

1368-543

**FOURTH AMENDMENT TO**  
**DECLARATION OF RESTRICTIONS, PROTECTIVE**  
**COVENANTS AND RESERVATIONS PERTAINING**  
**TO IMPERIAL VIEW SUBDIVISION IN MORGAN DISTRICT,**  
**MONONGALIA COUNTY, WEST VIRGINIA**

This Fourth Amendment to Declaration of Restrictions, Protective Covenants and Reservations Pertaining to Imperial View Subdivision in Morgan District, Monongalia County, West Virginia, made this 24th day of June, 2008, by the requisite majority of owners of Lots in Imperial View Subdivision acting by and through the Executive Board of Imperial View Property Owners Association, Inc. as the signator hereof.

WHEREAS, Imperial View Subdivision ("Imperial View") is a residential planned community form of Common Interest Community created by recordation by Bender & Company, Inc., (the original developer or "Declarant") of that certain Declaration of Restrictions, Protective Covenants and Reservations Pertaining to Imperial View Subdivision in Morgan District, Monongalia County, West Virginia, which is dated May 8, 1980, and is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 839 at Page No. 324; and

WHEREAS, the original declaration was amended by two instruments dated August 14, 1996, which are recorded in the Office of the said Clerk in Deed Book No. 1134 at Pages 154 and 163, respectively (original declaration and both amendments hereinafter collectively referred to as "Declaration"); and

WHEREAS, Imperial View Property Owners Association, Inc., a West Virginia non-profit corporation, is the duly incorporated association of all owners of all Lots in Imperial View which was formed pursuant to Article 7 of the Declaration to "further promote the community welfare of property owners in the Subdivision"; and

WHEREAS, effective July 1, 1986, the West Virginia legislature enacted Chapter 36B of the West Virginia Code, known as the West Virginia Uniform Common Interest Ownership Act ("the Act"), and pursuant to 36B-1-204, certain provisions of the Act apply retroactively to Imperial View; and

WHEREAS, the Declaration contemplated the Declarant's initial pre-development plan for Imperial View; and

WHEREAS, dwellings have been constructed on the majority of Lots in Imperial View and the Subdivision was completed pursuant to a common scheme of development which significantly exceeds the minimum pre-development standards imposed by the Declarant in the Declaration; and

WHEREAS, the owners of Lots in Imperial View desire that the Declaration be amended to adopt not only the applicable retroactive provisions of the Act but also certain other revisions covenants, restrictions, conditions and limitations which are reasonably calculated to: address issues not contemplated by Bender & Company, Inc., at the time the original Declaration was enacted; impose non-discriminatory provisions reasonably calculated to maintain the common scheme of development which has evolved within Imperial View; and preserve the present character and collective standards of the Subdivision; and

WHEREAS, the Declaration provides in Article 2 that it may be amended after January 1, 2000, by a majority of all Lot owners and the provisions of the Act requiring amendment by a larger majority of Lot owners are not retroactively applicable to Imperial View; and

WHEREAS, a majority of the quorum present at the duly noticed Annual Meeting of the Association held on March 13, 2008, authorized publication of this instrument to the membership for vote by ballot; and

WHEREAS, this Amendment is acknowledged, passed and enacted by the Executive Board of the Association after ratification and adoption by written vote of the record owners of sixty-two per cent (62%) of all Lots in Imperial View and subsequent ratification of such vote by a majority of the quorum present at a duly noticed Special Meeting of the membership held on June 24, 2008; and

WHEREAS, the votes allocated to each Lot may be cast by any one owner of the Lot and the owners voting in favor of this Amendment have evidenced their consent hereto and ratification hereof by affixing their signatures to the ballots evidenced by Exhibit A.

NOW, THEREFORE, WITNESSETH: the Declaration is hereby modified and amended by authority of the membership of the Association as follows:

1. APPLICABILITY: These Restrictions shall apply to all Lots in Imperial View which are presently subject to the Declaration or depicted or shown on the official sales maps or Plats of Imperial View which are recorded in the Office of said Clerk in Map Cabinet 1, Envelope Nos. 293A and 293B, Map Cabinet 2, Envelope 379B, and in Map Cabinet 3, Envelope 184A. These Restrictions shall also govern the use and enjoyment by the owners of said Lots of all roads, streets, easements and lands owned by the Association.

