

**2010 PUBLIC OFFERING STATEMENT**

**VILLAGE AT SLEEPY HOLLOW**

**A COMMON INTEREST RESIDENTIAL COMMUNITY**

**CLINTON TAX DISTRICT,**

**MONONGALIA COUNTY, WEST VIRGINIA**

**Prepared by Sleepy Hollow Properties,  
LLC, Developer and Declarant**

**Prepared Spring 2010 by Declarant**

**VILLAGE AT SLEEPY HOLLOW**

**PUBLIC OFFERING STATEMENT**

**PREFACE:** This document is a general discussion of matters which are in many cases set forth with specificity in the Exhibits, attachments and documents referenced herein. The reader is advised to review all such Exhibits, attachments and documents carefully for a more specific and detailed explanation of the matters addressed in this Public Offering Statement. To the extent that any document including the Declaration of Protective and Restrictive Covenants for Village at Sleepy Hollow should in any manner conflict with or otherwise be inconsistent with the information in this Public Offering Statement, the terms and provisions of the Declaration shall govern in all matters and respects.

**I Introduction.**

1.1 Village at Sleepy Hollow (“Subdivision”) is a Planned Community located in the Clinton tax district of Monongalia County, West Virginia, and the project is being developed by Sleepy Hollow Properties, LLC, (“Declarant”). The Subdivision is a single family residential community comprised of Lots (“Units”). All of the existing Units in the Subdivision are dedicated for construction of detached single family dwellings such as houses or patio homes. Future Units in future Phases may be attached or detached. The Units vary in size depending on topography and availability of sewage with no non-patio home Unit intended to be smaller than one-quarter (1/4th) of an acre in total area. The sizes of Unit vary between sections (Phases) of the Subdivision and may vary to a greater extent with regard to lands added to the Subdivision in the future. Patio homes may be attached or detached and patio-home Units may be no larger than the physical boundary of the patio home.

1.2 The Subdivision is being developed in sections known as Phases and the Declarant intends to dedicate additional Phases as construction and sale of Units progress. At present, there are two (2) Phases in the Subdivision, namely Phase 1, which is contains larger lots which are approximately an acre in size, and Phase 3, which contains smaller lots which are approximately 0.5 acres to 0.7 acres in size. The official sales maps or plats of Phase 1 and Phase 3 are attached hereto as **Exhibits A, A.1 and A.2**. Each Phase does, or will contain roadways, easements, utilities, Units and possibly common use areas known as Common Elements. The Declarant is responsible for providing utilities to the

perimeter of each Unit and completing the roadways and Common Elements. The roadways and Common Elements will eventually be deeded either in fee or by easement to the Sleepy Hollow Property Owners Association, Inc., a non-profit West Virginia corporation ("Association"), created for the purpose of governing the Subdivision and maintaining the improvements therein and the standards set by the Declarant. All owners of all Units ("Unit Owners") are members of the Association by virtue of the fact that they own an interest in a Unit.

- 1.3 During early stages of Development of each Phase the Declarant will own the majority of Units which exist or may be created in the Phase and thus Declarant will control the Association. Periodically, as an increasing number of Units are sold by Declarant to third parties, Declarant shall relinquish control of the Association to the Unit Owners. The Declarant's general schedule for completion of the Subdivision and the improvements to the Subdivision is attached as **Exhibit E**.
- 1.4 Declarant has recorded a document subjecting all land in the Subdivision to restrictive and protective covenants, rules, regulations, guidelines and standards for the purpose of maintaining the quality, character, market value and aesthetic value of the Subdivision and the Units ("Declaration"). The Declaration, generally speaking, establishes: (1) the duties of the Declarant; (2) the rights reserved to the Declarant; (3) the minimum improvements which a Unit Purchaser may expect to be completed; (4) the powers, duties and operating structure of the Association; (5) the minimum architectural and landscaping guidelines and standards for all Units and houses; and (6) certain preliminary standards of, and limitations of the purposes for which, a Unit Owner may utilize a Unit, Common Element or a Limited Common Element.
- 1.5 Declarant formed the Association by filing Articles of Incorporation ("Articles") with the West Virginia Secretary of State and Declarant passed the initial By-Laws of the Association ("By-Laws") prior to the sale of the first Unit. The Articles are the operational structure of the Association which cause the Association to exist as an independent legal entity. The By-Laws are the daily operating rules and guidelines of the Association which may be modified and amended from time to time to address the operational needs of the Association. The By-laws, Certificate of Incorporation of the Association, Articles are attached as Exhibits **C, D, and D.1**.
- 1.6 The Declaration is the supreme governing instrument of the Subdivision. In the event of any conflict, the Declaration is the governing instrument which supersedes all provisions of this Public Offering Statement, the Articles of Incorporation, By-Laws, all promotional materials utilized in the sale of Units and all representations and warranties made by any realtor or real estate Broker. The maps or plats of the Subdivision which are recorded in the Monongalia County Clerk's Office are part of the Declaration but promotional maps and plats are not.

1.7 This Public Offering Statement sets forth the Declarant's vision for the Subdivision and some of the pertinent considerations which will impact your decision to purchase a Unit or home in the Subdivision. This "Public Offering Statement" is a summary and generalization of matters set forth in the Declaration and other Exhibits and **you should read each of said documents carefully!**

1.8 **WARNINGS**

THROUGHOUT THIS PUBLIC OFFERING STATEMENT THERE ARE SPECIFIC WARNINGS CONCERNING THE DECLARANT, THE OWNER AND DECLARANT, AND THE SUBDIVISION OR INDIVIDUAL UNITS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY PURCHASE CONTRACT OR AGREEMENT.

1.9 Declarant's Statutory Disclaimers with regard to the exercise of Development Rights are attached hereto as **Exhibit T**.

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**II GENERAL INFORMATION**

2.0 The Subdivision shall contain not less than the existing Units in Phases 1 and 3, nor more than two hundred (200) Units. At the execution hereof, the Subdivision is in the early stages of development with only two (2) Phases being dedicated. Although it is the Declarant's intention to fully develop all of its property, Declarant is under no duty to do so. As a result, Declarant may never build, dedicate and sell more than existing Units in Phases 1 and 3 and Declarant may elect to withdraw some or all of the land in such Phases.

Even if additional future Phases are dedicated, no portion of Declarant's land is part of the Subdivision or subjected to the Declaration except the land specifically dedicated as future Phases by an amendment to the Declaration. Declarant has reserved the right to acquire additional real estate contiguous to the Subdivision and to incorporate some or all of such additional real estate into the Subdivision by dedication of additional future Phases.

The Declarant has no obligation to dedicate such additional real estate if acquired. The protective and restrictive covenants in the Declaration apply only to those Units and Common Elements which have, from time to time, been dedicated as Phases in the Subdivision.

2.1 The name of the Declarant is:

SLEEPY HOLLOW PROPERTIES, LLC  
1063 Maple Drive, Suite 3A  
Morgantown, WV 26505  
(304) 598-9002

2.2 The initial address of the Association is:

SLEEPY HOLLOW COMMUNITY ASSOCIATION, INC.  
1063 Maple Drive, Suite 3A  
Morgantown, WV 26505  
(304) 598-9002

The address of the Association will change not later than when Declarant relinquishes control of the Association.

Answers to questions and information about this subdivision may be obtained by telephoning the Declarant and/or the Association at the numbers listed above.

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### **III RISKS OF BUYING LAND**

- 3.0 Declarant is selling Units which are either building lots or lots containing a home. The initial purchase price of each Unit reflects the cost of land to the Declarant, the cost of the improvements furnished by Declarant and expenses incurred by the Declarant in developing the Subdivision.
- 3.1 Future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.
- 3.2 The value of your Unit may be affected by date of completion of, and completed quality of, the roads, utilities and all proposed improvements.
- 3.3 If you attempt to resell your Unit during development of the Subdivision and at a time when Declarant is actively marketing and selling Units, Declarant will be competing with you.
- 3.4 Development of this Subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse or beneficial and the degree of impact will depend on the location, size, planning and extent of the Subdivision. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your Unit and your ability to sell it.
- 3.5 In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a significant expenditure of money, it is recommended that you seek professional advice before you obligate yourself to purchase a Unit. A number of the considerations appurtenant to the purchase of land are addressed

below.

