health Department suggestions or reasonable standards as established by the Declarants or Building Control Committee.
26. Declarants shall provide appropriate easements for water, gas, and electric services, if available, to each Unit Owner within ninety (90) days of application for same.
27. The utility services provided by the Unit Owner servicing the Units of said Subdivision are to be constructed underground from the street rights of way to the residential dwellings.


28. No fuel tanks or similar storage receptacles may be exposed to public view.
29. There shall be no satellite dishes or antennas installed or constructed within the Subdivision, except 18" satellite dishes or smaller satellite dishes as the technology may become available in the future.
30. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. The Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
31. No swimming pools shall be allowed in the CIC.
32. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety per cent (90%) of the purchase price of the lot and improvements.

In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to grade. If the Unit Owner chooses to reconstruct, the Owner shall restore all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty or other disaster.

Each Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

33. All lawns must be well maintained (mowed and trimmed) at all times. Any Unit which is sold, but not yet built upon, must be well maintained and kept attractive by its Owner at all times. Special attention must be given to all those areas of vegetation which are visible from roadways.

Any area along the roadways which has been seeded by the Declarants must be kept mowed and maintained to the road by the Unit Owner.

34. Written plans and specifications regarding all fencing regardless of its size, location or purpose, must be submitted to the Declarants or Building Control Committee for its written approval or disapproval regarding size, height, color, location and type of construction. Fences may be installed for aesthetic or decorative purposes only. Under no circumstances shall any functional fence of any type be permitted anywhere in the Subdivision.
35. Written plans and specifications regarding any wall, including retaining walls, regardless of size, location or purpose, must be submitted to the Declarants or Building Control Committee for its written approval or disapproval regarding purpose, size, height, location and type of construction.
36. No clothes lines of any type may be erected or placed upon any lot which is visible from the exterior which includes the streets, neighboring Units or neighboring lands.
37. No junk or personal articles of any type shall be placed upon or stored upon any Unit which is visible from the exterior which includes the streets, neighboring Units or neighboring lands.
-  38. Cars are not permitted to be parked on streets, yards or lawns.
39. Prior to construction of driveways or sidewalks, the Unit Owner is responsible for seeing that a four (4") inch schedule 40 P.V.C. electrical conduit with caps on each end is buried under the portion of pavement which runs over top of the utility right of way, and the exact depth and location is to be designated by Monongahela Power Company, its successors or assigns. Prior to any digging in a utility area, Unit Owner or contractor shall call the appropriate Utility providers for the location of

utility lines.

40. Trees which measure ten (10") inches or greater in diameter at the base, which stand beyond a fifteen (15') foot perimeter of any structure or proposed structure shall remain, unless they create a hazard or potential hazard to any one or any property within Wood Crest or adjoining lands. For the purpose of this paragraph, driveways, decks, walkways, patios and porches are to be considered as structures. In order to maintain the rural and wooded character of the Subdivision, no tree may be removed from any Unit or common element without the prior written consent of the Building Control Committee.
41. There is a posted speed limit of 15 M.P.H. throughout the development.
42. All construction sites must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the development. However, such accumulations in small quantities may be kept towards the rear of the Unit or in a location upon the Unit as designated by the Declarants or the Building Control Committee.
43. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining lots and more particularly into the storm sewers or roadways. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.
44. The Developers shall install dusk-to-dawn photo-sensitive decorative lights in the front of each unit. The decorative lights must be maintained in working order by the owner of each unit and all lights must use the same type, color and wattage bulb. The decorative lights may not be

removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. No other light sensitive dusk-to-dawn light is permitted on the exterior of any Unit within the Subdivision.

45. No mobile or modular homes are permitted within the CIC.
46. Except during construction of an individual unit, no loud power tool, may be operated on the exterior of any unit between 9:00 p.m. and 9:00 a.m. Loud power tools include, but are not limited to, the following: lawn mowers, trimmers, shredders, chain saws, jack hammers, snow blowers, circular and other electric saws, etc.

D. BUILDING CONTROL COMMITTEE

- (1) The Committee shall be composed of two (2) members to be appointed by the Board of Directors. Committee members shall be subject to removal by said Board of Directors and any vacancies from time to time existing shall be filled by appointment by the said Board of Directors. In the event of any tie vote between the members of the Building Control Committee, the Declarants reserve the right to cast a deciding vote on that issue.
- (2) All buildings, structures and improvements (including exterior color design and construction materials) erected or placed on any Unit must be approved in writing by the Building Control Committee.
- (3) There shall be submitted to the Committee a complete set of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Unit unless and until the final plans, elevations and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the Unit of the

building, utility entrances, walls, or other structures proposed to be constructed, altered, placed or maintained, together with the proposed construction material, proposed landscape planting and off street parking.

