

(1)

DECLARATION OF COVENANTS AND
RESTRICTIONS OF MUSSELMAN SQUARE

THIS DECLARATION is made this 2nd day of October, 1990 by THOMAS G. SPRADLIN, INC., a Virginia corporation qualified to do business in the state of West Virginia, herein referred to as "Developer."

WHEREAS, Developer is the owner of that certain real property described in Article II of this Declaration, and desires to establish a residential subdivision to be known as "Musselman Square" Sections I and II, herein referred to as the "Subdivision;" and

WHEREAS, Developer desires to provide for the preservation of values and the maintenance of roadways in such Subdivision for the mutual benefit of Developer and all those who hereafter acquire lots in said Subdivision; and

WHEREAS, Developer desires to create an entity to which shall be assigned and delegated the power and responsibility of maintaining the roadways of said Subdivision, administering and enforcing the restrictive covenants set forth herein, and collecting and disbursing the assessments and charges created herein.

WITNESSETH, that the Developer hereby declares that the real property described in Article II is and shall be hereafter held, transferred, sold, conveyed and occupied subject to and together with the covenants, restrictions, easements, assessments, charges and liens as hereinafter set forth.

ARTICLE I

Definitions

Section 1: The following words then used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Musselman Square Homeowners Association, Inc., a non-profit West Virginia corporation.

(b) "The Properties" shall mean and refer to all properties as now are or shall hereafter become subject to this Declaration or any supplement to this Declaration.

(c) "Common Areas" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(d) "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of The Properties with the exception of Common Areas as heretofore defined.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of the mortgage or deed of trust, shall not mean or refer to the mortgagee or beneficial holder of a deed of trust unless and until such mortgagee or beneficial owner has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III hereof.

(g) "Subdivision" shall mean and refer to Musselman Square, Sections I and II, as described in Article II of this Declaration.

ARTICLE II

Property Subject to this Declaration

The real property which is, and shall hereafter be, held, transferred, sold, conveyed and occupied subject to this Declaration is described as follows:

All those certain parcels of real estate with improvements thereon, situate and being in Mill Creek District, Berkeley County, West Virginia, known and designated as Musselman Square, Section I (containing 0.857 acres), and Musselman Square, Section II (containing 1.587 acres) as shown on those certain plats prepared by Truman, Yebernetsky, & Roberts, Inc., surveyors and engineers, said plats being of record in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Plat Cabinet 4, slide 57.

AND BEING a portion of that same parcel of real estate as was conveyed to the Developer by that certain deed dated December 28, 1989, of record in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book 460 at page 199.

ARTICLE III

Musselman Square Homeowners Association, Inc.

Section 1: ORGANIZATION.

(a) The Association is a non-profit West Virginia corporation charged with the duties and vested with the powers described by law and set forth in the Articles of Incorporation of the Association, the Association By-Laws and this Declaration. Neither the Articles of Incorporation nor the By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of such

inconsistency the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (i) Members of the Association, or (ii) officers, directors, agents, representatives or employees of the Developer or a successor to the Developer.

(b) A Board of Directors of the Association and such officers as the Board may elect or appoint shall conduct the affairs of the Association in accordance with the Articles of Incorporation, the By-Laws and this Declaration.

Section 2: MEMBERSHIP.

(a) Every person or entity who is a record owner of a fee or undivided fee interest in any lot subject to this Declaration or which is in addition authorized by this Declaration and subject to a properly recorded Supplementary Declaration of Covenants and Restrictions shall be a Member of the Association; provided, that any such person or entity who holds such an interest merely as a security for a performance and obligation (such as a mortgagee, trustee or beneficiary of a deed of trust) shall not be a Member and further provided that all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use and all properties exempted from taxation by the laws of the state of West Virginia shall not be a Member.

(b) Each Member shall have the rights, duties and obligations set forth in this Declaration.

(c) Membership in the Association shall be appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title

to a Lot shall operate automatically to transfer membership in the Association appurtenant thereto to the new Owner thereof.

Section 3: VOTING RIGHTS. The Association shall have two types of membership, Class A and Class B.