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#### **IV METHOD OF LAND SALE, CONTRACTS, DEEDS, DUE DILIGENCE**

- 4.0 If you desire to purchase a Unit from the Declarant you must sign a written purchase contract and pay an earnest money deposit. No agreement is an enforceable contract unless it: (i) is written; (ii) is signed by all buyers and sellers; (iii) contains a specific description of the land to be conveyed and all terms of sale; and (iv) is accompanied by an earnest money deposit paid as consideration by the buyers. No negotiation or correspondence between you and the realtors or the Declarant shall constitute a contract unless there is one written agreement fulfilling the above requirements. No sales pitch, promise or assurance made to you by any party is enforceable against the Declarant unless reduced to writing in the contract. No promise that any service will be provided or any improvement made is enforceable if inconsistent with the Declaration.
- 4.1 Declarant intends to use cash-only purchases for the sale of all Units. A minimum deposit is required at the time of the signing of the sales contract in order for the sales contract to be binding. The remainder of the purchase price will be due at closing which will be no more than 60 days from the signing of the contract. With this method of purchase, you will receive at closing a general warranty deed free and clear of all liens and encumbrances and subject only to those restrictions, reservations, easements and covenants of record that apply to the property.
- 4.2 The Declarant does not offer any standard policy of financing of Unit purchases. Any contract offered to Declarant may include such provisions. Declarant reserves the right to decline such offers for any non-discriminatory reason permitted by law.
- 4.3 A restriction or an encumbrance on your Unit, or on the Subdivision, could adversely affect your title to the Unit. You should retain the services of a lawyer with real estate experience to provide you with a title certification prior to purchasing your Unit.
- 4.4 A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a Unit may give you possession but it doesn't give you legal title. You won't have legal title until you receive a valid deed. A general warranty deed will be used to convey title to Units.
- 4.4 The recording of the sales contract gives actual notice to any other prospective purchaser of the subject Unit that there is legal claim against that Unit. It is not the local custom to record sales contracts. The general warranty deed which transfers title to the property will be delivered to you at closing and should be recorded in the Office of the Clerk of the Monongalia County Commission, Morgantown, West Virginia.

- 4.5 Before you purchase a Unit you should conduct certain due diligence to determine that the Unit is, in fact what you expect. Therefore, you should make your contract contingent upon your ability to complete appropriate due diligence investigations. As part of your due diligence investigations you should hire licensed and qualified professionals to, among other considerations: (i) examine and certify the title to the Unit; (ii) survey the Unit; (iii) determine whether the substrata and geological formations of the Unit permit your intended use of the Unit; and (vi) if the Unit is to be serviced by on-site septic system, to determine whether, and if appropriate what part of, the Unit meets County regulatory requirements for such a treatment system. You may also want to consider obtaining: (i) an appraisal to determine the market value of the Unit; (ii) a structural or engineering inspection of the Unit; (iii) testing to determine the presence of, and if present the volume of, radon gas present on and in the Unit; and (iv) an opinion as to the presence of any wood destroying or wood infesting insects and whether there is any damage to the Unit as the result of same. Additional matters are addressed below.
- 4.6 Under West Virginia law, the recording of your deed will protect you from any claims by subsequent purchasers, from former owners, and from any claims of creditors of former owners which may arise subsequent to the date of recording. It is your responsibility to record your deed upon its delivery to you by us.

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UNLESS YOUR DEED IS RECORDED YOU MAY LOSE YOUR UNIT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR OF SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

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- 4.7 The Declarant believes that the land in the Subdivision has historically been utilized primarily for agricultural and residential purposes and Declarant has no knowledge of any underground storage tanks, burial sites or strip mining. Most land in Monongalia County has been mined to some degree and you may want to determine whether your Unit has been undermined. The Declarant has no knowledge of any mine subsidence in the Subdivision.
- 4.8 The land being developed is, at the execution hereof, encumbered by certain security instruments and easements which are set forth on **Exhibit F (Known Liens and Encumbrances)**. Each Unit will remain subject to the applicable liens until the closing of the sale for that Unit at which time Declarant shall pay a portion of its proceeds in exchange for a release of the Deed of Trust to the extent that it constitutes a lien against the Unit. The Common Areas, including the easements and the rights-of-way serving the Subdivision, have not been released in full from these liens; however, each partial release will release the undivided ownership interest in the Common Element, easements and rights-of-way apportioned to the Unit. State law requires that lien holders provide a release within thirty (30) days after the lien holder's receipt of the sale proceeds.

- 4.9 You should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership that you are acquiring in the Unit. We recommend that you have an attorney or other appropriate professional interpret the opinion or policy for you. You should also have your attorney interpret the Declaration and other documents included in this Public Offering Statement.
- 4.10 The oil and gas rights to the Units in this Subdivision will not belong to the purchasers of those Units. The exercise of these rights by their respective owners could affect the use, enjoyment and value of your Unit. To the extent that Declarant may own any of such rights, Declarant shall not utilize the surface of the Subdivision or any Unit or Common Element for the purpose of extracting same.
- 4.11 Declarant is offering the Subdivision and Units for sale subject to those limitations and exceptions which: (a) existed when Declarant acquired the land; (b) Declarant imposed as part of the development process; (c) which Declarant has and may from time to time establish to maintain the character and quality of Units in the Subdivision; and (d) include the above referenced Deed of Trust in favor of Round Table Development, LLC, and any subsequent financing by Declarant. West Virginia law provides that you take your Unit subject to such limitations and exceptions regardless of whether the same were disclosed to you by Declarant prior to your closing.
- 4.12 As noted above, you should retain the services of an attorney to examine the title to your Unit. Notwithstanding the foregoing, the liens and encumbrances which are known to affect the Subdivision are identified on **Exhibit F**. For the benefit of all purchasers, the chain of title for the Subdivision is set forth on **Exhibit G**.

## **V PURCHASER DEPOSITS AND RIGHTS OF CONTRACT CANCELLATION**

- 5.0 Any deposit made in connection with the purchase of a Unit will be held in an escrow account. The escrow agent will be one of the following parties to be determined at the time you enter into the contract:
- (a) if you contracted to purchase via a realtor, Declarant's designated real estate broker, or such successors as Declarant may from time to time engage; or
  - (b) if you contracted to purchase without a realtor, Declarant's attorneys, or such successors as declarant may from time to time engage.
- 5.1 The earnest money will be returned to you if: (a) Declarant does not accept your offer of purchase; (b) Declarant refuses to sell the Unit to you; or (c) if you elect to cancel your purchase contract pursuant to those rights detailed hereunder in Section 5.2.

5.2 WITHIN 15 DAYS AFTER RECEIPT OF A PUBLIC OFFERING STATEMENT, A PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT FROM THE DECLARANT;

IF DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT TO A PURCHASER BEFORE CONVEYING A UNIT THAT PURCHASER MAY RECOVER FROM THE DECLARANT TEN PERCENT (10%) OF THE SALES PRICE OF THE UNIT PLUS TEN PERCENT (10%) OF THE SHARE PROPORTIONATE TO HIS COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE UNIT and,

IF A PURCHASER RECEIVES THE PUBLIC OFFERING STATEMENT MORE THAN 15 DAYS BEFORE SIGNING A CONTRACT OF SALE, HE CANNOT CANCEL THE CONTRACT.

CANCELLATION SHALL BE MADE BY HAND-DELIVERING A NOTICE THEREOF TO THE DECLARANT OR BY MAILING NOTICE THEREOF BY PREPAID U. S. MAIL TO THE DECLARANT OR ITS AGENT FOR SERVICE OF PROCESS.

5.3 All sales will be cash to the Declarant. You are responsible for obtaining any financing you may require. Your contract may not permit you the right to terminate your purchase obligations due to failure of financing unless you specifically include such a provision.

5.4 If you default in the performance of your obligations under the sales contract, Declarant has the right to retain all earnest money and other deposits that you have paid pursuant to the terms of the contract as damages for your default, require specific performance of the sales contract, or demand payments of a deficit after resale.

