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Declaration of Covenants, Conditions,  
& Restrictions

for

Riverside Villages Subdivision  
(formerly called the Marlowe Towne Center Subdivision  
and  
the Villages of Riverside Subdivision)

DECLARANT: MARLOWE TOWNE CENTER, LLC  
(Owner of Riverside Villages)

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

RIVERSIDE VILLAGES

THIS DECLARATION, made this 23<sup>rd</sup> day of January, 2007, by MARLOWE TOWNE CENTER, LLC. a Maryland limited liability company, hereinafter called Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article I of this Declaration and is desirous of subjecting the real property described in said Article I to the restrictions, covenants, reservations, easements, liens, assessments, and the charges hereinafter set forth, each and all of which is and are for the benefit of said property and for each Owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors and interests in any Owner thereof, and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community; for the maintenance of the roads, streets, street lights, and other common amenities and for the provision for and the maintenance of common services including, but not limited to, snow removal, road repair, garbage removal, creation of an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated, or will incorporate, under the laws of the State of West Virginia, as a non-stock, non-profit corporation, RIVERSIDE VILLAGES HOMEOWNER'S ASSOCIATION, INC. for the purpose of exercising the functions aforesaid; and

WHEREAS, this Declaration is intended to create a common interest community as defined in the West Virginia Uniform Common Interest Ownership Act, Chapter 36B of the West Virginia Code (the Act), et seq., but which community shall not be subject to the Act pursuant to Chapter 36B, Article 1, Section 203(2) of the Act, except Sections 105, 106, 107, and 114 of Article 1 of the Act.

WHEREAS, this Declaration is a re-recording of an earlier Declaration recorded on December 13<sup>th</sup>, 2006 in Record Book 0085, Page 00642, Transaction No. 2006045663 and is intended only to change the name of the development from the Villages of Riverside to Riverside Villages.

NOW THEREFORE, the Declarant declares that the real property described in Article I, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, assessments, and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

Article I

Property Subject to this Declaration

The real property which is and shall be held and shall be conveyed, transferred, and sold subject to the conditions, restrictions, covenants, reservations, easements, liens, assessments, and charges with respect to the various portions thereof set forth in the various articles and subdivisions of this Declaration is located in the District of Falling Waters, County of Berkeley, State of West Virginia, and is more particularly described as follows, to-wit:

Lots 1-24, 43-54, 101-126, and 201-226 as shown on that Final Plat of Villages of Riverside Subdivision prepared by Catocin Mt. Surveys, Inc., dated 10-6-2006 and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Plat Cabinet 12 at Slide 165.

All of which said real estate shall hereinafter be referred to as "Existing Property."



THE DECLARANT MAY, FROM TIME TO TIME, AS HEREINAFTER SET FORTH, SUBJECT ADDITIONAL REAL PROPERTY TO THE CONDITIONS, RESTRICTIONS, COVENANTS, RESERVATIONS, LIENS, ASSESSMENTS, AND CHARGES HEREIN SET FORTH BY APPROPRIATE REFERENCE HERETO.

Article II  
Additions to the Property  
Subject to this Declaration

Section 1. Annexation With Consent. Additional property and common property may be annexed to the Properties subject to this Declaration with the consent of a majority of the Members.

Section 2. Effecting Annexation. The additions authorized under this Article shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration (amended as herein permitted) to such property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. If annexation occurs during the Class "B" Control Period, annexation may be achieved by the Declarant signing the Supplemental Declaration which shall then be recorded in the aforesaid Clerk's office and no further approval by the Members or the Association shall be required. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 3 and to ascertain the presence of a quorum at such meeting. Such Supplementary Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties, and as hereinafter permitted, such Supplementary Declaration shall not revoke, modify, or add to the covenants established by this Declaration within the Existing Property.

Section 3. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights, and obligations of the association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the existing Property except as hereinafter provided.

Section 4. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Article I which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Article I hereof.

Section 6. 1. Development Rights. The Declarant, by way of explanation and not limitation, reserves fully, completely, and to the maximum the following Development Rights:

- (a) The right by amendment to add real estate to the Properties. The real estate to which this development right applies is set forth in Article I.
- (b) The right by amendment to create Lots and Common Area within the Properties.
- (c) The right by amendment to subdivide and combine Lots or convert Lots into Common Area.
- (d) The right by amendment to withdraw real estate from the Properties.
- (e) The right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities

across the Properties for the purpose of furnishing utility and other services to all Lots. The Declarant also reserves the right to withdraw and grant easements to public and private utility companies and to convey improvements within those easements anywhere in the Properties not occupied by buildings.

Section 6.2. Limitations on Development Rights.

- (a) The development Rights reserved in this Article must be exercised within fifteen (15) years after the recording of the initial Declaration.
- (b) All Lots and Common Area created pursuant to the Development Rights will be as more fully set forth and defined in Article X restricted to residential use.
- (c) The quality of construction of any Residences to be created on the Property shall be consistent with the quality of the Residences erected in the initial phase of the Properties. Styles of Architecture and Design may change but shall always be consistent with the Community Standard.
- (d) There are no limitations on the styles, size, location, design, heights, and quality of construction of Residences. Declarant shall approve all such plans and specifications to ensure that they will be within the Community Standard.

Section 6.3. Phasing of Development Rights. Any of the Development Rights set forth in Section 6.1. above may be exercised with respect to different parcels of real estate within the Properties at different times, and at different locations. However, no assurances are made by the Declarant as to when, where, or the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within Riverside Villages Subdivision.

Section 6.4. Special Declarant Rights. The Declarant, or its permittee, fully and completely reserves the following Special Declarant Rights anywhere within the Properties:

- (a) To complete any and all improvements (including by way of explanation and not limited to streets, roads, storm water management, utilities, and single family homes as indicated on Plats and Plans filed with the Declaration), any Supplemental Declaration, or improvement reasonably anticipated and implied from the nature of the development;
- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, construction offices, signs advertising the Properties and Villages of Riverside Subdivision and models;
- (d) To use easements through the Common Area for the purpose of making improvements within the Properties or within real estate which may be added to the Properties.
- (e) To appoint or remove an officer of the Association or a Board member during the period of Class "B" Control Period.

The real estate to which the Special Declarant Rights specified in Sections (a) through (e) above apply is described in Article I.

Section 6.5. Models, Including Model Homes and Homesites, Sales Offices and Construction Offices. As long as the Declarant is developing the land described in Article I, the Declarant and its duly authorized agents, representatives and employees may maintain any Lot owned by the Declarant or any portion of the Common Area as a model Residence or sales office or construction office.

Section 6.6. Construction: Declarant's Easement. The Declarant reserves the right to perform initial building and construction work, warranty work, repairs and construction work, and to store materials in secure

areas, in Residences and in Common Area, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the board. The Declarant has such an easement through the Common Area as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development Rights or Special Declarant Rights, whether or not specifically reserved in this Declaration such easement including the right to convey utility and drainage easements to public utilities, municipalities, counties, and the State, to fulfill the plan of development.

Section 6.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Area to promote sales of Residences, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Owners.