2. TERM:

A. By the provisions of the original Declaration, the original Restrictions were imposed to affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2000. By accepting a deed to residential property subject to the original Restrictions, the residential owners agreed that after January 1, 2000, the original Restrictions would automatically be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the Lots subject thereto has been recorded agreeing to change the covenants in whole or in part. All new Restriction stated herein, and all original

Restrictions modified hereby shall extend and continue on the same terms. Provided, however, that these Restrictions may be amended by vote of the then record owners of a majority of such residential Lots, except as otherwise provided herein.

B. All Lots shall be utilized for single family residential purposes with no more than one dwelling per Lot.

C. Once construction of the residential dwelling is commenced on any Lot, the improvements must be substantially completed, including the exterior work in accordance with its plans and specifications, as approved by the Association or its Building Control Committee, within twelve (12) months. Weather permitting, the Lot must be graded and landscaped within one (1) year after the dwelling situate thereon is substantially completed and suitable for occupancy.

D. No dwelling or residence shall be occupied until the same has been substantially completed.

E. All structures constructed or placed on any Lot shall be built of new material.

F. No structure or building shall be located nearer than twenty-five (25) feet to the front or rear line, or nearer than ten (10) feet to an interior or side Lot line. For the purpose of this restriction, structures and buildings include, but are not limited to, dwellings, decks, play ground equipment, parking areas, eaves, steps, balconies and open porches. Provided, however, that no portion of any dwelling nor any eaves, steps, balconies or open porches in completed and in existence at the execution hereof, shall be deemed to be in violation of this Paragraph F. This provision shall not extend to mailboxes, light posts, utility systems, driveways and walkways to the extent the same must extend or be situate in a set-back in order to fulfill the purpose for which the same are intended, or otherwise due to third party utility provisions agreements. This provision shall not be construed to permit any portion of any structure or improvement on any Lot to encroach upon any adjoining property.

G. No structure of a temporary character, trailer, basement, tent, barn or garage shall be used at any time as a residence, either temporarily or permanently.

H. The fuel used in the dwelling or other structures shall be of the smokeless type; however, so-called fireplaces in which wood is used as a fuel shall be excepted from this provision.

I. No animals or livestock of any description, except the usual household pets shall be kept on any Lot, and those pets that are kept upon any Lot shall not be permitted to run at large or cause damage to other Lot owners.

J. No Lot or any building, structure or improvement erected thereon, shall be used at any time for the purpose of any trade, manufacture or business of any kind, and no junk

cars nor any noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Provided, however, that home offices may be operated within any dwelling so long as such home office does not entail the travel of clients, invitees, delivery persons or any other individual or entity to the Unit for any business purposes other than normal deliveries by such service providers, such as UPS and Federal Express, who customarily make residential deliveries in the Subdivision.

K. All Lots, whether occupied or unoccupied, and any improvements thereon shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

L. No outside toilet or individual water well shall be constructed on any numbered Lot. All plumbing fixtures, dishwashers or toilets shall be connected to the public sanitary sewer system. Storm water shall not be allowed to flow into the public sanitary sewer system and shall to the extent reasonable be directed into the storm water system.

M. No numbered Lot or consolidated Lot may be subdivided without the written consent of the Declarant or the "Building Control Committee".

N. No building or Lot improvement shall be erected, placed, changed or altered on any Lot until the construction plans, specifications and plot plan have been approved, in writing, by the "Building Control Committee", with regard to matters including, but not limited to: harmony, continuity, character, esthetics, size, external design, color, appearance, location, topography, elevations, finished grades, existing utilities, easements, road and driveway entrances, retaining walls, fences, landscaping and location of structures, appurtenant improvements, walkways and driveways, surface water and drainage control measures and concerns, sedimentation control, parking; traffic visibility impact and effect on other Lots, exterior lighting; finished grade elevation, and any other matter which is delegated by the Association to the Building Control Committee, and governed by this Declaration or any Rules and/or Regulations promulgated by the Association with regard to such matters. The express and stated purpose of the Building Control Committee review and approval process is maintenance, perpetuation and continuity of the general appearance, traditional residential character, and common and uniform scheme of development throughout Imperial View. The Building Control Committee shall, grant approval or disapproval of said plans, in writing within a period of thirty (30) days from the date submitted. Provided, however, that final approval or disapproval may be reasonably delayed contingent on provision by the Lot owner of any surveys, plans, reports, diagrams or other materials reasonably required by the Building Control Committee for beneficial and substantive informed review of the plans for the proposed improvements.