## **VI SUBDIVISION RESTRICTIONS ON THE USE OF YOUR LAND**

6.0 All Units are subject to certain restrictive covenants which are established by Declarant for the purpose of protecting and maintaining the character, value, aesthetics and appearance of the Subdivision. The restrictive covenants for the Subdivision are contained in the "DECLARATION OF COMMON INTEREST COMMUNITY FOR VILLAGE AT SLEEPY HOLLOW", and amendments thereto, (hereinafter the "Declaration"), and in certain cases in documents referenced therein. The Declaration is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, and attached hereto as **Exhibit B**. There have been multiple amendments to the Declaration which are attached hereto as **Exhibits B.1, B.2, B.3**. The Declaration must be amended each time that a new Phase 1s added to the Subdivision and will otherwise be amended from time to time during the development and evolution of the Subdivision. You should expect the

Declaration to change whether by act of the Declarant or post Declarant acts of the Unit Owners. This brief discussion of the Declaration below serves only as a highlight of some of the more significant restrictions and you should review the entire Declaration with your attorney prior to contracting to purchase a Unit from Declarant. It must be noted that there are no restraints on alienation of any of the Units or on the amount for which a Unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the Unit or to the Subdivision on termination of the common interest community status. Provided, however, that Declarant has reserved a Right of First Refusal to any dirt or earth removed from the Unit during construction. This Right of First Refusal is for the purpose of development of the Subdivision and potential development of other lands owned by Declarant which may be dedicated as future Phases of the Subdivision.

- 6.1 The Declaration is primarily comprised of four sections namely: (1) Declarant's intentions, rights, reservations and obligations; (2) Building Control Guidelines and limitations with regard to each Unit; (3) use restrictions and limitations with regard to each Unit; (4) the Association and its powers, duties and operating procedures.
- 6.2 The Declarant's intention is to complete a Subdivision of not more than 200 Units. Declarant has not conclusively determined the total number of Units which may be created, the size of the Units to be created, or the time period in which the Subdivision will be completed. Declarant has determined that it will complete construction of certain amenities and improvements which are itemized on **Exhibit E**. **BE ADVISED THAT ANY ADVERTISEMENT OR REPRESENTATION MADE BY ANY PARTY THAT DECLARANT WILL COMPLETE OR INSTALL ANY IMPROVEMENT IS VOID TO THE EXTENT THAT SAME IS IN ANY MANNER IN CONFLICT WITH EXHIBIT E.**
- 6.3 The Building Control Standards ("BCS") are covenants set forth in the Declaration and imposed by the Declarant which limit the improvements which may be made to Units and establish the criteria and process for such improvements. Building Control Guidelines ("BCG") are rules and regulations promulgated from time to time by the Association for each and every improvement that any party other than the Declarant may make to any Unit. BCG and BCS are managed, enforced and administered by the Building Control Committee ("BCC"). The Building Control Committee is initially controlled by the Declarant to protect the Declarant's investment in the Subdivision for the purposes of maintaining the value of all of Declarant's unsold Units. Declarant will, not later than when Declarant no longer owns any Unit in the Subdivision, assign all BCC rights and authority to the Association at which time the BCC shall be a committee of the Association. All improvements must conform to the general character of the development, paying particular attention to home style and design (including approval of building materials and colors used), sidewalks, driveways, landscaping, fences, lighting, and all other similar concerns. No improvement may be made to any Unit until complete plans and specifications for the improvement are approved, in writing, by the BCC. The

Unit owner has the burden of providing, at its cost, such plans and specifications as the BCC may deem reasonable or prudent with regard to the proposed improvement and there is no guarantee that any improvement will be approved even if a similar improvement already exists in the Subdivision. The BCC does not have control over improvements to the interior of any completed dwelling but only to the extent such improvements are not visible from the exterior of the Unit.

- 6.4 The use restrictions are for the purpose of maintaining the quality, character and appearance of the Subdivision and also to prevent any one Unit Owner's use and occupancy of his or her Unit from negatively impacting any other Unit Owners. You should review each and every use restriction carefully.
- 6.5 ***The Declarant has expressly reserved the right to approve any and all builders who construct dwellings in the Subdivision. All Units are conveyed by Declarant subject to this right of approval which applies only to the initial construction of any dwelling. Declarant's approval right is predicated on Declarant's desire to maintain character and quality of construction and to assure compliance with the Declaration. In the event that Declarant, for any legitimate business purpose should deny approval of any Builder, the Unit Owner shall have the option to proceed to utilize the services of such Builder after posting a Bond with Declarant in the amount of ten (10%) per cent of the construction value of the Unit to assure compliance with the Declaration, BCG and Rules and Regulations of the Association.***
- 6.6 The Association's duties are generally to: (a) maintain and manage all portions of the Subdivision other than Units; (b) to enforce and administer the restrictive and protective covenants in a manner consistent with the overall well being of the Subdivision and the interests of the majority of all Unit Owners; and (c) to manage all financial aspects and administrative functions of the Subdivision. The Association will charge all of its costs to the Unit Owners and the Association has the ability to enforce the Declaration and collect monies due it by Unit Owners by civil action or a lien against a Unit.
- 6.7 If one or more future Phases are dedicated for construction of patio homes, the covenants, restrictions, limitations and guidelines pertaining to patio homes shall, to the extent applicable differ from those applicable to standard Units. Those variations are expected to include: (a) reduction in the minimum dwelling area requirements; (b) reduction in the minimum Unit size requirements; (c) reduction in the minimum set-back requirements; (d) approval of similar exterior appearance, design and style of nearby Units; (e) reduction or release of the standard easement reservations from Units; and (f) other modifications to which are appropriate to permit construction of patio homes in certain areas. In the event that patio homes are constructed, the Declarant may elect to sell only the patio home as a Unit and dedicate the land surrounding the patio homes as a Limited Common Element, the expense of maintenance and upkeep of which shall be allocated to the patio homes. Declarant may also elect to make the roofs, exteriors and certain other structural members

of patio homes Limited Common Elements to be maintained by the Association at the cost of the patio home owners. An amendment to the Declaration adding patio homes will specify all of the foregoing and such other matters as may be appropriate. The term "Patio-Home" is defined in Section IV, Definitions, Paragraph 21, of the Declaration.

## **VII RIGHTS OF OTHERS TO UTILIZE YOUR LAND:**

- 7.0 Various easements, rights-of-way and other rights are excepted and reserved in the Declaration and may have an impact on your building plans or the use of your Unit. Easements have been expressly reserved to the Declarant, the Association, governmental authorities and public utility providers in, on, over, and under each Unit for various purposes. Each Unit is encumbered by the Declarant's and Association's rights to enter the Unit for any purpose authorized by the Declaration including the right to undertake the erection, installation, construction and maintenance of wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone, community television cables and other utilities and similar facilities. The Association and the Declarant also have the right to install various drainways and drainage systems. In the event that any such right is exercised, the Association and the Declarant have no liability for damage to or removal of any foliage or improvement in a right-of-way or easement area. Association and Declarant do, however, have an obligation to assure that any disturbed area is reasonably restored to grade and covered with grass seed. To the extent that any additional easements affect specific Units in the Development they are set forth in the Declaration or shown on the Map or Plat of the Development mentioned hereinabove.
- 7.1 The Association has the specific right to restrict construction of improvements and planting of foliage for the purpose of maintaining views from the Units. Such rights may not prevent construction and improvement of a Unit but may restrict the size, type, location and style of improvements and foliage. There is no specific view easement guideline and the Association will exercise its best judgment in balancing the interests of all Unit Owners when undertaking view easement decisions.
- 7.2 All improvements must conform to the general character of the development, paying particular attention to the design of your home (including approval of building materials and paint colors used), sidewalks and driveways. Because it is possible that your interpretation of the Declaration and BCG may differ from the Declarant's intentions and the BCC's policy for enforcing the BCG, it is strongly recommended that you obtain a preliminary approval of your house plans prior to purchasing a Unit. **If your intended dwelling is not what the BCC and Declarant consider "traditional residential" style, color and appearance, you may not be able to obtain approval to construct the same.** Declarant offers examples of house plans which are pre-approved and are demonstrative of the type of dwelling which is of "traditional residential" style, color and appearance.

