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**DECLARATION OF COMMON INTEREST  
COMMUNITY**

**OF**

**MCGINNIS POINT,<sup>1</sup>**

**A WEST VIRGINIA PLANNED COMMUNITY DEVELOPMENT**

**PURSUANT TO THE PROVISIONS OF THE WEST VIRGINIA  
UNIFORM COMMON INTEREST OWNERSHIP ACT,  
WEST VIRGINIA CODE § 36-1-101 et. seq.**

<sup>1</sup> Pursuant to the 1st Amendment to the Declaration of Common Interest Community, dated August 22, 2008, The Arden Manor II Common Interest Community was renamed to The McGinnis Point Common Interest Community. All references herein to "Arden Manor II" shall refer to McGinnis Point.

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**DECLARATION FOR ARDEN MANOR II,  
A WEST VIRGINIA COMMON INTEREST COMMUNITY**

**ARTICLE I  
SUBMISSION; DEFINED TERMS**

**Section 1.1 Declarant; Property; County; Name.**

S&A Land Acquisition Limited Partnership/ Arden, a Pennsylvania Limited Partnership, having an address of 2121 Old Gatesburg Road, Suite 200, State College, PA 16803 (hereinafter referred to as "Declarant"), is owner of the Real Estate located in the District of Arden, Berkeley County, West Virginia, a legal description of which is designated as Exhibit "A" attached hereto and incorporated by reference. Declarant hereby submits the Real Estate described in Exhibit "A" including all easements, rights, and appurtenances thereunto belonging and the buildings and improvements erected or to be erected thereon (collectively, the "Property") to the provisions of the West Virginia Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101 et. seq., (hereafter referred to as "Act"), and hereby creates The Arden Manor II Common Interest Community, a West Virginia Planned Community.

**Section 1.2 Easements and Licenses.**

- 1.2.1 Any mineral and/ or subsurface rights as previously sold and recorded of public record including but not limited to those recorded in the Berkeley County Clerk's Office in Deed Book 211 at Page 539, Deed Book 217 at Page 122, and Deed Book 193 at Page 538.
- 1.2.2 A utility right of way to the Berkeley County Public Service Sewer District as described in Deed Book 461 at Page 640.
- 1.2.3 A utility right of way to Potomac Edison as described in Deed Book 270 at Page 647.
- 1.2.4 A utility right of way to C&P Telephone Co as described in Deed Book 222 at page 17.
- 1.2.5 A utility right of way to Potomac Light and Power Company as described in Deed Book 189 at page 427.
- 1.2.6 A right of way for construction, maintenance and use of a controlled access facility in favor of the West Virginia Dept. of Transportation as recorded in Deed Book 550 at page 638.
- 1.2.7 Covenants, conditions, set back lines, easements and restrictions contained in an Improvement Plan for Arden Manor Subdivision Phase II, dated April 22, 2005 and recorded March 14, 2006 in the Berkeley County Clerk's Office in Plat Book 00012 at Plat Pages 00057 and 00058.
- 1.2.8 Easements and right of ways created by this Declaration, By-Laws of The Arden Manor II Homeowners Association, Inc., and the Plats and Plans.

**Section 1.3 Maximum Number of Units.**

The maximum number of units created by this Common Interest Community owned by the Declarant, which Improvement Plan is recorded in the Berkeley County Clerk's Office, shall be ninety-eight (98) total detached single-family Units and two (2) Open Space stormwater management detention basins (designated as A and B on the Plats and Plans).

Section 1.4 **Defined Terms.**

1.4.1 "Act" means the West Virginia Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101 et. seq., as amended.

1.4.2 "Affiliate of the Declarant" means any person who controls, is controlled by, or is under common control with the Declarant. A person "controls" the Declarant if the person:

- i. is a general partner, officer, director or employer of the Declarant;
- ii. directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the Declarant;
- iii. controls in any manner the election of a majority of the directors of the Declarant; or
- iv. has contributed more than twenty percent (20%) of the capital of the Declarant. A person "is controlled by" the Declarant if the Declarant:

- i. is a general partner, officer, director or employer of the person;
- ii. directly or indirectly or acting in concert with one or more other persons; or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person;
- iii. controls in any manner the election of a majority of the directors of the persons; or
- iv. has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

1.4.3 "Allocated interests" means the following interests allocated to each Unit:

- i. in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the Association;
- ii. in a condominium, the common expense liability and the ownership interest and votes in the Association; and
- iii. in a common interest community, the common expense liability and votes in the Association.

1.4.4 "Association" or "Unit Owners' Association" means the Arden Manor II Homeowners Association, Inc., a West Virginia non-profit corporation organized under Section 101, Article 3 of the Act.

1.4.5 "Common elements" means:

- i. in a condominium or cooperative, all portions of the common interest community other than the Units; and
- ii. in a common interest community, any real estate within a common interest community owned or leased by the Association, other than a Unit.

1.4.6 "Common expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

1.4.7 "Common expense liability" means the liability for common expenses allocated to each Unit pursuant to Section 107, Article 2 of the Act.

1.4.8 "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a Declaration: provided, that any resort owner which, prior to the effective date as set forth in Section 103, Article 1 of the Act, began the development of a resort and imposed fees or assessments upon owners of real estate in the resort for maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common elements in and around the resort, for fire and police protection and for such other services as may be made available to owners of real estate, may also impose the same fees and assessments to be used for the same or similar purposes upon persons purchasing real estate in the resort after the effective date as set forth in Section 103, Article 1 of the Act, without creating a common interest community. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options.

1.4.9 "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements is vested in the Unit Owners.

1.4.10 "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

1.4.11 "Cooperative" means a common interest community in which the real estate is owned by an Association, each of whose members is entitled by virtue of his ownership interest in the Association to exclusive possession of a Unit.

1.4.12 "Dealer" means a person in the business of selling Units for his own account.

1.4.13 "Declarant" means any person or group of persons acting in concert who:

- i. as part of a common promotional plan, offers to dispose of his or its interest in a Unit not previously disposed of; or
- ii. reserves or succeeds to any Special Declarant Rights.

1.4.14 "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

1.4.15 "Development rights" means any right or combination of rights reserved by a Declarant in the Declaration to:

- i. add real estate to a common interest community;

- ii. create Units, common elements or limited common elements within a common interest community;
- iii. subdivide Units or convert Units into common elements; or
- iv. withdraw real estate from a common interest community.

1.4.16 "Dispose" or "disposition" means 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.