Class A Members shall be all Members except the Developer. Each Class A Member shall be entitled to one vote for each Lot in which the Member holds an interest. When more than one person or entity holds such interest or interests in any Lot all such persons shall be Members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

The Class B membership shall consist of the Developer and any successor or assignee of the Developer who takes title to all or part of the The Properties and who is designated as a successor to the Developer in a recorded instrument executed by the Developer. Class B Members shall be entitled to three votes for each Lot owned. The Class B membership of the Developer, its successors and assigns, shall terminate at such time as it does not own any lots within The Properties or at such earlier time as the Developer voluntarily relinquishes it Class B membership as evidenced by a notice recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia; provided, however, the Class B membership shall not terminate if, within 120 days after the date on which the Developer conveys its last Lot within The Properties the Developer exercises its right to expand the development as set forth in Article VIII of this Declaration. In that event, the Class B membership of the Developer shall continue and it shall be entitled for three votes for every Lot it owns in the real estate added to the development.

Section 4: DUTIES OF THE ASSOCIATION. The Association shall, in addition to such obligations, duties and functions as

are assigned to it by other provisions of this Declaration have the obligations, duties and functions to do and perform each and every of the following for the benefit of all Owners of Lots within the Subdivision and for the maintenance administration and improvement of The Properties.

(a) Accept as part of the development all real estate annexed pursuant to Article VIII of this Declaration and accept all Owners thereof as Members of the Association subject to the membership requirements set forth herein and in the By-Laws.

(b) Take such action, whether or not expressly authorized herein or in any other governing instrument as may reasonably be necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association.

(c) To operate, maintain and otherwise manage or provide for the operation, maintenance or management of all Common Areas, together with all easements for operation and maintenance purposes and for the benefit of the Association or its members over and within the Common Areas; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, condition and repair and to maintain any sidewalks and green wooded or open areas free and clear of obstruction and in a safe condition at all times.

(d) To acquire, provide and pay for water, sewer, garbage disposal, electrical, gas and other necessary utilities for the Common Areas.

(e) To pay all real and personal property taxes and assessments (if any) separately levied upon or assessed against any of the Common Areas.

(f) To obtain and maintain insurance provided for by either the By-Laws or this Declaration.

(g) To make, establish, promulgate, amend and repeal any Association Rules.

(h) To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Declaration and the Association Rules.

Section 5: POWERS AND AUTHORITIES OF THE ASSOCIATION.

The Association shall have all of the powers of a non-profit corporation organized under the laws of the state of West Virginia subject only to such limitations upon the exercise of such of powers as are expressly set forth in the Articles of Incorporation, the By-Laws and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles of Incorporation and the By-Laws and to do and perform any and all acts which may be necessary and proper for or incidental to the exercise of any of the express powers of the Association, including the following which are listed without intent to limit the foregoing articulation:

(a) To levy assessments on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

(b) In its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or any written or threatened breach of the Declaration, Articles of Incorporation or By-Laws and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

(c) To grant and convey to any third party easements and rights-of-way in, on, over or under any Common Areas or within any preserved easement areas over all Lots as identified in this Declaration or upon any plats and plans of the Subdivision for the purposes of constructing, erecting, operating or maintaining thereon, therein or thereunder (i) underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio antennae facilities and for other appropriate purposes, (ii) public sewers, stormwater drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes, and (iii) any similar public or quasi-public improvements and facilities.

(d) To employ the services of any person or corporation as manager together with employees, to manage, conduct and perform the business obligations and duties of the Association as may be directed by the Board and to enter into contracts for such purposes. Such manager and employees shall have the right of ingress and egress over such portion of The Properties as is reasonably necessary for the purpose of performing such business duties and obligations.

(e) Without liability to any Lot Owner or any Lot to cause its agents, independent contractors or employees, after reasonable notice, to enter upon any Lot for the purpose of enforcing any and all of the provisions of the duties, obligations, powers and authorities of the Association as reasonably required to promote and protect the general health, safety and welfare of the residents and users of the Subdivision.

(f) With the assent of the vote of two-thirds of the Members of the Association, borrow money on behalf of the

Association for capital improvements to the Common Areas and to pledge as collateral therefore the assets of the Association.

(g) To do all things and take all actions reasonably necessary to operate, maintain and otherwise manage and provide for the operation, maintenance and management of the Common Areas and to provide exterior maintenance to each Lot within the Subdivision as provided in Article V of this Declaration.