## **VIII DECLARANT'S DEVELOPMENT RIGHTS**

- 8.0 The Declarant has reserved numerous rights which may impact your ownership and use of your Unit. The Declarant has reserved the right to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right, as defined in the Declaration; (iii) maintain sales offices, management offices, and signs advertising the Common Interest Community and models; (iv) use easements through the Common Areas for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision; (v) merge or consolidate the Subdivision with another Common Interest Community of the same form of ownership; (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant control; and (vii) to enlarge the Subdivision by adding additional real estate. Other Declarant's rights of potential impact are: (i) the right to utilize the roadways, easements and utility systems in the Subdivision for the benefit of other properties and the right to grant such uses to others; (ii) the right to develop other contiguous properties other than as part of the Subdivision; (iii) the right to determine the size, shape and selling prices of future Units; (iv) the right to approve your builder and to control the BCC for a period of time; and (v) the right to change the intended improvement plan for the Common Elements. It must also be noted that Declarant has no duty to complete any Phase of the Subdivision which has not been dedicated or any improvement which is labeled "Need Not Be Built".
- 8.1 Any and all Units created will ultimately be restricted exclusively to residential use. However, the Declarant has reserved the right to store materials and construction equipment and maintain a sales office, construction office and models in and on Units and Common Elements throughout the development process.
- 8.2 Declarant may add improvements which are not shown on the plans and Declarant may withdraw improvements shown on the plans. As a result:
- (1) No assurances, other than those found in the Public Offering Statement and Declaration, are made as to the locations of any building or other improvement that may be made within any part of the Subdivision pursuant to the development rights reserved by the Declarant.
  - (2) No assurances, other than those found in the Public Offering Statement and Declaration are made as to the type or size of any limited common element created pursuant to any development right reserved by the Declarant.
  - (3) No assurances are made as to the proportion of Common Elements or Limited Common Elements to Units created pursuant to the development rights of the Declarant.

(4) Any assurance made pursuant to this section relating to the development rights of the Declarant will not apply if that particular development right is not exercised by the Declarant.

8.3 You should review the Declaration in detail as to those rights which the Declarant has reserved, those duties which the Declarant does and does not have to perform, and the time periods in which Declarant may do so.

## **IX IMPROVEMENTS TO BE COMPLETED BY DECLARANT**

9.0 The plat depicting the Subdivision and the land which may be added to the Subdivision are recorded in the Office of the Clerk of the Monongalia County Commission, Morgantown, West Virginia. Copies of all recorded maps or plats of the Subdivision are attached as **Exhibit A (collectively)**. The Subdivision may be developed in Phases with the Plat of each Phase recorded prior to the sale of the first Unit therein. Except for Declarant's development purposes and the easements reserved for the benefit of other land, all dedicated Phases will be limited to use for single family residential purposes.

9.1 This jurisdiction has no regulatory review as a prerequisite to the recording of plats, except for street name approval by Monongalia Emergency Centralized Communications Agency ("MECCA") which is the governmental agency vested with authority to approve all road names and assigns all street addresses. MECCA has approved the Plat of Phase 1 and assigned mailing addresses and street names for the Units and Common Elements in Phase 1.

9.2 THE RECORDING OF THIS PLAT DOES NOT MEAN THAT THE SUBDIVISION HAS BEEN APPROVED BY ANY REGULATORY AGENCY. Provided, however, that the names of the Streets in the Subdivision have been approved by the Monongalia County Emergency Medical providers as required by law.

9.3 The Declarant must complete any improvements shown on the Maps or Plats unless the Declarant expressly reserved the right to void such improvement either by: (a) expressly labeling the same as "Need Not Be Built" on the Maps or Plats; or (b) expressly stating such right in the Declaration, this Public Offering Statement, the deeds of conveyance, purchase contracts or otherwise in writing.

9.4 The Declarant intends to provide the following improvements:

A. Underground distribution systems for the transportation of public: (i) natural gas, (ii) electricity, (iii) water, (iv) telephone service, and (v) cable television service. Declarant does not intend to provide public sanitary sewer service to any Unit and has only provided private sanitary sewer service to certain Units. Units 1 through 6 in Phase 1 must have on-site sanitary treatment systems known as "septic

systems” to be installed and maintained by Unit purchasers. A private sanitary sewer system is constructed within the Subdivision on a Common Element owned by the Association. The private sanitary sewer system belongs to the Association and all Units other than Units 1 through 6 in Phase 1 are required to utilize this system and pay the costs of its operation. The sewer system will require on-going maintenance and upkeep as required by law, consume utilities and chemicals, and from time to time require replacement and repair of its machinery and other components. All of the costs inherent in these matters are costs of the Association allocated only to the Units which utilize the sewer system. Units with on-site septic do not contribute to the cost of the sewer system because they must pay the costs of their own Unit-level system.

- B. Central storm water collection, transportation and disposal system to address water which leaves the Units.
- C. Paved roadways. Paved Roadways means roads paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted thickness of approximately two (2") inches of road base (type II aggregate asphalt) with a total average thickness of one (1") inch wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards and Declarant need not complete the roadways until six (6) months after the sale of Declarant's final Unit in the Subdivision. Prior to the paving of any segment of roadway, Declarant shall maintain high quality gravel roads. High quality gravel roads are stone, gravel or slag roadways, compacted and graded to facilitate vehicular travel. It is the Declarant's intent to establish the gravel roadways over time as part of the base for future paving. Because the Association is liable for maintenance and upkeep of all roadways, when completed, Declarant intends to provide gravel roads during early stages of development.
- D. Street signs and traffic regulations.
- E. A landscaped entryway with lighting and subdivision signage.
- F. Fire Hydrants supported by a six (6) inch waterline. At the execution hereof, the water supply is sufficient to support fire hydrants, public utility providers shall be responsible for maintaining said supply in the future.

9.5 The Declarant does not intend to provide the following improvements:

- A. Units 1-6 in Phase 1 are not serviced by central or comprehensive public or private sanitary sewer or sewage disposal systems and Declarant has not, and will not, extend mains or lines from the sewer system in the Subdivision to those Units.

- B. Utility meters, Unit utility taps, on-Unit distribution lines servicing each Unit, or on Unit storm water collection and disposal systems. The Unit purchaser is obligated to obtain and pay for the same. Control of surface or storm water within any Unit is the obligation of the Unit Owner. With regard to water services, Declarant has provided meter puts and stubs for connection.
- C. Sidewalks.
- D. Street Lights (other than at the entryway). Declarant may elect to, but has no obligation to, construct lighting at various locations throughout the Common Elements.
- E. Mailboxes. When the Subdivision was originally dedicated, the United States Postal Services had relatively liberal standards for postal delivery service and as a result, Phase 1 of the Subdivision was dedicated at a time when curb-side delivery service was available and viable. Subsequent to the dedication of Phase 1, the United States Postal Service changed its rural delivery requirements and now requires grouped boxes with a minimum number of postal addresses at one “delivery stop” or else “cluster boxes” with all mail delivered to a centralized location. Due to the rapid rate of technological changes, it is reasonable to assume that the government’s postal delivery requirements will continue to change in the future. Therefore, the Declarant imposed mailbox and postal requirements set forth in the Declaration are subject to change dependent on the requirements of the postal delivery provider. The Association shall from time to time establish and maintain reasonable standards for mailboxes and mailbox mounting and those standards may or may not be uniform between Phases. Each Unit Owner must comply with said standards at the Unit Owner’s cost.
- F. Any improvements to a Unit which has already been sold (Declarant however reserves the right to do so in the manner it may deem reasonable).
- G. Any other improvement that is not part of Declarant’s development scheme regardless of whether the same may have been promised or represented by any realtor, real estate broker or individual or entity other than the Declarant. If this Public Offering Statement (and Exhibits) do not specifically state that an improvement will be completed or any improvement is identified as “Need Not Be Built” there is no assurance that Declarant will do so.

9.6 At the time of this writing Declarant intends to complete multiple Phases which will not contain a total of more than 200 Units. There are 8 homes under construction or completed in both Phases 1 and 3 of the Subdivision. The improvements made by Declarant to subsequent Phases may not be consistent with improvements to Phases 1 or 3 or any other Phase in existence when Purchaser receives this document.