1.4.17 "Executive Board" means the body, regardless of name, designated in any Declaration to act on behalf of the Association.

1.4.18 "Identifying number" means a symbol or address that identifies only one Unit in a common interest community.

1.4.19 "Leasehold Common Interest Community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

1.4.20 "Limited Common Element" means a portion of the common elements allocated by the Declaration or by operation of subdivision (2) or (4), Section 102, Article 2 of the Act for the exclusive use of one or more but fewer than all of the Units.

1.4.21 "Master Association" means an organization described in Section 120, Article 2 of the Act, whether or not it is also an Association described in Section 101, Article 3 of the Act.

1.4.22 "Non-Residential Unit" means a Unit which shall not be used for the purposes set forth in 1.4.30.

1.4.23 "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a Unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.

1.4.24 "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a trust, the corpus of which is real estate, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

1.4.25 "Plats and Plans" means a survey or general schematic map of the entire common interest community which shows the location and dimensions of all real estate not subject to development rights or subject only to the development right to withdraw or convert and the location and dimensions of all existing improvements within that real estate; a legally sufficient description of any real estate subject to development rights labeled to identify the right applicable to each parcel; and all other requirements of Section 109, Article 2 of the Act.

1.4.26 "Common Interest Community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a Common Interest community.

1.4.27 "Proprietary lease" means an agreement with the Association pursuant to which a member is entitled to exclusive possession of a Unit in a cooperative.

1.4.28 "Purchaser" means a person, other than the Declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than:

- i. a leasehold interest (including renewal options) of less than twenty (20) years; or
- ii. as security for an obligation.

1.4.29 "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures and other improvements and interest that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

1.4.30 "Residential purposes" means use for dwelling or recreational purposes, or both.

1.4.31 "Resort" means a destination location which consists of:

- i. one or more persons offering recreational facilities and services such as skiing, golf, tennis or boating to the general public and commercial facilities such as retail stores, restaurants and hotels or other lodging accommodations; and
- ii. at least one hundred residential Units, a majority of which are used as vacation or second homes rather than primary residences.

1.4.32 "Resort owner" means any person owning or operating substantially all of the recreational facilities located within a resort, or the predecessor in title of any such person.

1.4.33 "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.4.34 "Special Declarant Rights" means rights reserved for the benefit of a Declarant to:

- i. complete improvements indicated on Plats and Plans filed with the Declaration (Section 109, Article 2 of the Act) or, in a cooperative, to complete improvements described in the public offering statement pursuant to Section 103(a)(2), Article 4 of the Act;
- ii. exercise any development right (Section 110, Article 2 of the Act);
- iii. maintain sales offices, management offices, signs advertising the common interest community, and models (Section 115, Article 2 of the Act);



- iv. use easements through the common elements and limited common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community (Section 116, Article 2 of the Act);
- v. make the common interest community subject to a master association (Section 120, Article 2 of the Act);
- vi. merge or consolidate a common interest community with another common interest community of the same form of ownership (Section 121, Article 2 of the Act); or
- vii. appoint or remove any officer of the Association or any master association or any executive board member during any period of Declarant control (Section 103(d), Article 3 of the Act).

1.4.35 "Time share" means a right to occupy a Unit or any of several Units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof.

1.4.36 "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 105(a)(5), Article 2 of the Act. If a Unit in a cooperative is owned by a Unit Owner or is sold, conveyed, voluntarily or involuntarily encumbered or otherwise transferred by a Unit Owner, the interest in that Unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that Unit under a proprietary lease, coupled with the allocated interests of that Unit, and the Association's interest in that Unit is not thereby affected.

1.4.37 "Unit Owner" means the Declarant or other person who owns a Unit, or a lessee of a Unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the Unit from the common interest community, but does not include a person having an interest in a Unit solely as security for an obligation. In a condominium or Common Interest community, the Declarant is the owner of any Unit created by the Declaration. In a cooperative, the Declarant is treated as the owner of any Unit to which allocated interests have been allocated (Section 107, Article 2 of the Act) until that Unit has been conveyed to another person.

1.4.38 "Writing" means any handwritten or typed document that may be communicated, sent and/or delivered in person, by regular mail, by overnight mail, by facsimile, or by authenticated on-line electronic transmission.

## ARTICLE II

### **ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES; UNIT IDENTIFICATION AND BOUNDARIES**

#### **Section 2.1 Percentage Interests, Votes and Common Expense Liabilities.**

2.1.1 Attached as Exhibit "C" hereto is a list of all Units by their Identifying Numbers and the Percentage Interest appurtenant to each Unit. The Percentage Interest appurtenant to each Unit is a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Common Interest Community.

- 2.1.2 Each Unit shall have one (1) vote in the Association.
- 2.1.3 The share of Common Expense Liability appurtenant to each Unit shall be in proportion to its Percentage Interest.

**Section 2.2 Unit Boundaries.**

- 2.2.1 The title lines or boundaries of each Unit are situated as shown on the Plats and Plans.
- 2.2.2 Each Unit in the Common Interest Community is a single subdivided lot as depicted in the Plats and Plans herein. The Plats and Plans also indicate each Unit's identifying number.

**ARTICLE III**  
**ALLOCATION AND RESTRICTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

**Section 3.1 Common Elements.**

Declarant has indicated or will indicate on the Plats and Plans the areas of Real Estate that are to be used as Common Elements. Upon completion of the Common Elements by Declarant the same will be conveyed in its entirety to the Association created in the Declaration by the Declarant or a successor to the interest of the Declarant by the later of the date of conveyance of the last Unit, or thirty (30) years from the date hereof. Declarant may, at its sole discretion, convey the Common Elements at any time prior to the last date as aforesaid. Without limiting the generality of Section 1.4.5 hereof, the following are hereby designated as Common Elements.

- 3.1.1 All storm water drainage lines and easements, as well as the stormwater management detention basins (indicated as Open Space Units "A" and "B" on the Plats and Plans"). The pump station will be maintained by the Berkeley County Public Service Sewer District, and/or its assigns or successors.
- 3.1.2 All sanitary, stormwater and sewer lines and easement areas as depicted on the Plats and Plans.
- 3.1.3 Signage areas now or hereinafter designated on the Plats and Plans.
- 3.1.4 Any other areas shown and identified as Common Elements on the Plats and Plans attached hereto as Exhibit "B", and any amendment thereto subsequently created.