ARTICLE IV

Covenant for Maintenance Assessments

Section 1: CREATION OF LIEN AND PERSONAL OBLIGATION.

The Owner of any Lot hereby covenants and agrees, by acceptance of a deed for such Lot (whether or not it is expressly stated in such deed), to pay to the Association in a prompt and timely fashion, both annual maintenance assessments and all special assessments. Such assessments, together with interest thereon and all costs of collection, shall constitute a lien upon the title to the Lot against which the assessment is made, and shall further constitute a continuing personal obligation of the person or persons who was the Owner of such Lot at the time when the assessment fell due.

Section 2: PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the maintenance and improvement of the Subdivision and its roadways and Common Areas, for taxes, insurance and utility expenses of common amenities (including street lights), and for the provision of services to all or the majority of Lots within the Subdivision. Towards such end, the Association shall levy, assess, collect and disburse assessments for road maintenance, snow removal, Common Area landscaping and grooming, fees and costs incident to the enforcement of restrictions and collection of assessments, and all other expenditures deemed necessary by the Association to

promote and preserve the values and welfare of the Subdivision and its Owners.

Section 3: ASSESSMENT BASIS AND AMOUNT. The annual assessment shall be levied and collected on a calendar year basis by the Association. All Lots, whether improved or unimproved, shall be assessed in an equal fashion. The annual assessment for calendar year 1990 shall be \$100.00 per Lot per year. Commencing with the calendar year 1991 the annual assessment shall be established by the Board of Directors of the Association in such amounts as needed to reasonably afford those expenditures contemplated by this Declaration; provided, however, that the annual average common expense liability, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed \$100.00, as adjusted pursuant to Section 1-114 of the West Virginia Common Interest Ownership Act (§36B-1-114). It is expressly provided that the annual average common expense liability shall not include special assessments for costs for maintenance and improvements to a Lot as provided by this Declaration.

Section 4: BILLING AND PAYMENT OF ANNUAL ASSESSMENT. The Association shall mail statements for the annual assessment by December 15 of the preceding year. The annual assessment shall be due and payable as of January 1 of the calendar year for which such assessment is made. Any assessment not received in full by the Association by March 1 of each year shall be deemed delinquent and thereafter shall bear interest at the rate 12% per annum until paid.

In the event of a continuing failure or refusal of an Owner to pay such assessments, the Association shall expend such sums necessary to collect same and enforce the lien, and all such fees and expenses so incurred by the Association shall further

constitute a lien upon such Owner's Lot in addition to the unpaid assessment.

Section 5: SUBORDINATION OF LIEN TO MORTGAGES. The lien for assessments created herein shall at all time be subordinate to the lien of a bona-fide purchase-money mortgage or deed of trust.

Section 6: SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized by Section 1 hereof, the Association may levy a special assessment for the purpose of capital improvements, provided that any such special assessment shall have the assent of two-thirds of the votes of the Members of the Association. Such special assessment shall constitute an enforceable lien in the same manner as the annual assessments.

ARTICLE V

Exterior Maintenance

Section 1: EXTERIOR MAINTENANCE. In addition to maintenance upon the Common Areas, the Association may provide exterior maintenance upon each Lot and any home, residence or other improvements erected thereon which is subject to assessment under Article IV hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grounds, grass, walks, fences and other exterior improvements; provided, however, the Association shall not provide any exterior maintenance upon any Lot, home, residence or other improvements erected on any Lot without first giving the Lot Owner thirty (30) days written notice of the Association's determination that said Owner's Lot, home, residence or other improvements are in need of exterior maintenance and the particulars thereof and that if said Owner does not provide the necessary exterior maintenance within thirty (30) days of the date of

notice, that it is the Association's intention to provide the necessary exterior maintenance and to assess the cost thereof to the respective Owner.

Section 2: ASSESSMENT OF COST. The cost of such exterior maintenance shall be assessed against the Lot or any home, residence or other improvements erected thereon upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot or any home, residence or other improvements erected thereon, is subject under Article IV hereof and, as part of such annual assessment or charge, and shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article IV hereof.

Section 3: ACCESS AT REASONABLE HOURS. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any home, residence or other improvements erected thereon at reasonable hours on any day.