Section 6.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, construction, and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the Properties promptly after the sale of the last Residence or Lot permitted under the Declaration any and all goods and improvements used in development, marketing, construction and maintenance, whether or not they have become fixtures.

Section 6.9. Declarant Control of the Association. There shall be a period of Declarant control of the Association as more fully set forth and defined in this Declaration and the By-Laws, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board and have all other such rights of control as are set forth in this Declaration and the By-Laws.

Section 6.10. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right specified in Section 6.4, 6.5, 6.6, 6.7, and 6.8 may be exercised by the Declarant until the earlier of the following: So long as the Declarant (i) is obligated under any warranty or obligation, (ii) holds a Development Right to create additional Lots or Common Area, (iii) owns any Lot or Residence; or (iv) owns any Security Interest in any Lot or Residence; or (v) for fifteen (15) years after recording this Declaration, whichever is earliest.

Section 6.11. Interference with Development Rights or Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Development Rights or Special Declarant Right without the prior written consent of the Declarant.

### Article III Definitions

Section 1. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Villages of Riverside Homeowners Association, Inc., as filed with the Secretary of State of West Virginia.

Section 2. "Association" shall mean and refer to Villages of Riverside Homeowners Association, Inc., a West Virginia corporation, its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under West Virginia Corporate Law.

Section 3. "Base Assessment" shall mean and refer to assessments levied against all Lots or Residences in the Properties to fund Common Expenses.

Section 4. "By-Laws" shall mean and refer to the By-laws of Villages of Riverside Homeowners Association, Inc., attached hereto as Exhibit B and incorporated herein by reference, as they may be amended from time to time.

Section 5. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article IIIA, Section 2, of the By-Laws.

Section 6. "Common Area" shall be an inclusive term referring 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 as reflected on the plat or plats of the Properties subject to this Declaration, including but not limited to the roads, parks, access rights of way, utility easements, storm water management facilities and the areas surrounding the same as delineated on the plat or plats, or set forth herein.

Section 7. "Common Expense" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, the Articles of Incorporation or the Rules of the Association. Common Expense shall mean fines and penalties permitted and levied against Owners, Lots and Residences for violation of this Declaration, the By-Laws and the Rules and Regulations of the Association.

Section 8. "Community Standard" shall mean the standard of construction quality and design, conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 9. "Concept Plan" shall mean and refer to the Concept Plan for the development of the property described in the final plat prepared by Catoctin Mt. Surveys, dated \_\_\_\_\_, as it may be amended from time to time, a copy of which is annexed hereto as Exhibit A.

Section 10. "Declarant" shall mean and refer to Marlowe Towne Center LLC, a Maryland limited liability company, or any other person or entity that Marlowe Towne Center LLC, in writing, may so designate; recording of such designation shall not be required in order for such designation to be effective.

Section 11. "Dwelling" shall mean any building constructed upon a Lot which is intended for use as a single family residence.

Section 12. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas as heretofore defined.

Section 13. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 14. "Mortgage" shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 15. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 16. "Mortgager" shall mean and refer to any Person who gives a Mortgage.

Section 17. "Owner" shall mean and refer to one or more Persons who hold the record title to any Lot or Residence which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation until such person has acquired title pursuant to foreclosure on any proceeding in lieu of foreclosure.

Section 18. "Parcel Developer" means any developer who purchases land within the Properties (as defined in this Article III) for the purpose of development and sale.

Section 19. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 20. "Properties" shall mean and refer to the real property described in Article I, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 21. "Residence" shall mean and refer to both the Lot and Dwelling situated upon the Properties.

Section 22. "Special Assessment" shall mean and refer to assessments levied in accordance with Article IX, Section 4, of this Declaration.

Section 23. "Supplemental Declaration" shall mean any amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Article IV  
Property Rights  
in the Common Properties

Section 1. Owner's Easements of Enjoyment. SUBJECT TO THE PROVISIONS OF SECTIONS 3, 4, AND 5 OF THIS ARTICLE IV, every Owner shall have a right and easement of enjoyment in and to the Common Area and such easements shall be appurtenant to and shall pass with the title to every Lot, subject to this Declaration as it may be amended from time to time and subject to any restrictions or limitations contained in any deed conveying such property to the family, tenants, members and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Residence shall be deemed to have delegated all such rights to the Owner's lessee.

Section 2. Title to Common Area. The Declarant shall convey the legal title to the Common Area to the Association following the date of conveyance of the last Lot in the Existing Property and any additions thereto, which conveyance of Common Area shall be free and clear of all liens and encumbrances. The Declarant reserves the full and complete right to complete any improvements required for final plat approval of the Existing property and additions thereto, and the conveyance of the Common Area to the Association shall be subject to the rights, easements and rights-of-way herein reserved to the Declarant. Declarant by execution of this Declaration hereby dedicates the Common Area to the Association for the common use and enjoyment of the Owners as reflected upon the plat or plats of the Properties subjected to the right to alter such plats as provided herein.

Section 3. Extent of Owner's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Declarant and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, and in aid thereof to mortgage said Common Area. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such Common Area, to charge use and other fees as a condition to continued enjoyment by the Owners and, if necessary, to open the enjoyment of such Common Area to a wider public until the mortgage debt is satisfied whereupon possession of such Common Area shall be returned to the Association and all rights of the Owners hereunder shall be fully restored.
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described Common Area against foreclosures; and
- (c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Owner for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for an infraction of its published Rules and Regulations; and
- (d) The right of the Association to charge reasonable assessment and fees for the use, maintenance, upkeep, and capital improvement of the Common Area, and for providing community services; and
- (e) The right of the association to make, establish, promulgate, amend and repeal rules and regulations concerning the use and occupancy of the Common Area by the Owners or their guests and the provision of community services, and to enforce compliance therewith, including the levying of fines; and
- (f) The right of the Declarant and the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer, determination as to purpose, or as to condition thereof, shall be effective unless authorized by a majority of each class of the members who are voting in person or proxy at a meeting duly called

for this purpose written notice of which shall be mailed to all members at least thirty (30) days in advance.

- (e) The right of any duly constituted public authority and body in the State of West Virginia to condemn, take, and maintain as public roads the streets and ways within the Property without any requirement or necessity of paying any property or Lot Owner for the land taken lying within the streets and ways within the Property so long as all Owners shall have full access to and the right to use said streets and ways.