**Section 3.2 Binding Obligation.**

The obligation of the Declarant to convey or lease to the Association the Common Elements shall be binding on the Declarant and any successor in interest of the Declarant, whether or not the successor succeeds to any Special Declarant Rights. The conveyance of the Common Elements will be for no consideration other than the Association's acceptance of the conveyance.

**Section 3.3 Ownership of Common Elements Prior to Association.**

Declarant will own the Common Elements prior to the conveyance to the Association.

**Section 3.4 Storm Drains and Storm Water Management Basins.**

Declarant will be installing storm drains and storm water management basins as shown on the Plats and Plans. Upon the completion of the storm water management basins and the storm drains, which shall be by the date of conveyance by the Declarant of the last Unit in all the Common Interest Community, the same, defined and known as Common Elements, shall be conveyed to the Association, which the Association by this Declaration, is under an obligation to maintain.

**Section 3.5 Limited Common Elements.**

Those portions of the Common Elements serving one or more Units, but fewer than all, within the Common Interest Community are Limited Common Elements allocated only to the Unit or Units which they serve. Without limiting the generality of Section 1.4.20 hereof, the following portions of the Property are hereby designated as Limited Common Elements:

3.5.1 Any Limited Common Elements designated and shown on the Plats and Plans, now or amended.

**Section 3.6 Changes by Executive Board.**

Subject to any limitation herein, the Executive Board may make additions, alterations or improvements to the Common or Limited Common Elements, which in its judgment it deems necessary.

**ARTICLE IV  
MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES**

**Section 4.1 Maintenance Responsibilities.**

The Units, including all improvements constructed thereon, shall be maintained and repaired by each Unit Owner, pursuant to the provisions of this Declaration. The Common Elements as defined in this Declaration, together with all improvements constructed thereon, shall be maintained and repaired by the Association in accordance with the provisions of Section 102 (a)(6), Article 3 of the Act, except as expressly set forth to the contrary in this Declaration or the By-Laws. The Limited Common Elements, as defined in this Declaration, together with all improvements constructed thereon, shall be maintained and repaired by the Association in accordance with the provisions of Section 107, Article 3 of the Act, except as expressly set forth to the contrary in this Declaration or the By-Laws of the Association.

**Section 4.2 Association Maintains Common Elements.**

The Association shall maintain, repair and replace all of the Common Elements and Limited Common Elements, as defined in this Declaration, so that the same are in good order and repair and in an attractive condition consistent with a residential community, and in connection therewith, the Association shall continually keep and maintain, or cause to be continually kept and maintained, all improvements to the Common Elements and

Limited Common Elements in a safe, sightly and serviceable condition which repair and maintenance shall include replacment, cleaning, lighting, painting, landscaping, removing obstructions, snow, water and ice, utilities and drainage facilities, directional signs and lighting facilities as necessary from time to time. Maintenance of the Common Elements and Limited Common Elements by the Association includes the payment of all utility charges applicable to the Common Elements and Limited Common Elements as defined in this Declaration.

**Section 4.3 Action by Executive Board to Remedy Unsatisfactory Conditions.**

Any person authorized by the Executive Board shall have the reasonable right of access to all portions of the Real Property, including a Unit, for the purpose of correcting any condition threatening any other Unit or the Common Elements or the Limited Common Elements, and for the purpose of performing installations, alterations or repairs; for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment; and for other proper purposes provided that all 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 any emergency, reasonable attempts to notify the Unit Owner shall be made, however, such right of entry shall be immediate, whether or not the Unit Owner is present at the time. If damage is inflicted on the Common Elements or Limited Common Elements, or on any Unit through which access is taken, the Unit Owner is responsible for the damage or the Association, if it is responsible, is liable for the prompt repair of the damage.

**Section 4.4 Unit Owners Maintain Units.**

Each Unit Owner is responsible for maintenance, repair and replacement of his Unit, including the maintenance of all landscaping items, including decorative fencing, trees, bushes, shrubs, flowers, and yard. All Units, including the landscaping items, must be maintained in good repair, in a sightly and serviceable condition, and in an attractive condition consistent with a residential community.

**ARTICLE V  
EASEMENTS**

**Section 5.1 Additional Easements.**

In addition to and in supplementation of the easements provided for by Section 116, Article 2 of the Act, the following are hereby created:

- 5.1.1 **Model Homes.** Declarant reserves the right to place one or more models, management offices, and sales offices on any portion of the Common Elements in such manner, of such size, and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, management offices, and sales offices to different locations within the Common Elements. Declarant shall have the right to remove any such models, management offices, and/or sales offices from the Common Elements at any time up to thirty (30) days after Declarant ceases to be a Unit Owner. Upon the relocation of a model or office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom. Any further fixtures not so removed shall be deemed Common Elements, and any personal property not so removed shall be deemed the property of the Association.

- 5.1.2 Signs. Subject to any limitation in this Declaration, Declarant may maintain signs in the Declarant's Units on the Common Elements advertising Units in the Common Interest Community owned by the Declarant for sale or lease.
- 5.1.3 Units. Declarant shall have the right to locate, relocate, and maintain offices and models used only in connection with management of or sale or rental of Units owned by the Declarant in the Common Interest Community, in the Declarant's Unit or Units in the Common Interest Community not withstanding the fact that this Declaration would otherwise preclude use of the Units for such purposes, but subject to all other provisions in this Declaration, including without limitation, modification, or elimination of the Declarant's rights under this subsection by specific reference thereto.
- 5.1.4 Utility Easements. The Real Estate described in Exhibit "A" shall be and is hereby made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this Section 5.1.4 shall include, without limitation, rights of Declarant, the aforementioned third party, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate, and replace gas lines, pipes, and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wire, conduits, and equipment, and ducts and vents over, under, through, along, and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 5.1.4, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities of similar facilities existed at the time of first conveyance of the Unit by the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupant.
- 5.1.5 Reciprocal Non-Exclusive Easement for Use of Utility Systems. Subject to compliance with applicable laws and regulations, and subject to obtaining the prior written consent of the Executive Board, which consent will not be unreasonably withheld, delayed, or conditioned, the Common Elements and the Limited Common Elements shall be and are hereby made subject to a permanent, mutual, reciprocal, non-exclusive easement and right to tie into (and maintain and repair such tie in) and use the sanitary and storm sewers, water lines, and other utilities as may be constructed on the Common Elements and Limited Common Elements for the mutual and reciprocal benefit of the Units, provided that such use shall not overburden such utilities or unreasonably interfere with the use thereof by the owners and occupants of other Units. The Association shall have the right to dedicate any utilities to a public utility or other proper entity.
- 5.1.6 Declarant's Easement to Correct Drainage. Declarant reserves an easement on, over, and under those portions of the Common Elements or Limited Common Elements not located within a building for the purpose of maintaining and correcting drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. The easement created by this Section 5.1.6 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, direct or redirect the flow of ground water, or to take any other action reasonably necessary to achieve this purpose, following which Declarant shall restore the affected property as closely to its original condition as practicable.