ARTICLE VI

Ownership and Easements

Section 1: NON-SEVERABILITY.

(a) The interest of each Owner in the use and benefit of the Common Areas shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Areas. Any conveyance of any Lot shall atomically transfer the right to use the Common Areas without the necessity of express reference in the instrument of conveyance.

(b) There shall be no judicial partition of the Common Areas. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Areas and does further agree that no action for judicial partitions shall be instituted, prosecuted or reduced to judgement.

Section 2: OWNERSHIP OF COMMON AREAS. Title to the Common Areas in each Section of the Subdivision shall be conveyed to the Association before the date of conveyance of the first Lot in that particular Section to an Owner.

Section 3: EASEMENTS. The ownership interests in the Common Areas and Lots within the development are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted shall be deemed to be established upon the recordation of this Declaration and shall hence forth be deemed to be covenants running with the land for the use and benefit of the Lot Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Subdivision. Individual grant deeds to lots may, but shall not be required to, set forth the easements specified in this Declaration.

(a) The Common Areas and Lots are subject to the easements and rights-of-way shown on the plats and plans of The Properties.

(b) Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions: (i) the right of the Board, after notice and hearing, to suspend an Owner's right

to use any recreational facilities; (ii) the right of the Association to dedicate or grant easements over all or any portion of the Common Areas.

(c) There are reserved and granted for the benefit of each Lot, as dominate tenement, over, under, across and through The Properties (including the Common Areas and each Lot) as the servient tenement, non-exclusive easements for utility services.

(d) There are reserved and granted for the benefit of each Lot, as dominant tenement over, under and across each other Lot as servient tenement, and for the benefit of the Common Areas, as dominant tenements, over, under and across each Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and Common Areas as are encroached upon, used and occupied by the dominant tenements as a result of any original construction design, accretion, erosion, addition, deterioration, decay, error in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of The Properties is partially or totally destroyed, the encroachment easements shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement or encroachment made but need not be cured by repair and restoration of the structure.

(e) There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Areas and to all other Lots, as dominant tenements, through each Lot and the

Common Areas as servient tenements, for the support, maintenance and repair of the Common Areas and all Lots.

(f) Developer shall, and hereby expressly reserves, an easement over and across the Common Areas, as servient tenement, for the purposes of reasonable ingress to and egress from, over and across The Properties, including private roads and pathways, to the residue of the real estate acquired by the Developer by Deed recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book 460 at page 199.

(g) Upon the recordation of a Supplementary Declaration of Annexation, the Lots and the Owners of Lots in the annexed section shall have all of the easements specified in this Article and the Lots and Owners of Lots in sections created prior to the annexation shall have all of the easements specified in this Article as though the annexed section was initially a part of the Subdivision.

(h) Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted or reserved by the Developer for the installation and maintenance of utilities and drainage facilities necessary for the development of The Properties.

(i) There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, including without limitation the right to enter upon Lots.

(j) There are hereby granted to the Developer and the Association, and their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as set forth in this Declaration.

Specifically, but without limiting the generality of the foregoing, there are hereby reserved and granted to Developer and the Association easements over all Lots and Common Areas within the Subdivision for the communications system, the pedestrian circulation system, utility line facilities, ingress and egress rights for the benefit of the Association in order for it to carry out its functions and duties and rights as set forth in this Declaration, and access rights in favor of all applicable governmental agencies for the maintenance, repair and enforcement of their applicable duties or obligations with respect to the Subdivision. In order to effectuate its duties and responsibilities, inclusive, the Board may enter any Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to a Owner as practicable and only after reasonable advanced written notice of not less than 24 hours, except in emergency situations.

(k) There is reserved and granted to the Owner of each Lot within the Subdivision, as dominant tenement, over and across each adjacent Lot, as servient tenement, a non-exclusive easement to enter the servient tenement upon reasonable notice to the Owner thereof and at reasonable times for the purpose of maintaining portions of the living unit located on the dominant tenement, including walls, eaves, overhangs and appurtenances thereto adjacent to the servient tenement. Entry on the servient tenement shall be at times reasonably convenient to the Owner of the servient tenement and shall be limited solely for purposes of the maintenance and repair of the living unit on the dominant tenement. Such entry and maintenance shall be undertaken in such a manner as to protect the security of the servient tenement and all improvements thereon. The Owner of the dominant tenement and

the Association shall be responsible for seeing that no damage is caused to the Owner of the servient tenement or his property by reason of the entry, and that the servient tenement is cleaned and left in the same condition following the entry as prior thereto.