Section 4. Parking and Highway Rights. Owner's easements in the roads and streets shall be subject to a reservation, exception and proviso that, the Declarant, and its successors and assigns, shall have the right to use all streets, roads and highways within Riverside Villages Subdivision for the purposes of ingress to and egress from all the Declarant's property presently owned or hereafter acquired adjacent to or surrounding Riverside Villages Subdivision which said properties may or may not be added to the Property which is subject to this Declaration and described in Article I, the Declarant and its successors and assigns, specifically hereby reserving and excepting unto themselves, their successors and assigns, a right of way or easement over all the streets, road and highways within Riverside Villages Subdivision between said adjacent or surrounding property as aforesaid and any and all public highways presently or hereafter running along or through such adjacent or surrounding property, and said reservation, exception, right of way or easement retained by the Declarant, its successors and assigns, shall be exercised and shall be in effect, even though said adjacent or surrounding properties of the Declarant shall not be made subject to this Declaration. In the event the Declarant does not add or subject the said adjacent or surrounding properties to this Declaration, then and in that event, the Association shall have the right to charge and assess the Declarant or its successors and assigns; as the case may be, whichever or both is using said streets and roads, its successors or assigns, who shall be liable for and shall pay a reasonable, common, non-profit road maintenance assessment for the use of such roads which said charge shall be based not only on the Association's reasonable cost of maintaining said roads but also on the Declarant's and its successors and assigns amount of usage of said roads. Should the Declarant, its successors or assigns abandon or release said reservations, then any road assessment allowed by this paragraph shall cease and terminate. The Owner's easements in the roads and streets and Association's rights and authority to grant the right and use of the roads and streets in the Property to any other person, firm corporation or other type of entity other than the Owner of a Lot in the Property, including but not being limited to the Owner of any property adjacent to the Property, shall be SUBJECT TO A RESERVATION, EXCEPTION AND PROVISIO THAT IS SPECIFICALLY RESERVED AND EXCEPTED UNTO THE DECLARANT THAT, the Association shall not have the right or authority to grant the right or use of the roads and streets in the Property unto any person, firm, corporation, or other type of entity without the express written permission of the Declarant.

Section 5. General Public Use. Common Area is not and shall not be dedicated for use by the general public, but will be dedicated and subject to the reservations and exceptions herein provided for, to the common use and enjoyment of the Owners in Riverside Villages Subdivision, and except for such reservations and exceptions, the roads or rights-of-way which comprise a part of the Common Area will not be dedicated to the use of or used for ingress to or egress from any lands or real estate which is not subject to this Declaration or a Supplemental Declaration.

Section 6. Delegation of Rights. Any Owner may delegate, in accordance with the Association By-Laws, his or her right of enjoyment to the Common Area to the members of his or her family, his or her tenants, or contract purchasers who reside on the property.

Section 7. Right to Amend. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to Article II hereof, without prior notice and without the consent of an Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Riverside Villages Subdivision desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Riverside Villages Subdivision.

Article V  
Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article III, shall be deemed to have a membership in the Association. NO Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

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

- (a) Class "A". Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section I hereof; and there shall be only one (1) vote per Lot. IN any situation where more than one (1) person holds the interest in such Lot, all such persons shall be members and the vote for such Lot shall be exercised as those persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting, but in no event shall more than one (1) vote be cast with respect to any such Lot. In the absence of such advice to the Secretary of the Association, the Lot's vote shall be suspended if more than one (1) person seeks to exercise it.
- (b) Class "B". The Class B Members shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each lot in which it holds the interest required for membership under Section 1 hereof, provided that the Class B membership shall terminate and become converted to Class A Membership upon the occurrence of any of the following events, whichever occurs earlier:
  - (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
  - (ii) when, in its discretion, the Declarant so determines.

From and after the occurrence of the first to occur of these events, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof. As additions are made to the Properties as provided in Article II, the Declarant shall retain and have Class B voting rights for all new Lots added to the Properties.

Article VI  
Utility and Drainage  
Easement Reservation

The Declarant reserves unto the Declarant and/or unto the Association, their successors, and/or assigns, the right to erect, install and maintain telephone, and electric light and cable T.V. poles, conduits, equipment, and sewer, gas, water lines, storm water management and drainage ditches, and similar utility structures, or to grant easement or rights-of-way therefore, with the right of ingress to and egress for the purpose of erection, installation or maintenance on, over, or under a strip of land ten (10) feet wide at any point along the front lines of each Lot within the Properties and a strip of land ten (10) feet wide at any point along the side and rear lines of each Lot within the Properties.

This easement shall be in excess of any street or road right-of-way and the ten (10) feet wide strip shall be measured from the edge of any road right-of-way line. In addition thereto easements for storm water management and drainage facilities, utility easements and flood plain easements as shown on the recorded plat are reserved unto the grantor and/or the Association and/or their successors or assigns. Within all reserved easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of or the flow of drainage channels in easements or which may obstruct or retard the flow of water through drainage channels in easements. The easement area of each Lot and any improvement in it shall be maintained continuously by the Owner of the Lot, except those improvements for which the Association, a public authority, or utility company is responsible. To the extent

reasonably possible utilities should be placed in the streets within the subdivision.

Article VII  
Architectural Control

Section 1. General. For the purposes of further insuring the development of the lands which are subjected to this Declaration, or amendments or additions thereto, as an area of high standards, the Declarant reserves the power to control the buildings, structures and other improvements placed on all Lots, as well as to make such reasonable exceptions to the standards set forth in this Declaration with reference to set-backs and square footage sizes for buildings set forth in this Declaration of Conditions, Covenants, Restrictions and Easements, as the Declarant shall deem reasonably necessary and proper to avoid hardship due to the size, shape or topography of a particular Lot.

Section 2. Applicability of Architectural Review for New Construction. All plans and specifications for the construction of any Dwelling upon a Lot shall be subject to sole and absolute approval of the Declarant.

Section 3. Applicability of Architectural Review for Alterations or Additions of Residences. **ANY OWNER WHO WISHES TO MAKE ANY ALTERATION OR ADDITION WHICH WILL AFFECT THE EXTERIOR OF HIS LOT OR RESIDENCE IS REQUIRED TO OBTAIN THE APPROVAL OF THE DECLARANT PURSUANT TO THIS ARTICLE PRIOR TO MAKING ANY SUCH ALTERATION OR ADDITION.** No house, building, wall, fence, or other structure of any type or nature shall be placed upon such Lots unless and until the plans and specifications therefore and the plat plan have been approved in writing by the Declarant. Each such house, building, wall, fence, or other structure of any type or nature shall be placed on the premises only in accordance with the plans and specifications and plat plans so approved. Refusal or approval of plat plans and specifications by Declarant may be based upon any ground, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the Declarant shall seem sufficient. If Declarant shall fail to approve or disapprove of the plans and specifications within thirty (30) days after written request therefore, then such approval shall be deemed granted, provided, however, that no house, building, wall, fence, or other structure of any type or nature shall be erected which violates any of the covenants herein contained. Any owner who makes an alteration or addition without the prior approval of the Declarant shall be deemed to be in violation of this Declaration. Nothing in this Article shall be deemed to relieve any owner from obtaining all necessary consents and permits and otherwise complying with all applicable State and local laws and ordinances.

Section 4. Formation of Architectural Review Committee. The Declarant reserves the absolute right to dedicate the authorities and responsibilities herein to the Association, and in the event of such dedication, the Association shall form an Architectural Review Board ("Board"). In such case, all architectural review shall be performed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee, the "Architectural Review Committee", to perform the architectural review functions, there shall be no less than three (3) members and no more than seven (7) members, all of whom must be Owners. The terms of office shall be as designated by the Board.