- (4) The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. The Committee shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest, welfare or rights of all or any part of the real property subject thereto, or the owners thereof. The decisions of the Committee shall be subject to appeal or review by the Board of Directors of said Association.

E. VARIANCES: The Building Control Committee may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and purposes of the general development scheme, and provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

The Building Control Committee shall have specific authority to grant variances, in appropriate circumstances, to Unit Owners who desire to construct (over or upon the 5-foot easement along each side of all boundary lines) porches, decks or other appurtenances non-integral to the primary residential structure. Any variance which the Building Control Committee may grant shall be based upon plans first submitted by the Unit Owner to the Building Control Committee.

The Unit Owner will bear the entire risk associated with the removal of

the appurtenance in the event the Association must enter the easement for any purpose. The Association shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage incurred by any part of the appurtenance while working within the easement.

Prior to the commencement of construction of the appurtenance, the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against the Association for any and all damages sustained by an appurtenance encroaching upon the aforesaid 5-foot easement.

F. EASEMENTS: There is reserved for the Association, its successors and assigns, and for the use of the Declarants in the development of this Subdivision, the following easements and rights of way incident to the development of this property:

- (1) A five (5) foot wide easement along each side of all road rights of way and along all other property boundary lines for the purpose of altering, adding, installing, operating and maintaining sewage disposal lift stations, utility lines, mains, drainways, culverts, electric lines, cable television, water and sewer mains, as well as other services; reserving also the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to trim, cut and remove any trees and/or brush located in said rights of way.
- (2) The Units shall be burdened by such additional rights of way and easements as may be shown on the recorded maps or plats of said Subdivision, or as may be placed in any deeds of conveyance for each individual Unit.
- (3) Declarants reserve unto themselves, their Lessees and licensees, their

successors and assigns, a perpetual, alienable and releasable easement and right to use the roads in the Subdivision, and the right on, over and under the cables, conduits, gas lines, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water and other public conveniences or utilities within the right of way of the roads and on such other reserved areas as are shown on the recorded plan of the Subdivision. Declarants may also cut drainways for surface water whenever and wherever such action may appear to Declarants to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations and to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any licensee of Declarants but this reservation shall not be considered an obligation of Declarants to provide or maintain any such utility or service.

(G) ALLOCATED INTEREST, USE AND ENJOYMENT OF COMMON ELEMENTS:

- (1) Each Unit Owner shall be allocated an undivided interest in the Common Elements and perforce the Common Expense of the Association of not less than one eighty-eighth (1/88th) for each Unit held in Fee Simple. THE TOTAL NUMBER OF LOTS DEDICATED TO THE CIC HAS NOT BEEN CONCLUSIVELY DETERMINED; however, Declarants shall not create more than twenty-eighth (28) Units in the CIC. The Special Declarants Rights reserved permit Declarants to create or subdivide Units and to construct town houses on Units 15, 16, 17 and/or 18. Should Declarants determine to create or eliminate, and/or add town

deducting the cost of such repair from said deposit and shall refund the balance thereof to Unit Owners, if any.

(K) REPRESENTATIONS:

All Unit owners herein, their heirs, successors and assigns, by their acceptance and recordation of this instrument, acknowledge the conditions of the hereinbefore described Unit and accept the same as it is and fully understand that the Declarants have made no representations whatsoever, either direct or implied, as to the fitness of the Unit for its use in any manner whatsoever.

IX. WARRANTY OF QUALITY

Wood Crest is a Common Interest Community created and designed for use as a single-family residential community. Declarants makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all expressed or implied warranties of quality are excluded. Units are being offered for sale by Declarants upon an "AS IS" basis.

All Purchasers shall execute a separate instrument attached hereto and marked as "Agreement and Waiver." This Agreement and Waiver, between Declarants and Purchaser, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should consult the Agreement and Waiver for more detailed information.

X. REMEDIES

In the event of any violation of the provisions of this Declaration, Articles of Incorporation, By-Laws or Rules and Regulations of the Board or Association by any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit), the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the West Virginia Acts to which this CIC is submitted, this Declaration, Articles of Incorporation, By-Laws or Rules and Regulations, or other like

source which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any subject actions or proceedings, including Court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than eighteen per cent (18%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expense. The Board shall have a lien for all of the same, as well as for non-payment of said defaulting Unit Owner's respective share of the Common Expenses upon the Unit and Ownership interest in the Common Elements of such defaulting Unit Owner and upon all of the additions and improvements thereto and upon all of the personality in, upon or located elsewhere on the property.