ARTICLE VII

Use and Restrictions

Section 1: All Lots of the Subdivision shall be used for single-family residential purposes only, with no commercial activities being permitted thereon.

Section 2: An Owner shall be entitled to rent or lease his Lot if;

(a) There be a written rental or lease agreement specifying that (i) the tenants shall be subject to all provisions of this Declaration and (ii) failure to comply with any provision of this Declaration shall constitute a default under the agreement; and

(b) The Owner keeps in his living unit a copy of this Declaration.

Section 3: All dwellings constructed in the Subdivision shall be residential townhouses, containing a minimum of 500 sq. ft. of living space (excluding basements, porches, etc.) on the ground floor, or a total of 1,000 sq. ft. minimum living space total for a two-story townhouse.

Section 4: No buildings may be erected within 10 feet of the front or rear boundary of any Lot; provided, however, that a storage building of not more than seven feet (7') in height together with a wooden privacy fence of not less than six feet (6') or more than eight feet (8') in height may be erected within ten feet (10') of the rear boundary line of a lot if approved by the Architectural Review Committee.

Section 5: All Lots shall be served by public water and sewer, and individual wells and sewerage treatment systems shall be prohibited.

Section 6: No structures may be located or erected within the drainage/drainfield easements as shown on the recorded Subdivision plat.

Section 7: No building of a temporary nature may be placed or maintained upon any Lot except as needed during bona-fide construction and for a period not to exceed six months in any event.

Section 8: No mobile homes or trailers may be placed or maintained upon any Lot. Recreational trailers and travel vehicles and boats must be located out of view of other Lots at all times.

Section 9: No Lot may be further subdivided in any manner.

Section 10: No signs, billboards or advertising of any nature shall be erected, placed or maintained on any Lot, except address identification signs and "for sale" signs. However, this shall not be deemed to prohibit the Developer from erecting a suitable entrance (with Subdivision name sign) to the Subdivision.

Section 11: No nuisance caused or created by noise, noxious odors or otherwise shall be permitted or maintained by any Owner or tenant or guest and it shall be left to the sole discretion of the Association to determine whether or not any nuisance exists and to regulate and control such nuisance by their rules and regulations and in addition, the Association shall be vested with the sole authority and power to cause such nuisance or nuisances to be discontinued where, in its discretion, such nuisance or nuisances exists.

Section 12: The Board shall specifically have the right prohibit the maintenance of any pets which, after notice and hearing, is found to be a nuisance to other Owners.

Section 13: No Lot shall be used or maintained as a dumping ground for rubbish, and no trash, garbage, junk, junked or abandoned cars or vehicles, waste or refuse shall be allowed to exist or accumulate upon any Lot.

Section 14: No recreational or off-the-road three-wheel or four-wheel motorized vehicle shall be permitted in the Subdivision, nor shall any motorcycles be permitted in the Subdivision (unless such motorcycle is used for normal transportation purposes not of a recreational nature).

Section 15: All construction must be completed within one year of its commencement.

Section 16: No part of any Lot may be sold, leased or otherwise used as road or access right-of-way to any land outside the Subdivision, without the prior express written consent of the Developer.

Section 17: All trash or other refuse must be kept or stored in covered metal or plastic containers. Trash and other refuse must be carried away on a regular (minimum weekly) basis. Containers may be placed in the open only on scheduled pickup days.

Section 18: No Owner shall erect or cause to be erected any structure within any easement area on his Lot, nor shall any such easement be obstructed, nor shall any Owner obstruct, divert or otherwise interfere with any drainage ditch.

Section 19: Vehicles shall not be parked anywhere in the development except wholly within designated parking areas. All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat,

trailer, camper, golf cart, commercial vehicle, mobile home or other recreational vehicle or dilapidated vehicle shall be parked or stored in any parking area. No part of the Common Areas shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in any emergency. As long as applicable ordinances and laws are observed the Board may cause the removal of any vehicle which is in violation of this Declaration. The Board shall have the right to assign parking spaces to each Lot within the Subdivision.