Section 5. Duties. The Board shall consider and act upon all proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may impose architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provision of this Declaration and the Community Standard by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the architectural Standards shall not be in derogation of the minimum standards established by this Declaration, and the Community Standard. The Architectural Standards shall be accepted as Rules when adopted in accordance with the provisions of the By-Laws.

Section 6. Application for Approval of Improvements. Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board.

Section 7. Basis for Approval of Improvements. The Board may approve the proposals only if the Board finds that (i) the plans and specifications conform to this Declaration, the Community Standard and to the



Architectural Standards in effect at the time the proposal was submitted; (ii) the proposed alteration or addition will be consistent with the standards of the Properties, the Community Standard, the provisions of this Declaration, and the Architectural Standards as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures, environment location with respect to topography and finished grade elevations; and (iii) the proposed alteration or improvement is in conformance with conditions imposed by any municipal or county ordinance having jurisdiction.

Section 8. Form of Approval and Denials. All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within thirty (30) days from the date of submission shall be deemed approved.

Section 9. Liability. If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawing, and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawing, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Section 10. Non-Applicability to Declarant. The provisions of this Article shall not apply to the Declarant.

#### Article VIII Health Club and Community Center Membership

Section 1. General. Each Unit Owner and their family (consisting of spouse, children and parents) shall be entitled to membership in any Villages of Riverside or Riverside South Community Center which may be added through or as part of Riverside Villages Subdivision or the Riverside South Subdivision. Such Membership is mandatory and each Unit Owner will be assessed for such membership. Such Assessment will be made regardless of whether or not the Unit Owner avails himself or herself of any membership benefits. Such membership will expire at such time as the Unit Owner ceases to be a Unit Owner within Riverside Villages Subdivision. The membership is non-assignable and non-transferrable. Nothing in this paragraph shall be deemed to require the Developer or his successor or assigns to create, construct, or develop a health club or community center.

#### Article IX Lawn and Sidewalk Maintenance in Townhouse Sections

Section 1. General. For the purposes of further insuring that the community is kept orderly and well-maintained, and for the purpose of simplicity, the Association shall bid out the lawn mowing and sidewalk snow clearing of all townhouse lawns and sidewalks every two years to a minimum of three professional lawn mowing and snow removal companies. The Association shall award the bid to the lowest bidding company unless there are reasons to believe that the lowest bidding company would be unable to perform adequately. The price of the lawn mowing and snow removal shall be divided equally between the townhouse units and billed to each unit on a bimonthly basis. Townhouse unit owners may elect to provide for their own mowing and lawn care by submitting a written notice ("Self-Mowing Notice") to the Association expressing their intent to assume that responsibility for their townhouse unit. At such time as the company with which the Association contracts to perform the mowing and snow removal for the townhouses releases the Association of the obligation to pay for the mowing and snow removal of the townhouse unit submitting a Self-Mowing Notice, said townhouse unit shall be released from the responsibility of paying the bi-monthly fee for the remainder of the period for which the townhouse owner agrees to assume that responsibility. The Association may, in its sole discretion, discontinue the mowing and snow removal responsibility upon three (3) months written notice to all townhouse unit owners.

#### Article X Maintenance

Section I. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but needs not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Area, including, but not limited to, drainage systems, open space, utilities, traffic control devices, parking areas where provided, all private streets within the

Properties, and such portions of any additional property included within the Common Area as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Common Area shall be a Common Expense to be allocated among all Lots and Residences as part of the Base Assessment.

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

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

Each Owner will reimburse the Association for any damages to the Common Area caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her Residence. The Association will be responsible for damage to Residences caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Area. If such expense is caused by misconduct, it will be assessed following notice and a hearing. In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Owner for any damages caused to the Residence in gaining entrance or in otherwise responding to the emergency. The Owner shall be responsible for making all repairs to the Residence which resulted from the emergency and shall hold the Association harmless from any damages resulting therefrom.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Residence and all structures, parking areas and other improvements comprising the Residence in a manner consistent with the Community Standard and all applicable covenants. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Owner thereof in accordance with this Declaration; except when entry is required due to an emergency situation. The Association shall not provide any exterior maintenance upon any Lot, home, residence, or other improvements erected on any Lot without first giving the Owner thirty (30) days written notice of the Association's determination that said Lot Owners's Lot, home, residence or other improvements are in need of exterior maintenance, in such cases the Association may provide the necessary exterior maintenance and the cost thereof to the respective Lot Owner.

#### Lots 1 - 8 SPECIAL NOTICE

LOTS 1 - 8 ARE SERVICED BY A PRESSURIZED SEWER LINE WHICH REQUIRES A PRESSURIZED LATERAL LINE AND GRINDER PUMP, BOTH OF WHICH ARE LOCATED ON EACH LOT. OWNERS OF LOTS 1 - 8 SHALL BE RESPONSIBLE FOR THE MAINTENANCE AND REPLACEMENT OF THESE DEVICES.

#### Article XI

##### Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, except as hereinafter provided in Section 10, for each Lot owned by it within The Properties, hereby covenants and each Owner of any Lot, by acceptance of a deed or other conveyance, is deemed to covenant and agree to pay such assessments as are fixed, established, and collected by the Association from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided and reasonable attorney's fees, shall also be the personal obligation of the

person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them; however, recorded liens shall remain against the Lot if not paid at the time of conveyance.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Base Assessments: Until the year beginning January, 2007, the Base Assessment shall be Three Hundred Dollars (\$300.00) per Lot or Residence. From and after January 1, 2007, the Base Assessments may be increased by vote of the Board of Directors of the Association. The Board shall at least annually review current maintenance costs, and replacement costs including property, general liability and directors and officers liability, if any, and the future needs of the Association and based on said review may increase or decrease the assessments. PROVIDED, HOWEVER, that the annual average Common Expense of each, Lot or Residence, inclusive of special assessments, and exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed \$300.00 as adjusted pursuant to Section 114, of Article 1 of Chapter 36B of the West Virginia Code, to-wit: Adjustment of dollars amounts under the West Virginia Uniform Common Interest Ownership Act.

Section 4. Special Assessments for Capital Improvements: In addition to the Base Assessments authorized by Sections 1 and 3 hereof, the Association may levy in any assessment year a special assessment, applicable to not more than 8 years, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto: PROVIDED THAT any such assessment shall have the assent of 60% of the Association Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting; AND FURTHER, PROVIDED, that the annual average common expense liability of each Lot or Residence, inclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed \$300.00 as adjusted pursuant to Section 114, of Article 1 of Chapter 36B of the West Virginia Code, to-wit: Adjustment of dollars amounts under the West Virginia Uniform Common Interest Ownership Act.

Section 5. Quorum for Any Action Authorized Under Section 4. The quorum required for any action authorized by Section 4 hereof shall be as follows:

At the first meeting called, as provided in Section 4 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4, and the required quorum of any subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Base Assessments. The Base Assessments provided for herein shall commence on the date of this Declaration. They shall be due and owing at the time that a Lot or Residence is transferred from Declarant to any other person.

The first Base Assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of January of said year.