XI. AMENDMENT

- (A) The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission by vote or agreement of Unit Owners owning Units to which not less than sixty-seven per cent (67%) of the votes in the Association are allocated and prepared, executed, acknowledged and properly recorded for the Association by its President; provided, however, no change, modification or rescission may increase or create Special Declarants Rights, increase the number of Units, alter Unit boundaries, increase the allocated interests of a Unit or the uses to which any Unit is restricted, without the consent or agreement of all Unit Owners and of all lien holders unless otherwise specified in this Declaration. Any instrument changing, modifying or rescinding any provision of this Declaration with respect

to such action shall be signed by all the affirmatively voting Unit Owners and all lien holders as required by this Declaration.

- (B) The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Acts to which the CIC is submitted, and **FURTHER PROVIDED** that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Association Board where alteration of the provisions hereof are made solely to bring this document into compliance with the Acts abovesaid, other existing law or to correct errors of scriveners, architect or surveyor with no notice to Unit Owners or lien holders as above said unless such change, modification or rescission directly affects an individual Unit Owner's or lien holder's interest in the real estate or appurtenances held as security.

XII. NOTICES

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

publication in a newspaper of general circulation in the absence of submission of a lien holder's address.

XIII. SEVERABILITY

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

XIV. PERPETUITIES AND RESTRAINTS ON ALIENATION

If any provision of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the President of the United States, William Clinton, and the Governor of the State of West Virginia, Gaston Caperton.

XV. TERMINATION AND EMINENT DOMAIN

- A. Termination: The CIC (which includes all Units, Common Elements, rights and restrictions herein created) may be terminated only by agreement of owners of Units to which at least eighty per cent (80%) of the votes in the Association are allocated. An agreement to terminate must be evidenced by: (1) the execution of a termination agreement; or (2) ratification of a termination agreement by the requisite number of Unit Owners. The termination agreement or individual ratifications thereof must: (i) be executed in the same manner as a deed; (ii) specify a date after which the agreement or ratification shall become void if not recorded before that date. No termination agreement shall be valid until recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

- (1) Notwithstanding any provision to the contrary herein contained, Declar-

ants may, by recording a Notice of Termination, terminate this Declaration as to the entire Subdivision prior to the recordation of the first deed for a Unit from the entire Subdivision or within that particular phase but not as to any remaining phase.

- (2) Foreclosure or enforcement of a lien or encumbrance against the entire CIC or any part thereof does not itself terminate the CIC or withdraw that part thereof from the CIC or from this Declaration and other related documents herein set forth.
- (3) The termination agreement may provide all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.
- (4) The Association, on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. Upon termination, if any real estate is to be sold following termination, title to that real estate vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effectuate the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of that portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assess-

ments and other obligations imposed on Unit Owners by the Declaration.

- (5) If a lien or encumbrance against a portion of real estate has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure may record an instrument excluding the real estate subject to that lien or encumbrance from the CIC.

B. Eminent Domain: If a Unit is acquired by eminent domain or any part of any Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Unit and its allocated interests, whether or not any Common Element are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element. Further:

- (1) Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, (i) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially-acquired Unit are automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially-acquired Unit participating in the reallocation

on the basis of its reduced allocated interests.

- (2) If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association.

XVII. SEPARATE TITLES AND TAXATION

After conveyance by the Declarants, each Unit, together with its interest in the Common Elements, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.

XVIII. RIGHTS AND OBLIGATIONS OF GRANTEES

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

XIX. HEADINGS

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

XX. DESCRIPTION INCLUSIONS BY REFERENCE

The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

XXI. SUBMISSION TO LAW

The Declarants, as the legal title holders in fee simple of the parcel, expressly intends

the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

THEREFORE

IN EXECUTION AND SUBMISSION OF THE WITHIN DECLARATION, NOW WITNESSETH THE NAMES, SEALS AND SIGNATURES OF THE DECLARANTS, MICHAEL D. WALLS AND BONNIE L. WALLS:

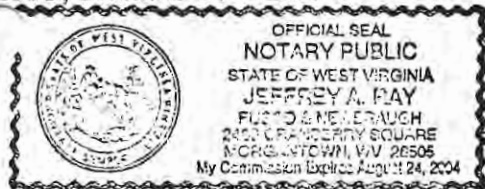
Michael D. Walls [Seal]
MICHAEL D. WALLS

Bonnie L. Walls [Seal]
BONNIE L. WALLS

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this 5TH day of SEPTEMBER 1995, Michael D. Walls.



My commission expires: August 24, 2004
Jeffrey A. Ray
NOTARY PUBLIC

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this 5TH day of SEPTEMBER 1995, Bonnie L. Walls.



My commission expires: August 24, 2004
Jeffrey A. Ray
NOTARY PUBLIC

This Document was Prepared by Steven Mark Prunty, Fusco & Newbraugh, L.C.,
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