5.1.7 Easement for Construction and Maintenance of Building. In connection with work performed within Unit title lines, incidental encroachments upon the Common Elements or Limited Common Elements as a result of the use of ladders, scaffolding, barricades, and similar equipment resulting in temporary obstruction of portions of the Common Interest Community shall be permitted as long as the encroachments caused by such construction, maintenance, or repair work are reasonable and work is being diligently pursued. The Common Elements or Limited Common Elements may be utilized for ingress and egress of vehicles transporting construction materials, equipment, and personnel and for temporary storage of materials and vehicles being used in connection with the construction, repair, maintenance, and rebuilding of buildings and related improvements, subject to all of the other terms of this Declaration.

**ARTICLE VI**  
**COMPLETION OF COMMON FACILITIES**

**Section 6.1 Time for Completion.**

Improvements to Common Elements will be completed at the discretion of the Declarant, but in no event will the Common Elements be completed later than the day of conveyance or lease by the Declarant of the last Unit, which the Declarant reserves the right to include in the Common Interest Community or the date of the expiration of the rights under Section 103(d), Article 3 of the Act.

**Section 6.2 Bonding of Common Elements.**

Declarant is not providing any third party guarantee, bond, escrow, letter of credit, or other mechanism to assure completion of the Common Elements and the only guarantee of completion is Declarant's own guarantee.

**ARTICLE VII**  
**AMENDMENT OF DECLARATION**

**Section 7.1 Amendment Generally.**

7.1.1 This Declaration, except in cases of amendments that may be executed by the Declarant under Section 109(f), Article 2 or 110 Article 2 of the Act, or by the Association under Section 107, Article 1, Section 106(d), Article 2, Section 108(c), Article 2, Section 112(a), Article 2, or Section 113, Article 2 of the Act, or by Unit Owners under Section 108(b), Article 2, Section 112(a), Article 2, Section 113(b), Article 2 or Section 118(b), Article 2 of the Act, and except as limited by Subsection 118(d), Article 2 the Declaration, including any Plats and Plans, may be amended only by vote or agreement of sixty-seven percent (67%) of the Unit Owners of the Association.

7.1.2 No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one year after the amendment is recorded.

7.1.3 Every amendment to the Declaration must be recorded in every county in which any portion of the Common Interest Community is located and is effective only upon recordation. An amendment, except an amendment pursuant to Section 112(a), Article 2, must be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.

- 7.1.4 Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the allocated interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.
- 7.1.5 Amendments to the Declaration required by Chapter 2 of the Act to be recorded by the Association must be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 7.2 Technical Corrections.

If any amendment to the Declaration is necessary in the judgment of the Executive Board to cure an ambiguity, correct or supplement any provision of the Declaration, including Plats and Plans, that is defective, missing, or inconsistent with any other provision of the Declaration or Act or conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or Units in a Common Interest Community or Common Interest Community Development projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, the Executive Board may effect an appropriate corrective amendment without approval of the Unit Owners or the holders of liens on the Common Interest Community, upon receipt of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the Act.

Section 7.3 Rights of Secured Lenders.

Annexation of additional properties, mergers and consolidations, dedication of Common Areas and amendment of the Declaration may require prior approval of HUD/VA as long as the Declarant exercises its Special Declarant Rights; provided, however, that the Declarant's Special Rights will terminate sixty (60) days after conveyance of seventy-five (75%) percent of the Units which may be created to Unit Owners other than Declarant. Declarant's Special Rights which entitle it to unilaterally convert Convertible Real Estate, add Additional Real Estate and withdraw Withdrawable Real Estate, cause mergers and consolidations and appoint or remove the Executive Board, extend from the date of the first conveyance of a Unit to a person other than the Declarant for not more than five (5) years; provided however, that the Declarant's Special Rights will terminate sixty (60) days after conveyance of seventy-five (75%) percent of the Units which may be created to Unit Owners other than Declarant.

**ARTICLE VIII**  
**USE RESTRICTIONS**

Section 8.1 Use and Occupancy of Units and Common Elements.

The occupancy and use of the Units, Common Elements and Limited Common Elements shall be subject to the following general restrictions:

Section 8.2 Prohibited Uses and Nuisances.

- A. Itemization. Except for the activities of Declarant during original development:
1. Only dwellings as defined herein shall be used for residential purposes upon said Units. Only one dwelling, not to exceed two stories in height shall be erected on each Unit.
  2. Each dwelling shall conform in general architectural design, quality and workmanship and materials to existing dwellings in this Common Interest Community. Minimum square footage of living space of all dwellings, excluding basements and garages, must be at least eleven-hundred (1,100) square feet.
  3. The Declarant shall maintain architectural control over the construction of the dwellings during the Declarant Control Period. At the end of the Declarant Control Period, the Association, by and through the Architectural Review Committee, shall maintain architectural control over the construction of the dwellings and shall require all Unit Owners to contract with an architectural firm as determined by the Architectural Review Committee which is capable of conforming to the architectural specifications of the Common Interest Community.
  4. Each dwelling must comply with all applicable zoning ordinances, if any.
  5. The erection and maintenance of any structure of a temporary and/or permanent character, such as a tent, trailer, barn, shed or any other type of out-building, is prohibited during the Declarant Control Period. Following transfer of control to the Association, an affirmative vote of sixty-seven (67%) percent of the Unit Owners will be required to allow such temporary and/or permanent structures within the Common Interest Community, which will be subject to such guidelines as the Association may hereafter adopt. No temporary or other structure of any kind, as referenced in this section, shall at any time be used for residential purposes.
  6. Units shall be used for residential purposes only and no business, mercantile, commercial, or manufacturing enterprise or activity of any kind shall be conducted thereon with the exception of such home occupations as permitted by the zoning ordinances established by the governing municipality and approved by the Declarant.
  7. The erection and maintenance of any type of sign (i.e. billboards, signboards, or other advertising contrivance or medium) is prohibited, with the exception of the entrance sign and signs for professional purposes, not to exceed in area one square foot, or a sign advertising the Units for sale or rent, not exceeding five square feet, or signs used by the builder to advertise Units during the construction and sales period. At no time will "for sale" signs be permitted at the entrance sign areas or other Common Areas throughout the Common Interest Community.
  8. No animals, livestock, horses or poultry of any kind shall be



kept for breeding or commercial use. No Unit Owner shall be allowed to have more than three (3) domestic animals, which shall be defined as dogs, cats or other indoor household animals, also referred to as pets. All pets must be on a leash when outside and pet Unit Owners must carry a sanitary utensil to clean up after their pets. Domestic animals are to be housed inside the dwelling, no exterior pet houses will be allowed.