The amount of the Base Assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in section 3 hereof as the remaining number of days in that year bear to the number of days in the year. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The date of any special assessment under Section 4 hereof shall be fixed in the resolutions authorizing such assessment.

Section 7. Duties of the Board of Directors. The board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Residence for each assessment period at least thirty (30) days in advance of such date or period and shall at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessment. If the assessments are not paid on the date when due (being the dates specified in Section 6 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owners, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum rate permitted by law or, in the absence of any legal limit at the rate of 15% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on assessment as above provided and a reasonable attorney's fee if permitted by law to be fixed by the court together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein.

CLASS A EXEMPT PROPERTIES:

- (a) All Properties to the extent of any easement or other interests therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Properties as defined in Article III hereof;
- (c) All Properties exempt from taxation by the Laws of the State of West Virginia upon the terms and to the extent of such legal exemption.

CLASS B EXEMPT PROPERTIES:

- (a) All unimproved Lots owned by the Declarant within the area covered by this Declaration; provided, that the Class B exemption shall cease as to any individual Lot or Lots owned by the Declarant upon the date that the Declarant shall remove any such Lot or Lots from its inventory of sales Lots and converts the same to purposes other than a Lot for sale within the subdivision, exclusive of and not including the execution of a Sales Contract by the Declarant on said Lot or Lots for a proposed sale of said Lot or Lots, and cease and terminate as to all the remaining Lots owned by the Declarant on September 30, 2021.

- (b) As the Declarant is to be exempt from assessments as hereinbefore provided for, the Declarant does hereby covenant and agree that until such time as its exemption terminates as hereinbefore provided for, the Declarant shall be and remain responsible for the reasonable maintenance, operation and repair of the undedicated portion of the Common Area upon, and subject to the proviso that such funds and assessments as are collected by the Association while the Declarant is responsible for said maintenance and repair, shall be used and provided to the Declarant to aid and defray the Declarant's cost in maintaining and repairing the common area and facilities. From and after the termination of the Declarant's exemption, the Declarant shall have no responsibility for the maintenance and repair of the Common Area in the subdivision except as a member of the Association.

Section 11. Common Expense Liability. As used in this Section 9 hereof, Common Expense Liability is not intended to include and shall not include fines and penalties permitted and levied against Owners and Lots for violations of this Declaration, the By-Laws and the Rules and Regulations of the Association; Assessments permitted and levied against Owners and Lots for failure to maintain their Lots as required by this Declaration, the By-Laws and Rules and Regulations of the Association; Assessments permitted and levied against Owners and Lots due to an Owner's willful or negligent damage to the common Area or other Lots as permitted by this Declaration, the By-Laws and Rules and Regulations of the Association, and other similar Assessments permitted and levied against Owners and Lots pursuant to this Declaration, the By-Laws, and the Rules and Regulations of the Association other than the normal annual Base Assessments, Special Assessments levied by appropriate affirmative vote, and normal annual Capital Budget and Contributions permitted by this Declaration.

Article XII  
Restrictions on Use, Alienation and Occupancy

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

- (a) Primary Residential Use. Except as permitted by article X, Section (1)(b), all Residences shall be used for residential purposes only.
- (b) Business Use in Residential Units. No trade or business may be conducted in or from any Residence, except that an Owner or occupant residing in a Residence may conduct business activities within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the properties, as may be determined in the sole discretion of the Board.

Neither this restriction nor any other restriction contained in this Declaration of Covenants and Restrictions shall be construed to prohibit the Declarant or any other owner or builder, for either use as their personal residence or for purposes of profit and sale, from erecting, constructing and building any structure permitted by these restrictions, on any Lot in the subdivision, nor prohibit the Declarant from erecting, constructing, or building any streets or other common amenities within the subdivision. In addition, the Declarant specifically reserves the right to and shall be permitted to operate subdivision development and sales offices out of a model home which may be located on one or more Lots within the subdivision.

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

- (a) SUBDIVISION OF LOTS.

No Lots shall be divided, subdivided or partitioned in any way by sale, gift, devise, or other method of

conveyance, except to allow for nominal boundary line adjustments. No Lot or Residence shall be combined or merged with any other Lot or Residence without the prior written approval and consent of the Board of the Architectural Review Committee.

(b) PROPERTY MAINTENANCE.

Each Owner shall keep their Residence in a safe, clean, neat, and well maintained condition, and shall comply with all applicable safety, health, police and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be permitted to remain exposed on any Residence except as necessary during the construction period. Rubbish, leaves, and trash shall not be disposed of on the Properties by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be stored out of view from neighboring Residences, roads, or streets, except at times of scheduled garbage or trash pickup. ALL TRASH OR GARBAGE CANS OR RECEPTACLES SHALL BE STORED OUT OF VIEW FROM NEIGHBORING UNITS, ROADS, OR STREETS, EXCEPT AT TIMES OF SCHEDULED GARBAGE OR TRASH PICKUP. ALL UNITS SHALL BE RESPONSIBLE FOR THEIR OWN UNITS FROM THE STREET CURBING TO THE BACK LOT LINE. EACH OWNER SHALL KEEP ALL SIDEWALKS IN GOOD REPAIR AND FREE OF SNOW AND ICE. ALL LAWNS TO BE KEPT MOWED FROM THE CURB TO THE REAR LOT LINE BY EACH UNIT OWNER.

(c) NUISANCE.

No noxious, illegal, hazardous, dangerous or offensive use, Construction or activity shall be conducted on any Residence, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners, tenants or occupants of other Residences within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise. NO Residence shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Residence to appear in an unclean or untidy condition or that will be obnoxious to the eye.

(d) UNREGISTERED VEHICLES.

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

(e) PETS.

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

(f) PARKING.

Each Residence shall provide an off street parking area of at least two hundred (200) square feet. Every single family home shall contain a minimum of a one car garage which shall be considered one parking space. All driveways shall be paved within one (1) year of substantial completion of the main residence and shall include at the street entrance an appropriate drainage culvert meeting storm water management requirements. Except for temporary and unusual irregular overflow parking from the garage and driveway of any Residence, no parking shall be permitted on any street or road, or in the year or any unpaved area of any Lot within the Properties. No Owner shall park on a regular or continuing basis more than two (2) registered vehicles at the Residence, other than inside any improvement thereon. Motor homes,

recreational vehicles less than 20 feet in length, or boats on trailers may be parked or maintained provided that they are kept in a garage. Subject to such Rules, Regulations and Fines adopted by the Association, a recreational vehicle or motor home may be parked on the driveway of a Residence for a period of preparing the vehicle for a trip. No Member may park such a vehicle for such purposes more than six (6) times in any calendar year.

(g) SNOWMOBILES, TRAIL BIKES AND SIMILAR VEHICLES.

No snowmobiles, trail bikes, mini-bikes, all terrain vehicles, or other vehicles shall be permitted to operate within the Properties.

(h) FIREARMS.

The discharge of firearms shall not be permitted within the Properties. NO hunting shall be allowed within the Marlowe Towne Center Subdivision. The term "firearms" includes, but is not limited to, rifles, shotguns, muskets, pistols, "BB" guns and air rifles, regardless of size.