O. All Lot owners shall use the public sanitary sewer system. The original private system constructed by the Declarant has been removed and replaced by the public system.

P. All pools, playground equipment, play houses, fences, gardens, ponds, and other similar improvements which are not commonly situate within the front yard of a traditional residential dwelling shall be situate behind or to the rear of the dwelling situate on the Lot. Provided, however, additional limitations restricting the placement of such improvements may be imposed on corner Lots and other atypical Lots. A "typical Lot" is a Lot which fronts on a street, shares common side boundaries with the sides of other Lots, and shares a common rear boundary with the rear of other Lots. An "atypical Lot" is any other Lot and the Association may impose additional requirements and restrictions limiting the improvements which may be made to the rear of any atypical Lot if such improvements would functionally be adjacent to any street or the front or side of any other Lot.

Q. Above ground swimming pools are not permitted in the Subdivision. In ground swimming pools are permitted to the extent approved by the Building Control Committee, and then only if: (a) the same do not encroach into any set-back; (b) adequately screened and fenced in accordance with the requirements of the Building Control Committee; and (c) the Lot Owner releases the Association from any liability for the pool and provides a binding hold-harmless agreement benefiting the Association and which runs with the land. Children's temporary play pools are only permitted on Lots approved by the Building Control Committee and then as reasonably regulated by the Building Control Committee.

R. Above ground fences are only permitted if approved by the Building Control Committee. If approved, above ground fences may be constructed no more than (4) feet in height unless the fence is constructed to enclose a pool in which case it may be no more than six (6) feet in height. All fences shall be primarily of wood or similar synthetic materials which have the appearance of wood. Hurricane, hardware cloth, chicken wire, and other woven wire fences are not permitted except: (i) approved seasonal fencing intended to protect foliage, gardens and landscaping from wildlife, and if approved shall be removed after cessation of approval or need; and (ii) to the extent that woven wire components may be incorporated into a wooden split rail fence if the wire and metal surfaces are coated in plastic, vinyl or similar material and not exposed to view. No fence may be constructed at any point nearer than three (3) lineal feet from the perimeter of the Lot nor nearer to any street than the dwelling situate on the Lot. Lot owners are discouraged from constructing fences within Lot perimeter easements and the Lot owner will bear the risk and cost of removal of any non-conforming fence or approved fence constructed within an easement. No approval is required for installation of subsurface electronic or other pet control fencing which is not visible.

S. No Lot owners shall store any recreational vehicle, motor home, boat, canoe, jet ski, ATV, trailer or similar vehicle in a driveway or yard except on a short term or interim basis.

T. Tree houses and metal swing sets are not permitted in the Subdivision. Playground equipment, sliding boards, swing sets, play houses and all similar improvements may: (a) not be situate within set backs without prior consent of the

Building Control Committee; (b) be located no nearer to any street than the dwelling situate on the Lot; and (c) be reasonably regulated by the Building Control Committee as to all matters including, but not limited to, location, color, size, height, appearance, density and materials. Building Control Committee may, in granting such approvals, reasonably limit the number and size of such improvements on any Lot and the proximity and density of such improvements over multiple Lots.

U. The style of all dwellings and appurtenant improvements shall generally conform to the present, traditional residential character of the Subdivision.

V. The primary exterior colors of each dwelling shall conform to the present "earth tone" color scheme present throughout the development with non-earth tone colors excluded except in cases of minor trim or minor accents. "Earth Tone" colors are a range of light to medium chroma (vividness) colors from green to red-orange in the commonly accepted Munsell Book of Color and generally correspond to earth (soil) or foliage. Blues, reds and violets are generally not permitted as primary exterior colors, however, the Building Control Committee may grant approval for non-earth tone colors so long as the over-all appearance of the Lot and improvements thereon is consistent and harmonious with the general character and appearance of the Subdivision.

W. All driveways and walkways shall be comprised of concrete, asphalt pavement or fitted stone. Non-fitted gravel driveways and walkways are not permitted.