9. All trash, garbage and refuse shall be stored in covered metal or plastic receptacles and concealed from view by an enclosure or screening approved by Declarant, its successors and assigns. Trash may be visible only on the day or night before the day of trash pickup by the municipality. All incinerators or other equipment for the storage or disposal of such matter shall be maintained in a clean and sanitary condition.
10. The use of any Unit or part thereof as a dumping ground for garbage and rubbish is strictly prohibited. All excess fill from home construction shall be required to be dumped in such areas as indicated by the Declarant.
11. All landscaping plans must be submitted, in writing, to the Architectural Review Committee for approval. This shall include, but not be limited to, such landscaping items as decorative fencing, tree rows as a form of screening or other trees, bushes, shrubs and flowers, which shall be planted in a landscape design. All landscape requests must be in compliance with all set back regulations established by the governing municipality and shall not cause obstruction to any easement areas. Following review by the Architectural Review Committee, the Unit Owner will receive, in writing, the Committee's decision of approval or disapproval. Only after approval is received may the landscaping work commence.
12. No fences or any kind will be allowed in the Common Interest Community, except those approved by the Architectural Review Committee for decorative purposes, or to surround approved hot-tubs or spas as required by applicable zoning ordinances, if any.
13. No building, garage, wall or other structure shall be commenced, erected, or maintained, nor shall any addition to or change or alteration therein be made until the plans and specifications, showing the nature, floor plan, location, and approximate cost of such structure and the grading plan of the Unit upon which such structure is to be built, shall have been submitted to and been approved in writing by Declarant. Approval or disapproval of said plans and specifications by the Declarant shall be absolute and final.
14. Any activity which is noxious or offensive and inconsistent with the residential character of the Common Interest Community is strictly prohibited, and is herewith declared to be a public nuisance and abatable as much.
15. No pools shall be permitted. Spas and hot tubs are permissible following compliance with the specific guidelines for screening, which will be established by the Declarant and the Association, compliance with all applicable zoning ordinances, if any, and upon written approval from the Architectural

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**Review Committee.** Requests for approval must first be submitted to the Architectural Review Committee. Only following approval from the Committee may installation commence.

16. No permanent clothesline or any structure used for the drying of clothing or housewares shall be visible upon any Unit when viewing the front of the structure. The temporary umbrella type may be used during the day, only if disassembled by dusk every evening.
17. No rooftop or other type of antennas shall be permitted to be installed on any exterior portion of any structure constructed on a Unit. No more than one (1) satellite dish per Unit is permitted, which can be no larger than twenty-four (24") inches in diameter. All satellite dishes must be placed on the rear of the Unit, and are subject to approval from the Architectural Review Committee as to location and color, which may not be unreasonably withheld.
18. No unlicensed, uninspected, or unregistered motor vehicle may be maintained or kept on any Unit of the said Common Interest Community. In addition, no repair work will be done on any motor vehicle in the Common Interest Community. Any vehicle over three-quarter (¾) ton shall not be permitted to park on or adjacent to the Units, except parked inside the Unit garage with the garage door down.
19. No automobile bodies, junk, erected cars, rubbish or other debris shall be kept on any Unit. All Units shall be kept neat and clean and free from refuse and weeds and nothing shall be placed, kept, stored, or maintained thereon which may constitute a nuisance or annoyance to Unit Owners or the residents of the Common Interest Community. The responsibility of the Unit Owner to keep the grass and vegetation mowed and maintained on the Unit shall commence from the time of the Unit purchase.
20. No motor homes, boats, campers, trailers, gliders or other recreational vehicles of any size may be kept on a Unit unless parked inside the Unit garage with the garage door down.
21. No Unit shall be subdivided into two (2) or more Units; however, two (2) Units may be merged to form a single Unit.
22. No game courts shall be permitted on a Unit without the prior approval of the Architectural Review Committee.
23. No trampolines will be permitted on a Unit. Children's play equipment may be permitted only after submitting a request for approval and receiving written approval from the Architectural Review Committee.
24. An outside electric eye pole light must be installed on each Unit prior to the completion of the dwelling on the Unit and must be maintained thereafter. The pole light must be lighted at all times, from sundown to sunup; it must be regulated by an automatic day and night switch or photocell, and it must have at least a one hundred (100) watt bulb. The pole light shall be wired directly to the electric panel box and shall not have an in-

- line switch.
25. Solar collection panels shall not be permitted.
  26. No Unit may be used as a means of access, ingress, egress or regress to or from any other real estate, except with Declarant's written consent, which may be withheld for any reason.
  27. Each Unit Owner shall refrain from interference with natural drainage courses and swales within this Common Interest Community.
  28. Declarant shall have the sole right to erect, maintain and operate real estate sales, management and/or construction offices on any part of the Property and/or in any dwelling now or hereinafter erected on any Unit provided such offices are solely used and operated in connection with the development of the Property or the building of structures on the Units, or the management, rental or sale of any Unit, or of structures now or hereafter erected thereon, but no part of the Property, nor any part of any dwelling now or hereafter erected thereon, shall be used for any of the aforesaid purposes set forth in this paragraph without written consent and approval of Declarant, in its sole, reasonable discretion, being first had and obtained. A successor to the Declarant shall not enjoy the rights granted by this paragraph unless instrument signed by Declarant, expressly granting such right and has been recorded in the Berkeley County Clerk's Office.
  29. These conditions, reservations, covenants, and restrictions shall apply to all Units whether vacant or improved and to all structures erected or to be erected thereon as well as to the alteration or improvement of or addition to any such structures.
  30. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Unit Owners who violate these covenants shall be assessed violation fees of up to \$50.00 per day and fifteen percent (15%) interest, plus any court, magistrate, penalties, fines and attorney fees incurred by the Association in the process of enforcing compliance with these covenants.
  31. Reasonable rules and regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Real Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such rules and regulations. Copies of the then, current rules and regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such rules and regulations or any amendments thereto.
  32. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.
  33. The provisions of Article VIII are not amendable at any time without the express written consent of the Declarant.