(i) CONSTRUCTION.

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

ANY RESIDENCE ERECTED UPON ANY LOT OR LOTS MUST BE COMPLETED WITHIN ONE (1) YEAR FROM THE DATE THAT EXCAVATION OF THE LOT OR LOTS IS COMMENCED, INCLUDING THE REQUIRED DRIVEWAY.

(j) COMMERCIAL VEHICLES, EQUIPMENT, ETC.

Except during periods when construction is taking place on the Lot, no trucks larger than one (1) ton capacity, no construction vehicles, camper tops, or like equipment or mobile or stationary trailers or portable on demand storage containers of any kind shall be placed or permitted to remain on any Lot.

(k) BUILDING SETBACK REQUIREMENTS.

Unless and except as otherwise shown and permitted on the recorded plat or plats of the Property (the setbacks on the recorded plat or plats taking precedence over the setbacks set forth in this paragraph), or except as permitted under Article VII, no single family residence or any part thereof shall be erected on any Lot closer or nearer to any street lines than twenty-five (25) feet or nearer or closer to any side or rear lines or other boundary lines than ten (10) feet, AND NO TOWNHOUSE RESIDENCE OR ANY PART THEREOF SHALL BE ERECTED ON ANY LOT CLOSER OR NEARER TO ANY STREET LINES THAN TWENTY-FIVE (25) FEET OR NEARER OR CLOSER TO ANY REAR LINES OR BOUNDARY LINES THAN TWENTY (20) FEET. Notwithstanding anything to the contrary herein, reasonable modification of setback requirements may be made as provided in Articles XVII, and notwithstanding anything to the contrary herein, any other residential improvements permitted by these restrictions such as tennis courts, in-ground swimming pools, patios, decks, rear- or side-mounted twenty-four (24) inch T.V. satellite antenna dishes, swimming pool fences, tennis court fences, et cetera, but excluding normal front, side and rear yard fences, are subject to the setback requirements set forth herein and subject to modification as provided in articles II, VII and XVII. A side line setback shall not apply to a property line between Lots in a single ownership when a permitted residence is built straddling the common Lot line and overlapping both lots.

(l) PARTY WALLS AND FENCES.

1. General Rules of Law to Apply: Each wall, fence, common walls and sidewalks which are built as part of the original construction of any Residence or other improvement constructed upon the Properties and

placed on the dividing line between any Lots or Residences shall constitute a party wall, (all of which are hereinafter referred to as party wall) and, to the extent not inconsistent with the provisions of this subsection, 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. The Owners of contiguous Residences who have a party wall shall both have the right to use such party walls, provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

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 party wall in proportion to such use.

3. Damage of Destruction: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may, subject to the approval of the Architectural Review Committee, restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost or restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the Owners under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

4. Structural Integrity: There shall be no impairment of the structural integrity of any party wall without the prior written consent of all Owners having any interest therein, the first mortgagees of each such Owner, and the Architectural Review Committee.

5. Right to Contribution Runs with Land: the right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(m) UTILITY LINES

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

(n) OUTDOOR LIGHTING.

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

(o) MAIL BOXES.

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

(p) OUTDOOR STORAGE TANKS.

All outdoor storage tanks shall be located or obscured so as not to be visible from the street, roadway or court upon which the house fronts.

(q) SIGNS.

All signs displayed in the Properties shall be attractive and compatible with the design of the Properties and shall comply with all applicable local ordinances. The only signs of any kinds which may be displayed to the public view on or from any Lot, Residence or Common Area in the Properties shall be as follows:

(1) One (1) sign of reasonable dimensions may be placed on a Lot or Residence advertising the Lot or



Residence for sale or rent.

(2) Signs may be displayed by Declarant or Parcel Developer on Common Area, unsold Lots or unsold Residences, as Declarant or Parcel Developer deems appropriate, advertising Lots or Residences owned by Declarant or Parcel Developer for sale or rent.

(3) Appropriate signs may be displayed by the Association to identify the Properties.

(4) Signs required by legal proceedings may be displayed.

(r) WATER AND SEWER.

As set forth in Article VIII, section 2 above, each applicable Owner shall be responsible to pay the annual maintenance fee as well as the costs for future repairs and/or replacement of the grinder pump and pressure lateral installed on each Lot (if any).

(s) BEVERAGE RESTRICTION.

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

(t) RESTRICTION ON RESIDENCE TYPES

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

(u) FENCES.

Fences shall not be permitted in the front yard or side yard of any Single-Family or Townhouse Lot. Fences are permitted in the back yard of any Single-Family or Townhouse Lot provided that such fence does not exceed five (5) feet in height. Permitted swimming pool fencing shall not exceed five (5) feet in height. Chain link, American Wire and Barb Wire fences are strictly prohibited. All fences must be approved pursuant to Article X. Permitted fences may be built within setback areas as long as they meet all other requirements of this Declaration. Fencing in the rear yard of Townhouses must stop ten (10) feet from the rear property line of each lot so as to allow approximately forty (40) feet of open space between the rear lot lines of abutting townhouse lots.

(v) RESIDENCE SIZE.

All Lots in the Properties shall be designated as single-family or townhouse residential lots and shall not be used except for residential purposes. The ground floor foundation area of all single-family, single level homes or residences shall contain a minimum area of one thousand five hundred fifty (1,550) square feet, exclusive of garages, breeze-ways and porches, and the ground floor area of all other homes, townhouses, or residences shall contain a minimum area on the ground floor of seven hundred fifty (750) square feet, exclusive of garages and breeze-ways and porches.

Notwithstanding anything to the contrary herein, these standards may be reasonably modified as set forth in Articles II, VII, and VII.

(w) PERMITTED IMPROVEMENTS.

It is the intent of these restrictions that other residentially oriented improvements such as storage buildings, detached garages, decks, in-ground swimming pools, cabanas, patios, outdoor picnic fireplaces or solar panels will, subject to the provisions of articles VII and with prior written consent of the Architectural Review Board, be permitted. However, no more than one out-building shall be permitted on any one Lot unless one of the buildings is a detached garage. If a detached garage is located on a Lot, then an additional outbuilding other than the detached garage may be located on the Lot.

(x) GARAGES.

No garage shall be converted or renovated for any residential living purpose. All garages shall be kept usable as a garage for passenger motor vehicles or other permitted vehicles subject to the following exception. The Developer or its assigns and agents are permitted to use the garages made part of the model homes as a sales offices prior to the respective model home being sold to a purchaser who will occupy the home for residential purposes. Once the home is sold to the initial residential occupant the garage must be converted for use as a garage.

Detached garages are permitted up to three (3) bays and not to exceed dimensions of thirty (30) by forty (40) feet. All garages must connect to the driveway and must be of similar construction materials, color and style of the house built on the Lot.

(y) OCCUPANTS BOUND.

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

(z) ANTENNAS.