## **X**      **LAND PURCHASE AND USE ISSUES**

- 10.0      **Zoning** Because the Subdivision is located outside of municipal limits of the City of Morgantown there are no zoning ordinances in effect which regulate the use of the Units in the Subdivision. Therefore the Declaration imposes use and occupancy restriction similar to zoning. No approvals of any zoning authorities are necessary for you to use your Unit, however, you must obtain all necessary use and occupancy approvals from the Association. If your lot contains an on-site septic system you must also obtain approval from the Monongalia County Health Department. If you obtain such approval prior to purchase, or you receive evidence that the Declarant obtain such pre-approval, be advised that Monongalia County Health Department approvals are subject to revocation and expiration as a result of the passage of time or change of Health Department standards for approval.
- 10.1      **Surveying** Each Unit has been properly marked with permanent markers so that you can identify the boundaries of your Unit. You may wish, or your title insurance company may require you, to obtain a survey of your individual Unit at the time of the sale. Any such survey must be obtained at your expense. The estimated cost of a boundary survey of a Unit is generally between \$400.00 and \$600.00. If the boundary markers are moved, removed, damaged, vandalized or destroyed, your deed will convey your Unit as shown on the Map or Plat rather than your Unit as marked on the land. It is common for boundary markers to be adjusted, moved, removed or destroyed by third parties without the knowledge of the Declarant. Therefore, Declarant advises you to obtain a survey prior to purchase and that you may not rely on any representation or warranty by a broker, realtor or other party as to the precise boundaries of your Unit. The BCC may require that you obtain, at your cost, an "as built" foundation survey of your Unit during construction to establish that the improvements do not violate the covenants or BCG.
- 10.2      **Permits** Prior to building a structure, making any improvement, or implementing any landscaping on your Unit, you must obtain a building permit from the BCC of the Association. Building permits will be based on plans submitted by you. You will have to pay all costs of preparing the plans and you may have to pay a fee for BCC review of your plans. BCC will establish a standard review fee for plans and the standard fee may vary from time to time based on the actual cost and expense and time requirements of the Association. Costs may also be subjective depending on the nature, character, complexity and sufficiency of the plans submitted.
- 10.3      **Flood Plain District** Certain Units in the Subdivision may be located within a Flood Plain District as designated by the National Flood Insurance Program. The owner of any Unit located within a flood plain must comply with the requirements of the Monongalia County Flood Plain Management Ordinance and Federal Emergency Management

Administration prior to any construction on, or development of, an affected Unit.

- 10.4 **Environment** No environmental impact study has been prepared for the development. No determination has been made as to the possible adverse effects that the subdivision may have upon the environment and surrounding area.
- 10.5 **Title** Land title issues are addressed above. You should hire an attorney to address these issues for you.
- 10.6 **Radon Gas** Any completed Unit may contain radon gas. The EPA action level for radon gas concentrations is 4.0 pica curies per liter of enclosed air space. If you purchase a dwelling, you should consider having the same tested for radon gas levels.
- 10.7 **Pest/Termite** If you purchase a Unit which does not contain a dwelling you should have the soil treated prior to or during construction. If you purchase a Unit which contains a dwelling you should have the dwelling tested for the presence of wood eating and wood destroying insects such as termites and carpenter bees.
- 10.8 **Septic** If you purchase Unit 1 through 6 of Phase 1, you should determine whether the property is suitable for installation of an on-Unit septic system in accordance, or if such system exists you should determine its compliance, with the requirements of the Monongalia County Health Department and the West Virginia Board of Health.

## **XI CHARACTERISTICS OF THE COMMUNITY:**

- 11.0 The Subdivision is located in Clinton District of Monongalia County, West Virginia. It is not within municipal limits of any city or town. The land being developed was, when purchased by Declarant not developed and the only structures present prior to development by Declarant were the remnants of several ancient dwellings. It is the Declarant's belief that the land has never been utilized except for residential, agricultural, hunting and timbering purposes. Properties contiguous to the Subdivision are, at the execution hereof, utilized for single family residential purposes, agricultural purposes or are undeveloped. There is one gas well located in the Subdivision. Declarant does not own all mineral interests and mineral production rights with regard to the Subdivision. Declarant will not, however, utilize the surface of any Unit for the purpose of exploration or realization of oil, gas or other minerals.
- 11.1 **Access to the Subdivision** The Subdivision abuts U.S. Route 119, and Sleepy Hollow Road, both of which are public roads maintained by the State of West Virginia. U.S. Route 119 is a paved road and Sleepy Hollow Road is partially paved. You will not be assessed by the Association for the maintenance cost of the public roads. The primary entrance to the Subdivision is located on U.S. Route 119. The construction entrance which must be utilized by commercial vehicles is located on Sleepy Hollow Road.

11.2 **Access within the Subdivision** Access within the Subdivision is provided by private roads to be constructed by the Declarant. Declarant intends to dedicate the private roads as Common Elements and convey same to the Association. Declarant is responsible for construction of these roads and there is no construction cost to the purchaser. You will have to pay a proportionate share of all road maintenance and improvement costs. If, during construction, your builder's vehicles or other delivery vehicles fail to utilize the construction entrance and cause damage to the main entrance or paved roads, you may be charged for the cost of repairing the same.

11.3 **Nearby Communities** The following table identifies the distance (in miles) from the Subdivision to nearby communities.

Nearby Community	Approximate Population per 2000 Census	Distance Over Paved Roads	Distance Over Unpaved Roads	Total Distance
Morgantown, WV	26,809	13.46	0	13.46
Fairmont, WV	19,097	21.69	0	21.69
Grafton, WV	5,489	11.97	0	11.97
Clarksburg, WV	16,743	40.98	0	40.98
Pittsburgh, PA	334,563	87.63	0	87.63

The foregoing figures have not been updated since the 2000 Census but are available via internet and other public sources should you desire more current information.

## **XII UTILITIES**

12.0 The Subdivision is serviced by public utility providers which are regulated by the West Virginia Public Service Commission. Each utility service is addressed below with specificity. With regard to each public utility provided, the Declarant has caused a distribution line to be extended to each Unit. The Unit Owner will be responsible for causing, and paying the costs of: (a) installing a meter; (b) connecting the Unit to the distribution line; and (c) extending a service line to the dwelling and improvements constructed on the Unit. The cost of the foregoing will vary from time to time and may be obtained from the public utility providers.

12.1 **Water** The subdivision is served by a central public water system and water service is available from:

Clinton Water Public Service District  
703 Greenbag Road  
Morgantown, WV 26508  
Telephone: (304) 292-3088

Declarant installed service stubs and water meter pits for all Units on which there are no dwellings and, to the extent Declarant has pre-paid any water tap or meter fees to Clinton Water District, Declarant is entitled to reimbursement of said fees at the time of the initial sale of the Unit.

- 12.2 **Sewage/Septic** Units 1 through 6, inclusive, of Phase 1 of the Subdivision are **NOT** served by a central or comprehensive public or private sanitary sewer or sewage disposal system. Each purchaser of Units 1 through 6 of Phase 1 must cause an on-site septic system to be installed on the purchaser's Unit at the purchaser's expense. On-site septic systems are regulated by the Monongalia County Health Department and all purchasers are advised to retain the services of qualified professionals for the purpose of obtaining a septic proposal and feasibility study prior to purchasing a Unit. No septic drainage field may encroach on the Unit of any adjoining property owner or the common areas and roadways of the Subdivision.

Subsequent to the dedication of Phase 1 and the initial sale of certain Units therein, Declarant constructed and installed a private sanitary sewer system within the Subdivision, with the approval of the Monongalia County Health Department and the West Virginia Department of Health ("Treatment System"). The Treatment System belongs to the Association, is located on Common Elements dedicated to and belonging to the Association, and will be maintained by the Association in behalf of the membership and Unit Owners. The Treatment System is a Limited Common Element affecting, benefitting and allocated to, Units 7 through 14 in Phase 1, all Units in Phase 3, and also any Units hereinafter dedicated to the Subdivision. All costs of the use, operation, maintenance, permitting, upkeep, restoration, rebuilding, replacement and ownership of the Treatment System are Limited Common Expenses allocated to the benefitted Units entitled to utilize the Treatment System, however, the ad valorem tax obligation for the tract on which the Treatment System is situate is a Common Expense allocated to all Units. To the extent that the Owner of Units 1 through 6 in Phase may desire to, or need to, connect to the Treatment System, they will bear the costs of extending services lines to their Unit, the costs of any lift station or grinder required, and they will thereafter be required to pay a pro rata share of the cost of the operation of the Treatment System and any repairs or improvements thereto.

Questions with regard to on-site septic systems, so called "perk tests", and other related matters should be addressed to the Monongalia County Health Department at the following address:

Monongalia County Health Department  
453 VanVoorhis Road  
Morgantown, WV 26505  
Telephone: (304) 598-5150

- 12.3 **Electricity** Primary underground electrical service lines will be installed to each Unit. Allegheny Power Company has agreed to supply electrical service to the subdivision and is responsible for installation of service lines.