Section 8.3 Survival of Article VIII.

The uses, restrictions, and architectural standards as set forth in this Article VIII shall survive the termination of the Common Interest Community. It is the intent of Declarant that the use restrictions shall run with the land.

**ARTICLE IX**  
**LEASING**

Section 9.1 Rental of Units.

A Unit Owner may not lease his, her or its Unit as an investment and must occupy the Unit, except as set forth below:

- 9.1.1 A Unit Owner may lease his Unit for any periods when the Unit Owner is on an extended vacation. Any lease between a Unit Owner and a lessee must be in writing and shall not be for a term of less than ninety (90) days.
- 9.1.2 The lease shall state that it is subject in all respect to, and that the lessee shall comply with all of the provisions of the Declaration and the By-Laws and that failure of the lessee to comply with any of the terms of the aforementioned documents shall be a default under the lease.
- 9.1.3 The lease shall not relieve the Unit Owner of any duty or obligation imposed by this Declaration.
- 9.1.4 All leases must be approved by the Executive Board of the Association.

**ARTICLE X**  
**BUDGETS; COMMON EXPENSES; ASSESSMENTS; AND ENFORCEMENT**

Section 10.1 Definition of Common Expenses.

Common Expenses shall include:

- 10.1.1 Expenses declared to be Common Expenses by the Common Interest Community documents or the Act; and
- 10.1.2 Expenses of administration maintenance and repair or replacement of the Common Elements; and
- 10.1.3 Such reserves, as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any real or personal property acquired or held by the Association.

Section 10.2 Apportionment of Common Expenses.

All Common Expenses shall be assessed against all Units in accordance with their respective Percentage Interests as shown on Exhibit "C" of this Declaration and any amendments thereto. Common Expenses related to Limited Common Elements are assessed in equal shares against the Units to which the Limited Common Elements were assigned at the time.

**Section 10.3 Annual Payments.**

All Common Expense assessments made in accordance with Sections 2.1 and 10.2 of this Declaration to meet the requirements of the Association's annual budget shall be on a calendar year basis, payable in one (1) annual payment, which shall be due and payable to the Association, on or before, and no later than January 31<sup>st</sup> of each year. Special assessments shall be due and payable as set forth by the Executive Board.

Assessments for the first year shall be prorated from the date of settlement, utilizing the annual budget assessment schedule, for that current year, which shall be established by the Executive Board and used in the computation of the first year assessment amount due.

**Section 10.4 Association Initiation Fees.**

During the Declarant Control Period as defined in Article XII, Section 12.2, Declarant reserves the right to charge an Association Initiation Fee for each Unit sold or resold in the Common Interest Community. At the conclusion of the Declarant Control Period, the Executive Board may determine the amount of Association Initiation Fee.

The Association Initiation Fee shall be paid immediately upon transfer of the Deed for a Unit and shall be a one-time fee used by the Association for capital expenses and improvements in starting and maintaining the Association.

The amount of the Association Initiation Fee shall be set by the annual Association Budget, and disclosed in a Public Offering Statement or Resale Certificate provided by the Declarant or the Association.

**Section 10.5 Subordination of Certain Charges.**

Any fees, charges, late charges, fines, and interest which may be levied by the Executive Board pursuant to Section 116, Article 3 of the Act, shall be subordinate to the lien of a permitted Mortgage on a Unit, provided the Mortgage is a first security interest and was recorded prior to the date on which the assessment sought to be enforced became delinquent.

**Section 10.6 Assignment of Income Rights.**

The Association may assign rights to future income, including payments made on account of assessments for Common Expenses to secure any loan obtained by the Association for repairs, replacements, or capital improvements to the Common Elements,

**Section 10.7 Special Allocation of Expenses.**

If a Common Expense is caused by the negligence or misconduct of any Unit Owner, the Association may assess that expense exclusively against that Unit.

**Section 10.8 Commencement of Common Expense Assessments.**

Common Expense assessments shall begin as of the date of conveyance of the first Unit to a Unit Owner other than the Declarant (the "First Settlement").

**Section 10.9 Personal Liability of Unit Owners.**

Notwithstanding that the assessment for a Common Expense is assessed to and paid by the Association, the Owner of a Unit, at the time a Common Expense assessment or portion thereof is due and payable is personally liable for his pro-rata share of that assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless said successor agrees to assume the obligation.

**Section 10.10 No Waiver of Liability for Common Expenses.**

No Unit Owner may exempt himself/ herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

**Section 10.11 Acceleration of Common Expense Assessments.**

In the event of default for a period of ten (10) days after the due date by a Unit Owner in the payment of any Common Expense assessment levied pursuant to Paragraph 10.2, Paragraph 10.3, and/ or Paragraph 10.4, the Executive Board of the Association shall have the right to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable. Further, a late fee of fifteen percent (15%) of the total fee annually, on the delinquency, and a penalty of Five Dollars (\$5.00) per day will be assessed. In addition, attorney's fees equal to fifteen percent (15%) of the total due and payable shall be assessed.

**Section 10.12 Lien.**

- 10.12.1 The Association has a statutory lien on a Unit for any assessment levied against that Unit or fine imposed against the Unit Owner from the time the assessment or fine becomes delinquent. Fees, including attorneys' fees, late charges, fines and interest charged pursuant to the Act and the Common Interest Community documents are enforceable as assessments under this Section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.
- 10.12.2 As to any purchaser for value of a Unit, a lien to be perfected must be recorded pursuant to Section 116(h), Article 3 of the Act.
- 10.12.3 Any lien for delinquent Common Expense assessments or other charges that the Association has on a Unit will be subordinate to a first Mortgage on the Unit, if the Mortgage was recorded before the due date of the assessment or the due date of the unpaid installment, if the assessment is payable in installments.
- 10.12.4 If a holder of a first Mortgage on a Unit forecloses that Mortgage, the purchaser at the foreclosure sale is not liable for any unpaid assessments against the Unit which became due before the sale, other than the assessments which are prior to that mortgage in accordance with the provisions of the Act. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners of the Common Interest Community, including the purchaser.