Section 20: Except for those erected or constructed by the Developer or installed by licensed public or quasi public utility or cable franchises or whose erection or construction is approved by the Board, no outside television antennae, aerial or radio tower shall be erected, constructed or placed on any Lot.

Section 21: Each Owner shall be responsible for compliance with the provisions of this Declaration by his invitees. An Owner shall promptly pay any reimbursement assessment levied or any fine or penalty imposed upon such Owner for violations committed by his invitee.

Section 22: No clothes lines or other exterior clothes drying apparatus shall be permitted on any Lot except as approved in writing by the Architectural Review Committee.

Section 23: All Owners may alter or remodel the interiors of their living units if the Owners complies with all laws and ordinances in this Declaration regarding alterations and remodeling. Any proposals for alterations, additions or other improvements to exteriors of living units or Lots shall be made only with the permission of the Architectural Review Committee. The costs of any alteration or addition shall be paid by the Owner who has obtained the approval. Special architectural design standards may be established in the Association Rules for

any type of change in the external appearance of Lots and living units and may expressly prohibit clothes lines, basketball nets, window air conditioners, window boxes or any other alterations or additions that change in any respect the external appearance of any Lot or living unit.

Section 24: All landscaping within the development shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by the Developer and in a condition comparable to that of other first class residential subdivisions in the county. Specific restrictions on landscaping may be established by the Association Rules. Landscaping shall be maintained by each Lot Owner in a neat and orderly condition. Any weeds, diseased or dead lawn trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Lot Owners, with the approval of the Architectural Review Committee and at the Owners expense, may make reasonable landscaping changes consistent with the Association Rules and the initial tenor of the Subdivision.

Section 25: Notwithstanding anything to the contrary contained in this Declaration Developer will have the fullest latitude to develop The Properties and to sell or lease Lots, without reservation or restoration, except as imposed by applicable zoning, subdivision and other land use laws. Developer may construct, operate and maintain sales and rental offices within the Subdivision and make such use of the unsold or unleased Lots and permitted additions thereto as may facilitate the construction, improvement, subdivision, sale and leasing of The Properties including, but not limited to, the maintenance of sales and rental offices, the showing of portions of the Subdivision, and the display of signs. Developer shall have an easement over the

Subdivision for ingress, egress and parking for itself, its agents, employees and prospective purchasers of Lots and permitted additions thereto. The restrictions set forth in this Article VII shall not apply to Developer or Developer's designated successors and assigns during the development of Musselman Square.

ARTICLE VIII

Annexation

Section 1: ANNEXATION OF ADDITIONAL REAL ESTATE. All or any portion of the real estate purchased by the Developer from Inwood Center Associates, containing a total of 6.3111 acres, by deed of record in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book 460 at page 199 may, from time to time and at any time hereafter, be annexed to the scheme of this Declaration by Developer without the consent of the Association or its Members or of any mortgagee or other land holder (other than those holding mortgages or liens on the real property being annexed), by the recordation of a Supplementary Declaration as provided by Article VIII Section 2.

Section 2: METHOD OF ANNEXATION.

(a) The additions authorized by Article VIII Section 1 shall be effectuated by the recordation of a Supplementary Declaration. Such Supplementary Declaration shall be executed by the Developer or designated successor or assignee.

(b) A Supplementary Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration.

(c) A Supplementary Declaration may contain such complementary additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches to which the annexed plan or parts thereof may be subjected all of which may be significantly at variance with that of Musselman Square, Sections I and II.

(d) A Supplementary Declaration may designate a portion or all of the lands so annexed as part of the Common Areas.

ARTICLE IX

Party Walls

Section 1: GENERAL RULES OF LAW APPLY. Each wall which is built as a part of the original construction of any dwelling or other improvement constructed upon the property and placed on the dividing line between any Lot shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to the negligence or willful acts or omissions shall apply thereto. Owners of contiguous Lots who have a party wall shall both have the right to use such walls provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

Section 2: COST OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: DAMAGE OR DESTRUCTION. If a party wall is destroyed or damaged by fire or other casualty any Owner who has

used the wall may, subject to the approval of the Architectural Review Committee, restore it, and, if the other Owners thereof make use of the wall they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any Owner to call for a larger contribution from the other Owners under any rule of law regarding liability for negligence or willful acts or admissions. Notwithstanding any other provision of this Article a Owner who by his negligence or wilful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4: STRUCTURAL INTEGRITY. There shall be no impairment of the structufal integrity of any party wall without the prior written consent of all Owners having any interest therein, the first mortgagee of such Owner and the Architectural Review Committee.