Allegheny Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15606-0001  
Telephone: (800) 255-3443

- 12.4 **Telephone** Verizon Telephone Company will supply underground telephone service to the Subdivision.

Verizon Telephone Company  
P.O. Box 17577  
Baltimore, MD 21297  
Telephone: (800) 562-2355  
Website: Verizon.com/storefront

- 12.5 **Television** Adelphia Communications was the original FCC regulated service provider to supply underground cable television and other services to the Subdivision. Adelphia Communications was acquired by Comcast Communications after Phase 1 of the Subdivision was dedicated and Comcast Communications is the current cable television service provider for the Subdivision.

Comcast Communications  
15 Summer School Road  
Morgantown, WV 26508  
(304) 292-6561

- 12.6 **Natural Gas** Dominion Hope has agreed to supply natural gas service to the Subdivision. In order to reduce the cost of installing natural gas distribution lines in the Subdivision, each Unit must contain one major natural gas appliance such as a furnace or heating system, stove or range, hot water heater or clothes dryer.

Dominion Gas  
P.O. Box 26666  
Richmond, VA 23261  
Telephone: (800) 688-4673

### **XIII LOCAL SERVICES**

The governmental and other local services available to the Subdivision:

- 13.0 **Fire Protection** Primary fire protection is available on a year-round basis from the Clinton Volunteer Fire Department, telephone number (304) 291-0818. The fire station is located approximately three and three-tenths (3.3) miles north of the entrance to the Subdivision on U.S. Route 119, also known as the Grafton Road. Additional fire protection is available from other county fire departments on a year-round basis but the Subdivision is not within the area regularly serviced by those additional departments.
- 13.1 **Police Protection** Police protection is available on a year-round basis from the Monongalia County Sheriff's Department and the West Virginia State Police, both of which agencies have offices in Morgantown.
- 13.2 **Schools** Children residing in the Subdivision may attend the following public schools:

SCHOOL	OPERATING BODY	DISTANCE FROM SUBDIVISION	ENROLLMENT GRADES
Ridgedale Elementary	Monongalia County	6.14	K-5
South Junior High School	Monongalia County	10.51	6-8
University High School	Monongalia County	12.07	9-12

There are multiple parochial and private schools in Monongalia County including the Saint Francis schools maintained by the Wheeling Catholic Diocese of the Roman Catholic Church near the intersection of West Virginia County Route 119 and Interstate 68, and Trinity High School, a non-denominational Christian school located on Trinity Way near the intersection of West Virginia County Route 7 and Interstate 68 in Sabraton West Virginia.

- 13.3 **Hospitals** The Monongalia General Hospital and West Virginia University Hospitals are located in Morgantown, West Virginia, approximately thirteen (13) miles from the subdivision. Ambulance service also is available.
- 13.4 **Physicians and Dentists** There are a significant number of physicians and dentists located within the Fairmont, Morgantown and Grafton, West Virginia areas.

- 13.5 **Shopping Facilities** A wide variety of shopping facilities are located in Monongalia, Taylor and Marion Counties.
- 13.6 **Public Transportation** There is no public transportation available in the subdivision. Chartered and public air service is available from the Morgantown Municipal Airport, located approximately 20 miles from the Subdivision. Commercial air service is available from that airport to various locations including Washington, DC, and Pittsburgh, PA.

#### **XIV SUBDIVISION CHARACTERISTICS AND CLIMATE**

- 14.0 **Terrain Issues** The general terrain of the subdivision, the climate and any nuisances or hazards affecting the enjoyment or use of the area in which the Subdivision is located should be considered by all Unit Purchasers.
- 14.1 **General Topography** The subdivision lies in Monongalia County, West Virginia, located in the Appalachian Plateau Region of West Virginia at the foot of the Allegheny Mountains. The topography of the land within the subdivision ranges from the approximate elevation of 1700 feet above sea level to an elevation of 1921.3 feet above sea level. This topography is varied and quite steep in places and is covered with varying degrees of vegetation consisting primarily of pines, maples, oaks and other deciduous types of trees and considerable underbrush. Certain Units are the site of significant rock formations which could be impediments to construction but add aesthetic quality and character to the Subdivision.
- 14.2 **Slope Concerns** Some Units in the Subdivision may have slopes greater than twenty (20%) percent. This may affect the type and cost of construction and will require adequate engineering and professional architectural attention prior to any building or site work.
- 14.3 **Drainage and Fill** Some of the Units may have been filled or drained and some Units may require draining or fill. Some Units are the site of significant rock or stone formations. Soil conditions and subsurface geological conditions will vary throughout the subdivision. Prior to purchase, you should obtain a subsurface geological inspection to determine the impact that stone or rock formations may have upon your landscaping, excavation and construction plans and costs. Significant subsurface conditions may limit the type of home you can build and/or dramatically increase the cost of construction.
- 14.4 **Flood Plain** The subdivision is generally not within the flood plain. Should an improvement touch the flood plain, flood insurance would be required and is available through the Natural Flood Insurance Program as established by the National Flood Disaster Protection Act. The cost of Flood Insurance may be obtained from the provider. The

cost of flood insurance will vary from time to time and purchasers are advised to obtain an estimate from a flood insurance provider prior to executing a contract to purchase a Unit in the Subdivision.

- 14.5 **Flooding and Soil Erosion** The Declarant has retained an engineering firm to provide a comprehensive drainage system within the watershed of the development. The program includes mulching and seeding of exposed areas, sodding and seeding in areas of heavy grading and construction of diversion channels, drainage swales, outlet channels, underground piping, basins, and other similar methods of water conveyance and distribution. You must comply with the storm water plan in the development of your Unit and no drainage improvement installed by Declarant may be modified or removed without the prior written consent of the Association.
- 14.6 **Drainage Standards** The draining system is designed as follows:
- A Culverts will pass a 20-year storm.
  - B. Storm sewers will pass a 20-year storm without backing water through inlets.
  - C. Ditches and swales will contain a 20-year storm within its banks and are treated for a two-year storm water velocity.
- 14.7 **Drainage/Sediment Regulation** There is no governmental agency to approve or disapprove the program, therefore, the measures being taken may not be sufficient to prevent damage or health and safety hazards. Storm Water discharge and sediment control are regulated by the Environmental Protection Agency and the West Virginia Department of Environment Protection. Declarant obtained all necessary permits for development of the Subdivision but you may be required to obtain additional permits to develop your Unit.
- 14.8 **Purchaser Drainage Due Diligence Issues** Prospective buyers are hereby notified that the surface water conditions on individual Units within the Subdivision vary during certain seasons of the year and existing surface water conditions may not be apparent at all times. Further, surface water conditions on individual Units will be materially affected by the development and construction of homes on both the Unit to be purchased and other Units in the Subdivision situated at elevations above the Unit to be purchased. Therefore, prospective purchasers are advised to consult an engineer for the purpose of: (a) ascertaining pre-purchase, pre-development and post-development surface water conditions on any given Unit; and (b) advising the purchaser and the purchaser's builder, contractor and landscaper with regard to construction on, and development of, the Unit.
- 14.9 **Limitations on Use of Drainage System** Although Unit Owners are required to discharge surface water into the comprehensive storm water management system, the BCC

may reasonably restrict the location and rate of such discharge. On-site storm water retention systems may be required on individual Units. No Unit owner may make any material modification to the storm water system, restrict the flow of the system, redirect the system or fill in any portion of the system without prior written consent of the BCC. The BCC may reasonably require an engineer's certification of the appropriateness and adequacy of such changes and that the same be made at Unit Owner's expense.

14.10 **Unit Owner Drainage Duties** Each Unit owner is charged with the duty of maintaining and monitoring all storm water systems located on his/her Unit. Each Unit Owner, as a member of the Association, has an affirmative duty to promptly notify the Association of any failure or deterioration or inadequacy of the system.

14.11 **Nuisances** To the knowledge of the Declarant, there are no nuisances which affect the Subdivision. The real estate abutting the Subdivision located on its northern boundary is utilized for agricultural purposes which include maintaining livestock and periodic use of natural and artificial fertilizers which may from time to time be considered a nuisance by some individuals. Those uses of adjoining land, however, were in existence prior to Declarant's acquisition of the land on which the Subdivision is being developed and those uses are not regulated or governed by the Declaration.