- 10.12.5 The Association's lien may be foreclosed in any manner provided in the Act or by the laws of the State of West Virginia, now existing or hereafter adopted.
- 10.12.6 This Section does not prohibit actions to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.
- 10.12.7 A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
- 10.12.8 In connection with the collection of any assessment and fees, including attorney's fees, late charges, fines and interest, the Association shall have all of the powers, rights and privileges and legal remedies provided by this Declaration and the Act in and about the collection and enforcement of assessments.
- 10.12.9 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessments become payable; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the lien for unpaid assessments shall be extended until the automatic stay of proceedings under Section 362, or succeeding Sections, if amended, of the Bankruptcy Code is lifted.
- 10.12.10 Any payments received by the Association in the discharge of a Unit Owner's obligation may, at the Association's discretion, be applied to the oldest balance due.

**Section 10.13 Association Records.**

During the period of Declarant control, the Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 109, Article 4 of the Act. All financial and other records shall be made reasonably available for examination by any Unit Owner and his/her authorized agents.

**Section 10.14 Statements of Unpaid Assessments.**

On written request, the Association shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments currently levied against the Unit and any credits or surplus in favor of his Unit as required by Section 116(g), Article 3 of the Act. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner.

**Section 10.15 Surplus Funds.**

Unless otherwise provided in the Declaration, any surplus funds of the Association remaining after payment of or provision for Common Elements and any prepayment of reserves must be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense assessments.

**ARTICLE XI**  
**RIGHTS OF PERMITTED MORTGAGEES**

**Section 11.1 Reports and Notices.**

Upon the specific written request of a holder of a Mortgage to a Unit or to the Executive Board, the mortgagee shall be entitled to receive some or all of the following as designated in the request:

- 11.1.1 Copies of budgets, notices of assessment or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the Mortgage;
- 11.1.2 Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;
- 11.1.3 Copies of notices of meetings of the Unit Owners and the right to designate a representative to attend such meetings;
- 11.1.4 Notice of the decision of the Unit Owners to make any material amendment to this Declaration;
- 11.1.5 Notice of any default by the Owner of the Unit which is subject to the Mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;
- 11.1.6 The right to examine the books and records of the Association at any reasonable time; or
- 11.1.7 Notice of any decision by the Executive Board to terminate professional management and assume self-management of the Property.

The request of a mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a mortgagee hereunder.

Failure to comply with the requirements set forth above shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

**ARTICLE XII**  
**EXECUTIVE BOARD; DECLARANT'S RIGHTS; SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS**

**Section 12.1 Overview.**

- 12.1.1 There shall be an Executive Board for the Association. The number of Executive Board members of the Association shall be five (5), of which three (3) shall be Initial Directors/ Executive Board members, and two (2) Executive Board member positions shall be added as provided in Article XII, Section 12.2.2 of this Declaration.

**Section 12.2 Declarant Control Period.**

Subject to the provisions below, Declarant's control of the Association will extend from the date of the first conveyance of a Unit to a person other than the Declarant for a period of not more than five (5) years, provided,



however, that notwithstanding the foregoing, Declarant's control shall terminate regardless no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant, two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business, or two (2) years after any development right to add new Units was last exercised.

12.2.1 Until the sixtieth (60<sup>th</sup>) day after conveyance of twenty-five percent (25%) of the Units, which may be created to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. Declarant may not unilaterally remove any members of the Executive Board elected by Unit Owners other than Declarant.

12.2.2 Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than Declarant, one (1) additional Executive Board member shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units, which may be created to Unit Owners other than Declarant, one (1) additional Executive Board member shall be elected by Unit Owners other than Declarant.

**Section 12.3 Declarant Rights.**

Declarant reserves unto itself all Special Declarant Rights as defined in Section 103(31), Article 1 of the Act and as defined under Paragraph 1.4.15 of this Declaration, now or as amended in the future.

**Section 12.4 Development Rights.**

Declarant reserves unto itself all Development Rights as defined in Section 103(14), Article 1 of the Act, now or as amended in the future.

**ARTICLE XIII**  
**LIMITATION OF LIABILITY**

**Section 13.1 Standard of Conduct.**

13.1.1 In the performance of their duties, the officers, and members of the Executive Board shall stand in a fiduciary relation to the Association and shall perform their duties, including duties as members of any committee of the Executive Board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the Association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

13.1.2 In discharging the duties of their respective positions, the Executive Board members and officers may, in considering the best interests of the Association, consider the effects of any action upon employees, upon suppliers of the Association, upon communities in which the Common Interest Community is located and all other pertinent factors. The consideration of those factors shall not constitute a violation of the standards described above.

13.1.3 Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as an Executive Board member or officer, or any failure to take any action shall be presumed to be in the best interest of the Association.

**Section 13.2 Good Faith Reliance.**

In performing his duties, an officer or member of the Executive Board shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

13.2.1 One or more other officers or employees of the Association whom the officer or Executive Board member reasonably believes to be reliable and competent in the matter presented.

13.2.2 Counsel, public accountants or other persons as to matters which the officer or member of the Executive Board reasonably believes to be within the professional or expert competence of such person.

13.2.3 A committee of the Executive Board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or member of the Executive Board reasonably believes to merit confidence.

An officer or member of the Executive Board shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

**Section 13.3 Limited Liability.**

No Executive Board member or officer, in his capacity as such, shall be personally liable for monetary damages for any action taken, or any failure to take any action, unless he has breached or failed to perform the duties of his office under the standards described above; provided, however, that the provisions of this Section 13.3 shall not apply to the responsibility or liability of an Executive Board member or officer pursuant to any criminal statute or to the liability of an Executive Board member or officer for the payment of taxes pursuant to local, state or federal law. These provisions do not limit the liability that a Declarant may have as set forth Section 111, of Article 3, of the Act.

**Section 13.4 Rules and Regulations.**

13.4.1 The Executive Board may promulgate rules and regulations for the use and enjoyment by the Unit Owners of the Common Elements. The rules and regulations may not be in violation of any applicable ordinance, statute, rule or regulation.

13.4.2 The Executive Board may also set and publish a set of fines for violation by any Unit Owner, except the Declarant, of those rules and regulations. Any fine so imposed may be collected certifying them as liens pursuant to the provisions in this Declaration and may be collected in the same manner as other liens imposed herein. Before, however, any fines may become liens, the Executive Board must establish a notice and appeal system and permit an administrative redress by the Unit Owner.