1. No radio or television, aerial, antennae, tower, satellite dish or transmitting or receiving aerial, antennae, tower or support thereof shall be permitted or placed upon any Unit unless it is placed adjacent to the rear wall of a building built on the Lot and shall be positioned as much out of view as reasonably possible. All satellite dishes shall be three (3') feet in width or smaller.

2. The restriction of paragraph (1) above shall not apply to the installation, use and maintenance of antennas used to receive video programming signals, to the extent that the installation, use, and maintenance of such antennas are protected by the federal Telecommunications Act of 1996, as the same may be amended, (hereinafter "Protected Antenna(s)"); provided, however, that prior to installing such antennas, as Owner must submit a written request for the installation, maintenance, and use of such antenna to the Board or a Committee appointed by the Board for such purpose. Such written request shall be accompanied by documentation showing the antenna to be a Protected Antenna and a sketch showing the proposed placement of the Protected Antenna on the Dwelling. A Protected Antenna shall be placed in a location on the Dwelling that is not visible from any street, if such placement permits reception of an acceptable quality signal; provided, however, that no Protected Antenna shall be placed on a Dwelling in such a manner as to obstruct or interfere with the clear line of sight of motorists on any street. This restriction is deemed necessary for the safety of residents and visitors of the Properties. In order to further protect the safety of residents and visitors of the Properties, all antennas shall be properly grounded and securely and adequately installed by bolting or guying in accordance with the requirements as set forth in the Building Officials and Code Administrators International, Inc. Model code ("BOCA code"), shall be placed no closer to a high voltage power line than permitted by the BOCA code, and shall extend no more than twelve (12) feet above the roof line of any Unit. All Protected Antennas to be placed on the ground shall be screened from view by foliage, to the extent such screening does not preclude reception of an acceptable quality signal. All antennas shall be painted, in a fashion that will not interfere with reception, so that the antenna blends into the background against which it is mounted.

3. The Board, or a committee appointed by the Board for such purpose, may promulgate rules for implementing and carrying out the purpose and intent of this paragraph and as necessitated by any future amendments to the Telecommunications Act of 1996. In acting on any request for installation of a Protected Antenna, the Board, or a committee appointed by the Board for such purposes, shall not unreasonably delay its review of, and decision on, such request.

4. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite

dish, or other apparatus for maser antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Declarant or the Association and require such exterior apparatus. Such system may be provided by the Declarant or th Association through an independent Vendor.

(aa) SWIMMING POOLS.

No above-ground swimming pools shall be erected, constructed or installed on any Lot. In-ground swimming pools may be erected, constructed or installed on any Lot that contains a single family detached home. All swimming pools must be approved pursuant to article VII.

(bb) DRAINAGE.

Catch basins and drainage areas are for the purpose of natural flow of water only. NO obstructions or debris shall be placed in these areas. No Person other than Declarant may change or re-channel the drainage flow after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow.

(cc) SIGHT DISTANCE AT INTERSECTIONS.

All property located at street intersections shall be landscaped so as to permit safe sigh across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

(dd) ARTIFICIAL, EXTERIOR SCULPTURE, AND SIMILAR ITEMS.

No artificial vegetation or lawn ornaments shall be permitted on the exterior of any portion of the Residence. Exterior sculpture, fountains, flags, and similarly items must be approved in accordance with Article VII of this Declaration. Fixed swing sets and similar fixed exterior play equipment shall be permitted in the rear of any Lot only provided that the same is maintained in a well painted or stained condition.

(ee) GENERAL STORAGE

All permitted personal property, including but not limited to garbage containers, non-stationary grills, bicycles, toys, yard equipment, lawn mowers, and all other household personal property shall be stored within the home or garage upon each Lot so that it will not be visible from any road.

(ff) LANDSCAPING AND EXTERIOR MAINTENANCE.

All landscaping and Residences shall be maintained and cared for by the Owner in a manner consistent with the standards of design and quality established by Declarant and in a condition comparable to that of other first class residential subdivisions in the County. Specific restrictions on landscaping may be established in the Rules. Landscaping in the Common Area shall be maintained by the Association in a neat and orderly condition. Any weeds (including dandelions) or 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. ALL FRONT AND SIDE YARDS MUST BE SODDED WITH "TURF" BY THE CONTRACTOR OR BUILDER ORIGINALLY BUILDING THE HOME. REAR YARDS MUST BE COMPLETELY DUG UP AND RESEEDED AT THE ORIGINAL CONSTRUCTION OF THE HOME TO PREVENT WEEDS AND INFERIOR TEMPORARY GRASSES THAT MAY HAVE BEEN PLANTED BEFORE HOME CONSTRUCTION FROM CONTINUING TO GROW.

(gg) NO IMMORAL PURPOSE.

No immoral, improper, offensive, or unlawful use may be made by the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of West Virginia and all ordinances, rules and regulations of the County of Berkeley. The violating Owner

Article  
VII, Section 2

shall hold the Association and other Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(hh) NO DUMPING.

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, and other waste shall be kept in sanitary containers. All sanitary containers used for the storage or disposal of such materials shall be kept in a neat, clean and sanitary condition. All lots shall be free and clear of trash and rubbish at all times and shall be kept in an attractive, sightly manner.

(ii) NO OPEN FIRES.

No open fires shall be permitted on any of the Properties. All outdoor burning shall be in small, well built, attractive exterior fire places or fire pits.

(jj) TREES AND SHRUBS.

All single family lots shall be improved by the planting of 2 trees and 3 shrubs within 4 weeks of the completion of a house thereon.

Section 3. Restrictions on Alienation.

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

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

### ARTICLE XIII Insurance

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

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have such coverage and limits of liability as the Board deems appropriate.

The Board may also obtain insurance indemnifying the officers and directors of the Association for its negligent acts with such coverage and limits of liability as the Board deems appropriate. All insurance premiums shall be a Common Expense of the Association.

Section 2. Hazard and Flood 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 Residence owned by such Owner, which insurance shall be subject to such additional requirements may be set forth in agreements of other undertakings which the Board or Association may enter into with or for the benefit of holders or insurers of mortgages secured upon portions of the Properties.

Section 3. Obligation to Repair and Restore.

- (a) Subject only to the rights of an institutional holder of a first mortgage lien on a damaged Residence, the insurance proceeds from any insurance policy covering a residence shall be first applied to the repair, restoration, or replacement of such Residence. Each Owner shall be responsible for the repair, restoration, or replacement of each Residence owned by such Owner pursuant to the terms hereof. Any such repair restoration or replacement shall (subject to advances and changes in construction techniques and materials generally used in such construction and then current generally accepted design criteria) be generally harmonious with the other Residence, 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 cost of repair, restoration, or replacement of a Residence, the Owner of such Residence 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 Residence, the Owner of such Residence shall be entitled to such excess in accordance with the provisions of the applicable insurance policies and subject to the terms of any mortgage covering such Residence.

Section 4. Association Rights. If any Owner fails to obtain the insurance required in this Article, or fails to pay the premiums therefore 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 cost of such payments of performance, as a special assessment, to the general assessment of such Owner.

Section 5. 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 covering 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 Properties at any time.

Article XIV  
No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provision of this Declaration.