X. The exterior wall surfaces of all structures and dwellings shall be of stone, brick or other approved masonry, wood, or attractive synthetic siding and shall be finished in such materials to grade. The exposed exterior surfaces of structures and dwellings shall not be of aluminum siding, stucco, drivet, poured concrete, cinder block or other similar unapproved block. Provided, however, that any approved construction existing at the enactment of this Declaration is approved and may be maintained "as is" and "where is". However, any replacement, or reconstruction of such existing and approved but non-conforming concern shall be made and completed of only approved materials. For example, existing aluminum siding may maintained, painted and repaired but if removed must be replaced with approved non-aluminum siding.

Y. All utilities distribution lines and utility systems situate on or within a Lot shall be constructed below grade. Provided, however, meters, access panels, gang boxes and similar improvements are permitted above ground if consistent with the character and tenor of the Subdivision and reasonably camouflaged or screened.

Z. Radio antenna towers and other exterior personal wireless communications antennas or towers are not permitted unless approved by the Building Control Committee. The Building Control Committee may regulate the placement, size, appearance and location of satellite dishes, receivers and other exterior antennas to the extent permitted by Federal law.

AA. Permanent exterior clothes lines are not permitted.

BB. Mobile homes or trailers which have axels or were ever subject to licensure and registration requirements by the West Virginia Department of Transportation may not be utilized for residential purposes in the Subdivision. Panelized and sectional construction are permitted.

CC. Each Lot owner shall be responsible for maintaining adequate storm and surface water control measures on his or her Lot to facilitate the proper drainage of storm water within the Subdivision and direct the same to the existing underground storm water system maintained by the Association. Each Lot Owner shall continuously maintain all culverts, ditches and drainage lines and drain ways on his or her property, whether installed by the Developer, the Association or the Lot Owner, so as to prevent the restriction of water flow through the same. No portion of any culvert, ditch, drainage line and drain way owned or maintained by the Association may be modified by a Lot owner without written approval of the Association and also a recommendation as to the suitability and appropriateness of the modifications made by a licensed and insured Engineer approved by the Association's Board of Directors. Such written recommendation shall be addressed to the Association and certify that the modifications are to be completed in compliance with the Subdivision drainage plan and it shall specify the design, materials and manner of construction.

DD. Each Lot shall have sufficient off-street parking to service the dwelling. Except as permitted by the Association, there shall be no parking in or along streets in the Subdivision, on lawns or sidewalks.

EE. Exterior hot-tubs and similar amenities shall not be situate within set-backs or easements, shall be situate no nearer to any street than the dwelling situate on the same Lot, and shall be reasonably screened from view pursuant to the directives of the Building Control Committee.

FF. Car ports are not permitted in the Subdivision.

GG. Not more than one (1) "For Rent" or "For Sale" or "Garage Sale", or other similar sign, may be maintained on a Lot at any time, and then subject to reasonable size, substance, color and location limitations by the Association. No commercial sign shall be erected, placed or maintained on any Lot or on any Common Element, except with the written permission of the Association or except as may be required by legal proceedings. Not more than one political sign or sign advertising or advocating any candidate for public office or political issue may be displayed on, or be visible from, any Lot at any time ("Political Signs"). No Political Signs be displayed for a period of more than twelve (12) days during any calendar month nor more than ten (10) days before or two (2) days after the election or vote subject of such sign. All of such signs shall be less than six (6) square feet in total placard area. The Association may impose reasonable restrictions as to the size, substance and location of all signage.

HH. No vehicle with an engine or motor and which is not licensed by the West Virginia Department of Motor Vehicles, including, but not limited to, golf carts, go carts, dirt bikes, and all terrain vehicles, may be operated on any Lot, roadway or common area, except as may be necessary for construction or maintenance purposes.

II. All Lot owners shall be subject to fine or penalty as a result of violation of any of these restrictions by the Lot owner, or the Lot owner's family, friends, guests and invitees, or any other occupant of the Lot or any common element. In the event of an uncured violation of this Declaration, the Association may after notice and hearing deny the responsible party the right of entry onto and use of the roadways of the Subdivision. To the extent that the West Virginia Common Interest Ownership Act and this Declaration require notice of violation prior to assessment of a fine or penalty for parking or motor vehicle violations, a single notice by the Association shall be sufficient for the purpose of subsequent violations occurring within twelve (12) calendar months of such notice.

JJ. To the extent that any Lot condition, structure or improvement was permitted under the prior Declarations and completed prior to the date hereof with written approval of the Association, Building Control Committee or Declarant but the condition, structure or improvement constitutes a violation as a result of the amendments enacted herein, the same is grandfathered in full compliance with this Declaration. Provided, however, that any removal, reconstruction, replacement or modification of such grandfathered condition, structure or improvement shall be made in full compliance herewith.