ARTICLE X

Insurance Obligations of Owners

Section 1: HAZARD INSURANCE. Each Owner shall obtain and maintain in effect fire and appropriate extended insurance coverage and other appropriate damage and physical loss insurance all in an amount equal to the then current full replacement value of each living unit owned by each Owner, which insurance shall be subject to additional requirements as may be established from time to time by the Board by resolution. Such additional insurance requirements may be set forth in agreements or other undertakings which the Board or Association may enter into with or for the benefit of holders or insurers of mortgages secured by portions of the Subdivision. Evidence of all such insurance shall be furnished by each Owner to the Association.

Section 2: OBLIGATION TO REPAIR AND RESTORE.

(a) Subject only to the rights of an institutional holder of a first mortgage lien on a damaged living unit the insurance proceeds from any insurance policy covering a living unit shall be first applied to the repair, restoration and replacement of such living unit. Each Owner shall be responsible for the repair, restoration and replacement of each living unit owned by each Owner pursuant to the terms hereof. Any such repair, restoration or replacement shall (subject to advances and changes in construction techniques in materials generally used in such construction and then current generally accepted design criteria) be generally harmonious with the other living units and reconstruction must be consistent with plans approved by the Architectural Review Committee.

(b) If the proceeds of the insurance are insufficient to pay for the costs of repair, restoration or replacement of a living unit the Owners of such living unit shall be responsible for the payment of any such deficiency necessary to complete the repair, restoration or replacement.

(c) If the insurance proceeds are in excess of the amount necessary for the repair, restoration or replacement of a living unit the Owner of such living unit shall be entitled to such excess in accordance with the provisions of the applicable insurance policies subject to the terms of any mortgage covering such living unit.

Section 3: ASSOCIATION RIGHTS. If the Owner fails to pay the insurance required in this Article or fails to pay the premiums therefor when and as required or fails to otherwise perform the obligations of an Owner under this Article the Association may (but shall not be obligated to) obtain such insurance, make such payments for any such Owner and perform such

obligations, and add the cost of such payments or performance, as a special assessment, to the general assessment of such Owner.

Section 4: ADDITIONAL INSURANCE. Each Owner may obtain additional insurance at his own expense, provided, however, that (i) such policy or policies shall be governed and written in accordance with such reasonable rules and regulations as may from time to time be established by the Board or Association and (ii) no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on any part of the development at any time.

ARTICLE XI

Architectural Review

Section 1: PURPOSE. The Board shall establish a Architectural Review Committee consisting of three members appointed by the Board in order to assure that all properties shall be maintained in a manner; (i) providing for visual harmony and soundness of repair, (ii) avoiding an activity deleterious to the aesthetic or property values of the Subdivision, and (iii) promoting the general welfare and safety of all Owners, guests, employees, agents and invitees.

Section 2: JURISDICTION. The Architectural Review Committee shall have exclusive jurisdiction over additions or alterations (which terms are used collectively herein to include all matters which are subject to architectural review pursuant to the terms of this Declaration) made on or to Lots or living units and the Common Areas subject to the supervision and control of the Association.

Section 3: STANDARDS AND PROCEDURES. The Architectural Review Committee shall promulgate standards and procedures

governing its areas of responsibility and practice consistent with this Declaration and the other development documents. All applications shall be in writing and in the event the Architectural Review Committee fails to approve or to disapprove such application or to request additional information reasonably required within 45 days after the date of submission of the application the application shall be deemed approved.

Section 4: NO WAIVER OF FUTURE APPROVALS. The approval of the Architectural Review Committee of any proposals, plans, specifications, drawings or applications for any alterations or additions that an Owner proposes or in connection with any other matter requiring the approval and consent of such committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval consent.