14.12 **Hazards** To the knowledge of the Declarant, there are no existing hazards which affect the subdivision.

14.13 **Climate** The average temperature ranges for the subdivision area are shown below:

MONTH	AVERAGE HIGH TEMPERATURE	AVERAGE LOW TEMPERATURE	MEAN TEMPERATURE
January	38.0 F	21.4 F	29.7F
July	82.6F	62.6 F	73.1 F

Monongalia County has an average annual precipitation of approximately 40.59 inches and an average snowfall of 32.1 inches. Precipitation, however, varies annually and all Unit purchasers are advised to implement drainage controls sufficient to handle the most severe precipitation which may occur.

**XV PROPERTY OWNERS ASSOCIATION**

15.0 Membership in the Association is mandatory for each Unit owner, entitling that Unit owner to one vote per Unit on all Association business.

- 15.1 The Association is the entity empowered to enforce the Declaration and all documents referenced therein for the purpose of protecting and ensuring the character, value, aesthetics and appearance of the Subdivision. The Association also owns and maintains the Common Elements and manages the financial affairs of the Subdivision. The Association has the option but not the duty to undertake any specific enforcement action.
- 15.2 During the initial year of operation, Declarant shall provide all snow removal, roadway repairs, mowing and trimming of the Common Elements, and the cost of all utilities consumed in maintaining the Common Elements. Declarant shall also pay the cost of all property taxes on the Common Elements and all Association expenses for insurance, taxes and governmental filing fees. A copy of the declarations page for the Association's insurance coverage provided for the benefit of Unit owners is attached as **Exhibit H**. The initial Association's insurance declaration page is attached to this Public Offering Statement but current copies of the most recent declarations page are available from the Declarant (during Declarant control of the Association) or Association upon request.
- 15.3 Each year the Association shall adopt an annual budget which shall provide for all known and anticipated expenses of the Association. The costs of the Association will vary from time to time and those costs will to some extent depend on what expenses the Association elects to incur.
- 15.4 Because the Declarant initially bore all costs during the first year of the Association and continues to subsidize the Association by bearing some of its costs during development. Until a sufficient number of Units have been conveyed to third parties Declarant subsidization is a Declarant option. Thus, due to subsidization no actual Association budget is available at present. A proposed balance sheet and a projected budget for the Association is attached as **Exhibits I and J**. The budget is an estimate prepared by the Declarant under the Assumptions set forth on **Exhibits I and J**, made in good faith. The balance sheet and budget are estimates which may change in the future based on factors including, but not limited to, the rate at which Units are dedicated, sold, added or withdrawn from the Subdivision, the size, character and density of Units and dwellings, and the rate at which dwellings are constructed, sold and occupied, seasonal conditions, services and/or improvements which the Association may elect in the future. All purchasers should assume that the budgetary costs of the Subdivision shall increase over time if for no other reason than inflation and also that the Association will from time to time elect to modify its fiscal objectives. It is unlikely that the Association's budget will decrease over time and it is almost certain that costs of ownership of operation of the Subdivision will increase over time.

*The budget must include, without limitation:*

*(i) A statement of the amount or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;*

*(ii) A statement of any other reserves;*

*(iii) The projected common expense assessment by category of expenditures for the association; and*

*(iv) The projected monthly common expense assessment for each type of unit;*

*(v) The Limited Common Expenses of operating the Treatment Facility and the capitalized future replacement and repair costs of same.*

The Association must prepare an annual budget and annually assess the same to the Units. An annual budget must be proposed to the membership and an annual budget meeting held within 20 days after publication of the annual budget. Unless the annual budget is voted down at the meeting by a majority of all Units (not majority of Units in attendance) the proposed annual budget will automatically go into effect. If the proposed annual budget is voted down by a majority of all Units, the most recent approved annual budget will remain in full force and effect until a new annual budget is passed.

## **XVI ASSOCIATION ASSESSMENTS:**

The Association must finance its operations by assessing its costs to the Units. If Assessments are not paid when due, the Association has the power and authority to impair the marketability and title of the Unit by perfecting a lien to secure payment of such costs..

16.0 There are several types of Assessments:

(a) **Annual Assessments** for the common benefit of all members of the Association and intended to finance the annual operations of the Association. During the initial year of the Subdivision there will be no Annual Assessments and Declarant will bear the cost of all Association expenses. Annual Assessments will begin during the year after the first of the following to occur: (i) when Declarant relinquishes control of the Association; or (ii) when Declarant advises the Association it will no longer bear all of the Association's expenses. **The minimum Annual Assessment is set at \$300.00.** The Declarant may elect to bear any portion of the Association's expenses and cause assessment of the remaining expenses to the Units. Said election may be based on, among other reasonable factors, Declarant's desire to establish the assessment system and protocols without overburdening the Units with all Common Expenses or Limited Common Expenses during early stages of development.

(b) **Special Assessments** which are from time to time necessary to finance the costs of matters either not accounted for in, or which exceed the amount budgeted in, the Annual Assessment.

(c) **Initial Membership Deposit**, which are paid by all Unit purchasers at the time they acquire the Unit. **During 2009, the Initial Membership Deposit is \$150.00 but the Association may increase this fee in the future.** The Initial Membership Deposit is due from the grantee as the result of each sale of each Unit in perpetuity and it is intended to help fund the Association's reserves and balances.

(d) **Fines and Penalties** which are assessed against fewer than all Unit Owners as the result of a violation of a restriction, rule or regulation of the Association; and

(e) **Construction Bonds** which are paid to assure compliance with the Association's requirements during development or improvement of a Unit.

- 16.1 At the time of this Declaration, there are no current or expected fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Subdivision. The Association may elect to impose such fees at a later date.
- 16.2 Assessments are made for the purpose of paying the Association's actual and anticipated expenses. The Association's expenses are budgeted annually and include, but are not limited to management fees and administrative costs of operation and maintenance of the Common Elements and Association such as, ad valorem taxes, insurance premiums, business registrations, capital expense reserves, snow removal, roadway repairs, mowing, signage, lighting and other similar expenses. Assessments may be increased annually as deemed necessary at the discretion of the Association for the purpose of defraying in whole or in part any appropriate expenses or capital costs of the Association, including without limitation, the costs of any construction, reconstruction, or unexpected repair of streets or parking areas or for necessary fixtures and personal property related thereto.
- 16.3 Annual Assessments shall be allocated equally to all owners of all Units regardless of location, use or size. The allocation schedule for Annual Assessments is set forth in the Declaration. The cost of Common Elements which benefit all Units is assessed equally to all Units. The cost of Limited Common Elements which may be utilized by less than all Units are assessed to those Units entitled to utilize the Limited Common Elements. With regard to Patio-Homes, the cost of structures which benefit more than one Patio-Home are the Limited Common Expense of the benefitted Patio-Homes.
- 16.4 The Annual Assessment for each Unit shall be set by the Association Board no later than December 31 of the year before the Assessment is due. The Annual or Common Assessment shall at the Association's option be payable either: (a) in quarterly installments; or (b) in full on or before the 31<sup>st</sup> day of January of each year., The rate of said Annual Assessment shall be established, and may be modified, each year by the Association's Board.

- 16.5 All money collected from Initial Assessments during the period of Declarant's control, and before the first Annual Assessment will be placed in an interest bearing account of the Association and used for future road repair when the Declarant turns the community over to the property owners.
- 16.6 A copy of the Association's initial insurance declarations page is attached as **Exhibit H**.
- 16.7 Notwithstanding the foregoing provisions of this Article 16, the costs of the Treatment System may be by Annual or Special Assessment and the same are apportioned only to those Units entitled to use the Treatment System, regardless of whether the Unit contains a dwelling which is connected to the Treatment System.