3. BUILDING CONTROL COMMITTEE:

A. The Building Control Committee shall be composed of not less than three (3) members to be appointed by the Board of Directors of the same Association. Committee members shall serve at the will of, and be subject to removal by, said Board of Directors. Any Building Control Committee vacancies from time to time existing shall be filled by appointment by the said Board of Directors.

B. No building, structure or improvement may be erected or placed on any Lot until approved in writing by the Building Control Committee, nor shall any material modification, excluding preventative maintenance, be made to any existing building, structure or improvement absent such approval.

C. The Committee may require Lot owners to submit such additional detail and supporting data, studies, samples, architect's renderings, and reports as may be reasonably necessary for the Committee to adequately review the proposed plans and specifications. The Committee may reasonably require the Lot owner to furnish survey maps or plats prepared by licensed engineers, land surveyors and other professionals with regard to any pertinent issue including, but not limited to, surface water and drainage impact of the improvements. The Committee may retain a qualified engineering firm to review all major construction plans with regard to matters requiring professional



expertise and training with the reasonable cost of such professional services chargeable to the Lot owner requesting review or plan approval.

D. The Committee shall approve, disapprove, or grant partial approval accompanied by comment or additional requirements within thirty (30) days from the time that all materials required by the Committee have been submitted. The Committee shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest or welfare of the Subdivision or if materially and unreasonably harmful to the owners of one or more other Lots. All decisions of Building Control Committee shall be subject to appeal or review by the Board of Directors of said Association.

E. A pre-condition to plan approval and authorization by the Building Control Committee for any Lot owner to commence construction is that the Lot owner shall execute and submit a waiver to the Association. The waiver shall state that the Lot owner waives and releases any and all claims and causes of action which the owner has or may have against Building Control Committee or Association for any and all damages sustained as the result of future damage to, or removal of, any appurtenance or improvement which when constructed encroaches upon or into any easement.

F. The Association and Building Control Committee shall not under any circumstances be liable to any Lot owner for damage or injury resulting from the grant or denial of approval of construction plans whether said plans be for the injured party's Lot or another Lot in the Subdivision. All Lot owners by acceptance of a deed subject to the Declaration release Building Control Committee and Association from liability for injury and damage directly or indirectly resulting from such plan approval. Each Lot Owner in improving his/her own Lot bears all liability for injury to person or property resulting from such improvement and shall indemnify, defend and hold harmless Association and Building Control Committee from all claims, causes of action and liabilities resulting from said improvement. All owners are charged with a duty to develop and improve their property in a reasonable and prudent manner so as to avoid injury or damage to person, property, other Lots, common areas and land owned by third parties including the Association.

G. The standards established for plan approval are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision and do not create any duty to any present or future Lot Owner. Review and approval of any application by the Building Control Committee is made on the basis of the considerations addressed herein. Building Control Committee and Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor of the impact of such improvements, including drainage systems and excavations on other Lots.

4. VARIANCES: The Association, acting through its Building Control Committee, may allow reasonable variances and adjustments of these Restrictions in order to overcome practical

difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the collective interests of the Subdivision, and the general development scheme and provided also that in every instance such variance or adjustment will not be unreasonably and materially detrimental or injurious to other property or improvements in the Subdivision. Variances are encouraged in the case of minor violations which are nonetheless consistent and harmonious with the over all character and appearance of the Subdivision. Variances should be given if the balancing test between the potential hardship to an individual Lot owner exceeds the benefit of the restriction or covenant to be enforced and the actual or perceived harm to the Community or another Lot owner. No variance, if granted, shall be a precedent requiring the granting of future variances in circumstances where such unnecessary hardship does not exist or in circumstances where the hardship resulted from willful violation or assumption of risk by the Lot owners.

5. EASEMENTS: There is reserved for the Association, its successors and assigns, and for the use of the Declarant and Developer, in the development of future sections or subdivisions, the following easements and rights of way incident to the development of the property.

A. A ten (10) foot wide easement along each side of all road rights of way and a seven (7) foot wide easement along all other property boundary lines for the purpose of installing, operating and maintaining utility lines, mains, drainage ways and culverts. It also reserves the right to trim, cut and remove any trees and brush and to locate guy wires and braces wherever necessary for the installation, operation and maintenance, together with the right to install, operate and maintain electric, cable television, water and sewer mains, as well as other services for the convenience of the property owners and appurtenances thereto; reserving also the right of ingress and egress to such areas for any of these purposes.