Section 5: LIABILITY. If the Architectural Review Committee members have acted in good faith on the basis of such information possessed by them neither the Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed due to:

(a) The approval or disapproval of any plans, drawing, specifications, whether or not effective;

(b) The construction or performance of any work whether or not pursuant to approve plans, drawings and specifications; or

(c) The development of any property within the Subdivision.

ARTICLE XII

General Provisions

Section 1: TERM. The easement, covenants, rights, conditions, affirmative obligations and restrictions of The Properties shall inure to the benefit of and be enforceable by the Association, the Developer or any Owner, their respective legal representatives, heirs, successors and assigns, subject, however, to this Declaration, for a period of 25 years from the date hereof, after which time said Declaration shall be automatically extended for successive periods of 10 years, unless within three years prior of the expiration date of any renewal period thereafter there shall be recorded an instrument directing the termination of this Declaration signed by not less than two-thirds of all Members of the Association.

Section 2: AMENDMENTS AND TERMINATION.

(a) This Declaration may be amended pursuant to the written consent of all of the following: (i) Owners representing not less than 75% of the total Association voting power of all Owners, and (ii) mortgagees or lien holders holding first mortgage liens on Lots and living units within the Subdivision representing not less than 70% of the total mortgagees and lien holders holding such first liens; provided, however, no amendment shall be made without Developer's written consent on or before January 1, 2000.

(b) Any such amendment shall become effective immediately upon proper recordation in the office of the Clerk of the County Commission of Berkeley County, West Virginia of a document complying with the requirements of this Article XII and any other attempt to amend the provisions of this Declaration shall be null and void and of not effect.

Section 3: REMEDIES. The Association, Developer or any Owner shall have the right to enforce, by any proceeding at law or in equity, the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. The expense of enforcement of the Association shall be chargeable to the Owner of the Lot or living unit violating the provisions hereof and shall constitute a lien on the Lot or living unit collectible in the same manner as general assessments under this Declaration.

Section 4: VIOLATION AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and a violation of this Declaration and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Developer, the Association or any Owner and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 5: VIOLATION OF LAW. Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership occupation or use of any of property within the development other than by Developer, is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein and in this Declaration.

Section 6: REMEDIES. Each remedy set forth in this Declaration shall be in addition to all other remedies, whether available at law or in equity or otherwise, and all such remedies whether or not set forth in this Declaration shall be cumulative and not exclusive.

Section 7: DELIVERY OF NOTICE AND DOCUMENTS. Unless otherwise provided by the by-laws any written notice or other documents addressed to the Board, Architectural Review Committee,

Developer or any Owner may be delivered either personally or by mail to the last known address of the party to be served. Each Owner shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

Section 8: NON WAIVER. The failure of the Developer, the Association or any Owner, or their respective legal representatives, their successors or assigns, to enforce any covenant, easement, condition, charge or restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 9: SEVERABILITY. All of the covenants, conditions, restrictions and reservations contained in this Declaration are hereby declared to be severable and the finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity of enforceability of any of the covenants, conditions, restrictions, reservations or clauses or phrases thereof.

Section 10: SPECIAL AMENDMENTS. Notwithstanding anything contained herein to the contrary the Developer, by its own action, shall have the right to amend this Declaration during a one year period commencing on the date of recordation of this Declaration solely in order to comply with the rules or requirements of any governmental or quasi-governmental body or any institution holding or insuring a security interest in any portion of the development.

WITNESS the following signature and seal:

THOMAS G. SPRADLIN, INC.,
a Virginia corporation

By: Thomas G. Spradlin
Its President

STATE OF VIRGINIA,
CITY
COUNTY OF ALEXANDRIA, to-wit:

The foregoing instrument was acknowledged before me this
2ND day of OCTOBER, 1990, by THOMAS G. SPRADLIN,
of Thomas G. Spradlin, Inc., a Virginia corporation, on behalf of
said corporation.

John E. Spradlin
Notary Public

My Commission Expires: SEPTEMBER 30, 1994

THIS INSTRUMENT WAS PREPARED BY:

Hoy G. Shingleton, Jr.
BOWLES RICE McDAVID GRAFF & LOVE
Post Office Drawer 1419
Martinsburg, West Virginia 25401

2350165DOC.90