**Section 13.5 Indemnification.**

To the extent permitted under West Virginia law, each member of the Executive Board, in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including

attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses incurred, except in such cases wherein such Executive Board member and/or officer is adjudged to be in breach of the standards of conduct described above; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member and/or officer) approves such settlement and reimbursement as being in the best interests of the Association, as the case may be; and provided further that, indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Executive Board member and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this Section 13.5 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

To the extent permissible under West Virginia law, expenses incurred by an Executive Board member and/or officer in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon the request of the Executive Board member and/or officer, after the Association has received an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association.

**Section 13.6 Directors and Officers Insurance.**

The Executive Board shall obtain and maintain insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Section 13.5 above, if and to the extent available at a reasonable cost.

**ARTICLE XIV**  
**INSURANCE**

**Section 14.1 Insurance to be Carried by Association.**

Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, all of the following:

- 14.1.1 Property insurance on the Common and Limited Common Elements insuring against all common risks of direct physical loss. The total amount of insurance after application of any deductibles shall not be less than ninety percent (90%) of the actual cash value of the insured Common or Limited Common Elements as the case may be, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
- 14.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board covering 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 or Limited Common Elements.

14.1.3 Insurance described in Section 14.1.1 above to the extent reasonably available, shall include the Units but shall not include improvements and betterments installed by Unit Owners.

14.1.4 If the insurance described above is not maintained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners. The Association may carry any other insurance it deems appropriate to protect the Association or Unit Owners.

14.1.5 The policy terms of the insurance shall be in accordance with Section 113, Article 3 of the Act.

*[The remainder of this page left intentionally blank]*

IN WITNESS WHEREOF, the Declarant, S&A Land Acquisition Limited Partnership/ Arden, has executed this Declaration this 12<sup>th</sup> day of May, 2006.

WITNESS: S&A Land Acquisition Limited Partnership/Arden,  
A Pennsylvania Limited Partnership  
By: S&A Custom Built Homes, Inc.,  
General Partner  
Alicia N. Cornali By David L. Pepper  
David L. Pepper, Chief Financial Officer

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF CENTRE :

On this, the 12<sup>th</sup> day of May, 2006, before me, the undersigned officer, personally appeared David L. Pepper, who acknowledged himself to be the Chief Financial Officer of S&A Custom Built Homes, Inc., General Partner of S&A Land Acquisition Limited Partnership/Arden, and that he as such Chief Financial Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of S&A Custom Built Homes, Inc., General Partner of S&A Land Acquisition Limited Partnership/Arden by himself as Chief Financial Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Alicia N. Cornali, Notary Public  
State College Boro, Centre County  
My Commission Expires July 27, 2008  
Member, Pennsylvania Association of Notaries

Alicia N. Cornali  
Notary Public  
My Commission Expires:

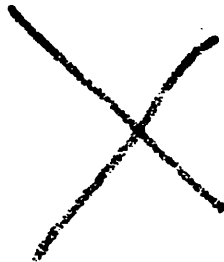
**EXHIBIT "A"**  
**Legal Description of all Real Estate Submitted**

All that certain parcel of real estate, with improvements thereon and appurtenances thereto belonging, situate, lying and being in Arden District, Berkeley County, West Virginia, and more particularly described as follows:

26.95 acres as shown on a plat entitled "Boundary Survey Plat Shenandoah Construction Management" dated May 10, 2004 as prepared by Terra Development Services, L.L.C., and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book 790 at page 457.

**EXHIBIT "B"**  
**Plats and Plans**

Recorded on this \_\_\_\_\_ day of \_\_\_\_\_, 2006 in the Clerk of the County  
Commission of Berkeley County, West Virginia in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_.



**EXHIBIT "C"**  
**Identification Numbers/Percentage Interests/Voting Interests**  
**For The Arden Manor II Homeowners Association, Inc.**  
Pursuant to Section 2.1 of this Declaration

**Association Common Areas**

Unit #	Common Areas
A	Open Space Stormwater Management Area
B	Open Space Stormwater Management Area

**Units in the Association**

Unit #	Percentage of Interest	Voting Interest
1	1.020	1
2	1.020	1
3	1.020	1
4	1.020	1
5	1.020	1
6	1.020	1
7	1.020	1
8	1.020	1
9	1.020	1
10	1.020	1
11	1.020	1
12	1.020	1
13	1.020	1
14	1.020	1
15	1.020	1
16	1.020	1
17	1.020	1
18	1.020	1
19	1.020	1
20	1.020	1
21	1.020	1
22	1.020	1
23	1.020	1
24	1.020	1
25	1.020	1
26	1.020	1
27	1.020	1
28	1.020	1
29	1.020	1
30	1.020	1
31	1.020	1
32	1.020	1
33	1.020	1
34	1.020	1
35	1.020	1
36	1.020	1
37	1.020	1
38	1.020	1
39	1.020	1
40	1.020	1
41	1.020	1
42	1.020	1
43	1.020	1
44	1.020	1
45	1.020	1



**EXHIBIT "C" continued**

<b>Unit #</b>	<b>Percentage of Interest</b>	<b>Voting Interest</b>
46	1.020	1
47	1.020	1
48	1.020	1
49	1.020	1
50	1.020	1
51	1.020	1
52	1.020	1
53	1.020	1
54	1.020	1
55	1.020	1
56	1.020	1
57	1.020	1
58	1.020	1
59	1.020	1
60	1.020	1
61	1.020	1
62	1.020	1
63	1.020	1
64	1.020	1
65	1.020	1
66	1.020	1
67	1.020	1
68	1.020	1
69	1.020	1
70	1.020	1
71	1.020	1
72	1.020	1
73	1.020	1
74	1.020	1
75	1.020	1
76	1.020	1
77	1.020	1
78	1.020	1
79	1.020	1
80	1.020	1
81	1.020	1
82	1.020	1
83	1.020	1
84	1.020	1
85	1.020	1
86	1.020	1
87	1.020	1
88	1.020	1
89	1.020	1
90	1.020	1
91	1.020	1
92	1.020	1
93	1.020	1
94	1.020	1
95	1.020	1
96	1.020	1
97	1.020	1
98	1.020	1
<b>Total Units</b>	<b>Total Percentage Interest</b>	<b>Total Votes</b>
98	100.0000%	98



BERKELEY COUNTY WV

FILED

July 05, 2006 14:22:44

JOHN W SMALL JR

COUNTY CLERK

TRANSACTION NO 2006024464

BOOK OF DEEDS

Book: 00841 Page 00622