B. The Lots shall be burdened by such additional rights of way and easements as may be shown on any recorded maps or plats or as may be placed in deeds of conveyance for each individual Lot.

6. OWNERSHIP, USE AND ENJOYMENT OF STREETS, PARKS AND RECREATIONAL AREAS: Each of the streets in the Subdivision is dedicated to the benefit of the Lots in the Subdivision and their owners, and shall be under the control and supervision of the Association. An easement for the use and enjoyment of each of said streets is reserved to the Association, its successors and assigns; to the persons who are, from time to time, members of Imperial View Property Owners Association, Inc.; to the residents, tenants and occupants of any multi-family residential buildings and all other kinds of residential structures or commercial structures that may be erected within the boundaries of the property and to the invitees of all aforementioned persons, the use of which shall be subject to such rules and regulations as may be hereinafter set forth and as may, from time to time, be prescribed by the said Association.

7. IMPERIAL VIEW PROPERTY OWNERS ASSOCIATION:

A. Every person acquiring title, legal or equitable (other than mortgagees) to any Lot in the Subdivision must and shall be a member of the Imperial View Property Owners

Association, a West Virginia nonprofit corporation. Each Lot is allocated one (1) vote on Association business and allocated a fractional liability for Association expenses. For the purpose of said allocations, the numerator shall be one (1) representing the Lot, and the denominator shall equal the total number of Lots in the Subdivision.

B. The general purpose of the Association is to further promote the community welfare of property owners in the Subdivision and the collective well being of the Subdivision rather than the individual Lot owners.

The Association shall be responsible for the maintenance, repair and upkeep of the Subdivision streets, storm water system, common areas, and recreational facilities within the Subdivision. The Association shall also be the means for the promulgation and enforcement of all rules and regulations necessary to the governing of the use and enjoyment of such streets, storm water system, and recreational facilities and such other properties within the Subdivision as the Association may from time to time own.

C. The Association's Board of Directors shall generally, and except as contrary to law, be authorized to act in all instances in behalf of the Association. No member of the Association's Board of Directors nor any committee of the Association shall participate in any decision or determination in which there is an actual or apparent personal or professional conflict, as determined by the unaffected members of the Association's Board.

E. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including, but not limited to, the following powers afforded it by WV Code §36B-3-102(a), to:

- i. Adopt and amend bylaws and rules and regulations;
- ii. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot owners;
- iii. Hire and discharge managing agents and other employees, agents, and independent contractors;
- iv. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Lot owners on matters affecting the Subdivision;
- v. Make contracts and incur liabilities;
- vi. Regulate the use, maintenance, repair, replacement, and modification of common elements;

- vii Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the Association;
- viii Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section WV Code § 36B4-109, and Article 15 below, or statements of unpaid assessments;
- ix Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- x Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- xi Exercise any other powers conferred by this Declaration or bylaws;
- xii Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.

F. The Association shall, at least annually, enact a budget sufficient to satisfy the Association's actual anticipated costs and expenses for the succeeding fiscal year, including the cost of future capital repairs to Streets, drainage systems and other improvements of limited duration. The budget shall be assessed and levied pro rata against every Lot as a Common Assessment or uniform annual charge which is reasonably calculated to satisfy the current maintenance needs and future needs of the Association.

Every such charge so made shall be paid by the member of the Association on or before the 1<sup>st</sup> day of April of each year, for the ensuing year or at such other date and on such other terms as may be specified by the Board or in the Budget. The Board of Directors of the Association shall fix the amount of the annual charge per Lot on or before the 1<sup>st</sup> day of April of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per Lot on or before the 1<sup>st</sup> day of March of each year and written notice of the charge so fixed shall be sent to each member.

G. Association Liens. Pursuant to WV Code §36B-3-116:

- i. The Association has a lien on a Lot for any assessment levied against that Lot or fines imposed against its Lot owner from the time the assessment or fine becomes due. All fees, charges, late charges, fines and interest charged pursuant to section 3-102(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

ii. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

iii. A judgment or decree in any action brought under this section **must** include costs and reasonable attorney's fees for the prevailing party.

iv. The Association upon written request shall furnish to a Lot owner a statement setting forth the amount of unpaid assessments against the Lot. If the Lot owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the executive board, and every Lot owner.

v. For the purpose of perfecting and preserving its lien, the Association shall give notice to the Lot owner in the manner set forth in section one, article two, chapter fifty-six of the West Virginia Code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the office of the Clerk of the County Commission of Monongalia County, West Virginia.