Article XV  
Rights and Obligations of the Association

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

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

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any of the Common Area. The Board shall, in addition, have the

power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. Fines shall constitute a lien against Lots or Residences.

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

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

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

#### Article XVI Mortgagee Provisions

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

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

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

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

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

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

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

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

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

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

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

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

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

#### Article XVII Additional Declarant's Rights

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

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Residences within the Properties and all permitted additions thereto shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Residence, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities.

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

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

This article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this article shall terminate upon the earlier of (a) September 30, 2021, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### ARTICLE XVIII Easements and Rights-of-Way

Section 1. Easements: The ownership interests in the Common Area and Lots and Residences described in this Declaration are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and Lots and Residences superior to all other encumbrances applied against or in favor of any portion of the Properties. Individual grant deeds to Lots and Residences may, but shall not be required to, set forth the easements specified in this Article.

Section 2. Easements on Map: The Common Area and Lots and Residences are subject to the easements and rights-of-way shown on the Plat or Plats of the Properties.

Section 3. Utilities: There are reserved and granted for the benefit of each Lot and Residence, as dominant tenement, over, under, across and through the Properties (including the Common Area and each other Lot and Residence), as the servient tenement, non-exclusive easement for utility services.

Section 4. Encroachment: There are reserved and granted for the benefit of each Lot and Residence, as dominant tenement, over, under and across each other Lot, Residence and Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenements, over, under, and across each Lot and Residence, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots, Residences and/or Common Area as are encroached upon, used and occupied by the dominant tenements as a result of any original construction design, (expressly including overhanging eaves) accretion, erosion, addition, deterioration, decay, errors 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 easement 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 encroachments 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 of encroachment may but need not be cured by repair and restoration for the structure.

Section 5. Support, Maintenance and Repair: There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and to all other Lots and Residences, as dominant tenements, through each Lot, Residence and Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Lots and Residences.



Section 6. Easement to Declarant for Adjoining Property: Declarant shall have, and hereby expressly reserves, an easement over and across the Common Area, 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 Additional Property until all of the Additional Property is annexed to the Properties, and as otherwise set forth in the Declaration.

Section 7. Annexation of Additional Property: Upon the recordation of a Supplementary Declaration of Annexation, the Lots and Residences and the Owners of Lots and Residences in the annexed Phase shall have all of the easements specified in this Article and the Lots, Residences and Owners of Lots and Residences in the Properties prior to the annexation shall have all of the easements specified in this Article as though the annexed Phase were initially a part of the Properties.

Section 8. Additional Easements: Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted and/or reserved by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Properties.

Section 9. Association's Easements: There are hereby reserved to the Association and their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration and the Association Articles, By-Laws and Rules of the Association.

Section 10. Party Walls: Each Owner of a Residence containing a party wall and the Lot upon which such party wall is located shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as is necessary to maintain such party wall.

Section 11. Easements to the Declarant and Association: There are hereby granted to the Declarant and Association, and their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association and the right of the Declarant. Specifically, but without limiting the generality of the foregoing, there are hereby reserved and granted to Declarant and to the Association easements over the Lots, Residences, and Common Area within the Properties for the Communication 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 the 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 Properties. In order to effectuate its duties and responsibilities, inclusive, the Board may enter any Lot or Residence 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 an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

Section 12. Right of Way Prohibition. NO part of the real estate within the Properties may be sold or used as a right of way to any property outside of the Properties, except that portion thereof lying within the streets shown upon any recorded plats of the Properties, and the Declarant specifically reserves the right to sell any portion of the real estate within the Properties as a right-of-way-not to any property outside of the Properties provided that the part to be used as a right-of-way is not within thirty (30) feet of the Lot line of any Lot previously sold by the Declarant without the express written consent of the owner of such previously sold Lot.

#### Article XVIV General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Area, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Area subject to this Declaration, their respective legal representatives, heirs, successors, and they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the then Owners of two-thirds (2/3) of the Lots, has been recorded agreeing to change the covenants and restrictions in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Article I for development as part of the Area, and so long as the amendment has no material adverse effect upon any right of any Owner. Any amendment (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (2) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to the Commercial Declaration; (3) required by any state, federal or county agency; (4) required by an institutional or governmental leader or purchaser of mortgage loans, including, for example and not in limitation, the Federal National Mortgage Association or Federal Home Loan Corporation, to enable such lender or purchaser to make or purchase mortgage loans or any portion of the Properties shall not be deemed material. In addition, modification or amendments as permitted under Articles II and VII shall not be deemed material. Thereafter, and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Berkeley County, West Virginia.

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

No amendment may be made during the Declarant Class "B" Control Period without the written consent of Declarant or the assignees of such right or privilege. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by the Mortgagee or impair the rights granted to the Mortgagees herein without the prior written consent of such Mortgagees.

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

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

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

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the association unless approved by a vote of seventy-five (75%) percent of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IX hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute

proceedings as provided above.

Section 7. Use of Words "Villages of Riverside", "Villages of Riverside Subdivision", "Villages of Riverside Homeowner's Association", "Marlowe Towne Center", or "Marlowe Towne Center Subdivision". No person shall use the words "Villages of Riverside", "Villages of Riverside Development", "Villages of Riverside Homeowner's Association", "Marlowe Towne Center", or "Marlowe Towne Center Subdivision" or any derivative thereof in any printed or promotional material without the proper consent of the Declarant. However, Owners may use the terms "Villages of Riverside", or "Villages of Riverside Homeowner's Association" in printed or promotional matters where such term is used solely to specify that a particular property is located within Riverside Villages Subdivision.

Section 8. Security. Villages of Riverside Homeowner's Association, will strive to maintain Villages of Riverside Subdivision as a safe, secure residential environment. HOWEVER, NEITHER VILLAGES OF RIVERSIDE HOMEOWNER'S ASSOCIATION, NOR MARLOWE TOWNE CENTER, LLC. SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT RIVERSIDE VILLAGES HOMEOWNER'S ASSOCIATION, INC, AND MARLOWE TOWNE CENTER, LLC., AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO RESIDENCES, AND TO THE CONTENTS OF RESIDENCES AND FURTHER ACKNOWLEDGE THAT MARLOWE TOWNE CENTER, LLC. HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants, Conditions, and Restrictions of Villages of Riverside Subdivision this 13 day of January, 2007.

MARCH

MARLOWE TOWNE CENTER, LLC.,  
a Maryland limited liability company

By Nathan P. Leatherman  
Nathan P. Leatherman, Member

By Samuel R. Allen III  
Samuel R. Allen III, Member

STATE OF ~~MARYLAND~~ WEST VIRGINIA

COUNTY OF ~~FREDERICK~~ to-wit: BERKELEY

MARCH, 2007

The foregoing instrument was acknowledged before me this 13 day of January, 2006,

by Nathan P. Leatherman, President of Marlowe Towne Center, LLC and Samuel R. Allen III, Vice-President of Marlowe Towne Center, LLC., a Maryland corporation, in my said County and State.

Christina R. McCann

Notary Public

My commission expires:

JULY 29, 2015