H. The Association shall at all times comply with the requirements of WV Code §36B-3-118, and keep financial records sufficiently detailed to enable the Association to comply with WV Code §36B-4-109. All financial and other records must be made reasonably available for examination by any Lot owner and his authorized agents.

I. The Association shall within ten days after a request by a Lot owner, furnish a certificate containing the information necessary to enable the Lot owner to comply with the resale certificate requirements of WV Code § 36B-4-109. A Lot owner providing a resale certificate is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate.

J All funds accumulated as the result of assessments, fines and charges levied by the Association shall held in two separate accounts, an annual account for costs and expenses to be incurred annually, and a capital or long term account. All sums remaining in the annual account at the end of the Association's fiscal year shall be transferred to its capital account and credited in behalf of the Lots for which the sums were paid. The Association's monies shall be used exclusively to pay the costs of the Association including, but not limited to, insurance, taxes, publications, operating expenses, and improvement and maintenance of the streets, drainage systems, signage and other property and improvements within the Subdivision owned by the Association.

8. MOTOR VEHICLE SPEED LIMITS:

A. Speed limits for streets and the rules governing the use of parks and recreational facilities with the Subdivision shall be promulgated from time to time by the Board of Directors of the Association. Appropriate postings of these speed limits shall be made. The Association shall have the power to, after notice of initial violation, assess fines for the violation of motor speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall, if not appealed by the finnee to the Association Board, be paid promptly upon its being assessed; if it is not, the Association may add the amount of the find to the annual charge made by the Association, and the amount of such fine shall be collectible by the same means as are prescribed for the collection of delinquent annual charges of the Association or through the use of the sanctions prescribed in Subparagraph 7(E)(vii) of the Restrictions or otherwise as may be permitted by law.

B. No motor vehicle of any nature except a duly licensed vehicle shall be operated on any street and no such vehicle shall be operated except by a duly licensed operator.

9. ASSOCIATION'S RIGHT TO PERFORM CERTAIN MAINTENANCE: In the event any owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, notice shall be provided by the Board, in writing, to the owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right , through its agents and employees to enter upon said Lot and repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon to the extent authorized by law. Such right shall not be exercised unless two-third (2/3) of such Board of Directors and sixty percent (60%) of the members at a duly called meeting for that purpose shall have voted in favor of its being exercised. The cost of such exterior maintenance and maintenance of the Lot shall be added to and become part of the annual charge to which such Lot is subject and until paid shall be a lien on said Lot and improvements thereon.

10. GRANTEE'S ACCEPTANCE:

A. The Grantee of any Lot in the Subdivision, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or the Association, or a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and agreements herein contained, and also the jurisdiction, rights and powers of the Board of Directors of the Association and the Association; and by such acceptance, the grantee shall for himself, his heirs, personal representatives, successors and assigns, covenant and agree to and with the Board of Directors and the Association and to and with the Grantees and subsequent owners of each of the Lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements, to be a member of the Association and abode by and comply with its Charter and By-Laws.

B. Each such grantee also agrees, by such acceptance to assume, as against Declarant, its successors or assigns, all the risk and hazards of ownership or occupancy

appendant to such Lot, including, but not limited to, its proximity to any recreational facility.

C. Each such grantee agrees to use the public sewage system constructed within the Subdivision.

11. SEVERABILITY: Every one of the Restrictions is hereby declared to be independent of and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions; therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions. Pursuant to WV Code §36B-2-103: (a) the rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to section 3-102(a)(1), (b) in the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the applicable provisions of WV Code §36B; and (c) title to a Lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this WV Code §36B.

12. REMEDIES:

A. The Association or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions and the Court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. The remedies hereby specified are cumulative and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of the Association or an aggrieved party to invoke an available remedy in respect to a violation of any of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

13. CAPTIONS: The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of the Restrictions.

14. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS: All provisions of the declaration and bylaws are severable and in the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the declaration is inconsistent with the Act.

15. RESALE REQUIREMENTS - WV CODE §36B-4-109.