## **XVII RESALE REQUIREMENTS / EXCHANGE PROGRAM**

- 17.0 The Declarant has no program to assist you in the resale of your Unit. Also, we have made no provisions for exchanging your Unit. To the extent that the Declarant is marketing its Units for sale, such marketing may be in direct competition with the resale of your Unit.
- 17.1 When you sell your Unit, it is your obligation pursuant to the Declaration and the West Virginia Common Interest Ownership Act, West Virginia Code Chapter 36B, Article 4, Section 109, to provide your grantees, assignees and successors in interest with certain documentation. **By West Virginia law no contract for the resale of any Unit in a Common Interest Community such as the Subdivision is binding as to any purchaser until three (3) days after the seller provides the following information:**
- (A) *this Public Offering Statement;*
  - (B) *the Declaration of Protective and Restrictive Covenants;*
  - (C) *the By-Laws of the Association;*
  - (D) *the Rules and Regulations of the Association;*
  - (E) *The most recent regularly prepared balance sheet and income and expense statements, if any, of the Association;*
  - (F) *The current operating budget of the Association; and*
  - (G) *The following information from the Association:*
    - (i) *A description of the type and amount of insurance maintained by the Association for the benefit of the Association's members and Unit owners;*

*and*

- (ii) A statement that the Association's Executive Board has no knowledge that any alterations or improvements to the Unit or to the Limited Common Elements assigned to said Unit violate any provision of the Declaration; and*
  - (iii) A statement that the Association's Executive Board has no knowledge of any violations of applicable health or building codes with respect to the Unit; the Limited Common Elements assigned to said Unit; or any other portion of the Common Interest Community; and*
  - (iv) A statement that there are no leasehold estates affecting the Unit;*
  - (v) A statement of any capital expenditures anticipated by the Association for the current and two next succeeding fiscal years; and*
  - (vi) A statement of the amount of any reserves for capital expenditures and any portions of those reserves designated by the association for any specified projects.*
- (H) A written Statement that to the best of the Association's knowledge:*
- (i) There are no rights of first refusal or restraints of the free alienability of the Unit to be sold which have an effect on the proposed disposition of the Unit; and*
  - (ii) The current monthly or annual common expense assessment for the Unit and the amount of unpaid common and/or special assessments currently due and payable; and*
  - (iii) All other fees are currently payable by the Unit owner; and*
  - (iv) There are no unsatisfied judgments against the Association and there are no pending suits in which the Association is a Defendant; and*
  - (v) There are no leasehold estates affecting the Unit or the common areas of which a beneficial ownership and/or use interest is attributable to the Unit; and*
  - (vi) There are no restrictions in the Declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty or loss to the Unit. The attached declaration contains certain provisions pertaining to*

*limitations affecting the amount that may be received by the Unit owner as the result of condemnation, casualty or loss of the common elements of the Common Interest Community or the termination of the Common Interest Community.*

We prepared forms attached hereto as **Exhibit P** which may be of assistance in complying with the Declaration and the Common Interest Community Ownership Act.

**XVIII WARRANTIES AND LIMITATIONS:** The Subdivision is governed by certain warranties of quality which are set forth in West Virginia Code Section 36B *et seq.* The Declarant makes the offer of all initial sales of all Units contingent upon all purchasers from the Declarant executing a document waiving the limitations period for actions on warranties to two (2) years. Each contract shall contain a waiver provision and a written waiver will be produced to all purchasers at closing. No deed shall be delivered by Declarant absent the voluntary execution of such waiver by the purchaser. A copy of the Waiver is attached hereto as **Exhibit K** and each deed from the Declarant shall contain language restating the waiver to be incorporated as part of the public land records after recording.

With regard to warranties, Declarant warrants only those improvements actually made by Declarant and Declarant is in no manner liable or responsible for the acts or actions of trespassers, builders, successor Unit Owners or their agents or employees. To the extent that any non-Declarant party makes or causes and change to any Unit or Common Element, Declarant does not warrant such action.

**XIX STATUTORY DISCLOSURE:** At the time of this Public Offering Statement, the Declarant has no knowledge of any unsatisfied judgments or pending suits against the Association or any litigation material to the Subdivision.

**XX UNIT TAXES/EXPLANATION:**

20.0 In West Virginia, standard real estate closing practice is for real estate taxes to be apportioned at closing by a mechanism contrary to statute. Specifically, although taxes are assessed based on a year beginning July 1 and ending June 30, taxes are published on a calendar year basis and the tax lien attaches on a calendar year basis. Therefore, all contracts for Units in The Subdivision provide that taxes will be apportioned on a calendar year basis.

20.1 Upon closing of your purchase of a Unit, you will be obligated to pay Monongalia County real estate taxes for the year in which you purchase the Unit. Taxes will be pro-rated between you and the Declarant as of the day of closing. Thereafter, you will be required to pay all taxes assessed against the property. Taxes are payable to the Sheriff of Monongalia County. The annual taxes on an unimproved Unit after the sale to a purchaser

will vary from Unit to Unit depending on the assessed value of the property and you should expect your real estate taxes to increase during the 18 months after you purchase your Unit.

- 20.2 In the event that you purchase a Unit which is at the time of conveyance assessed as part of the parent tract rather than as a separate Unit, or in the event that a tax ticket is issued after closing which assesses your Unit as part of a larger tract owned by Declarant, Declarant will be responsible for payment of the ticket and you will be responsible for reimbursing the Declarant for your share of those taxes. You will be obligated to reimburse such costs to the Declarant within fifteen (15) days after Declarant provides you with a copy of a full year or partial year paid tax receipt.
- 20.3 Real Property taxes for each year are assessed based on: (A) the ownership classification and use; and (B) the value of the real estate; on July 1 of the preceding year. There are two tax classifications which apply to properties in The Subdivision. Real estate which is the primary residence of its owner on the assessment date is Class 2. Real Estate which is not the principal residence of its owner on the assessment date is Class 3. Class 3 properties are taxed at the standard levy rate and Class 2 properties are taxed at one-half ( $\frac{1}{2}$ ) of the standard levy rate.
- 20.4 All properties owned by the Declarant are Class 3 and will be assessed as Class 3 during the year they are conveyed from the Declarant. If a Unit is conveyed and the deed is recorded prior to July 1 of a given year the subsequent year's taxes will be issued in the name of the purchaser and the tax classification may change based on the new owner. If a Unit is conveyed and the deed is recorded subsequent to June 30 of a given year the taxes for the subsequent year will be issued in the name of the Declarant and the property will be assessed as Class 3.
- 20.5 It is your obligation to contact the Sheriff and Assessor of Monongalia County, West Virginia, to confirm that any Unit you purchase from the Declarant is correctly assessed for years subsequent to conveyance. You should notify the Sheriff as soon as you move into your home so that the Sheriff may make any appropriate tax classification changes.
- 20.6 Example taxation calendar:
  - A. Taxes for 2009 are based on the classification and value of the land on July 1, 2008.
  - B. During April of 2009, the County Commission sets the levy rate which when multiplied by the value and the classification factor results in the amount of the taxes.
  - C. 2009 Taxes are published and become payable during July of 2009.

- D. The first half (January to the end of June) 2009 taxes are due by September 1, 2009, and delinquent if not paid by October 1, 2009.
- E. The second half 2009 (July to the end of December) taxes are due by March 1, 2010, and delinquent if not paid by April 1, 2010.
- F. Both halves may be paid at any time after July 1, 2009, and there is a pre-payment discount if assessments are paid early.

If the 2009 taxes are not paid prior to November 2010, the land will be sold for back taxes.

20.7 If you construct improvements on a Unit in The Subdivision, please bear in mind that each year's taxes are based on the state of the property on July 1 of the preceding year. Hence, new construction may not be taxed at its post-completion state for as much as two years after closing. If the construction was completed on July 1 of the preceding year but the dwelling was not the principal residence of its owner on that date then taxes for the upcoming year would be issued based on full completed value and at the highest possible levy rate.

20.8 Example of tax calculation:

$(\text{Appraised value on June 30 of preceding year}) * 0.60 = \text{Assessed Value}$
$\text{Assessed Value} * \text{Levy Rate} = \text{Tax}$

If a Unit with dwelling is worth \$250,000 and it is the principal residence of its owner it would be taxed as Class 2 and based on the 2009 Clinton Tax District levy rate of .010454 the tax would be calculated as follows:

$$\$250,000 * 0.60 * .010454 = \$1,568.10 \text{ per year.}$$

If a Unit with dwelling is worth \$250,000 and it is NOT the principal residence of its owner it would be taxed as Class 3 and based on the 2009 Clinton Tax District levy rate of .020908 the tax would be calculated as follows:

$$\$250,000 * 0.60 * .020908 = \$3,136.20 \text{ per year.}$$

Therefore, you should notify the Assessor's office at (304) 291-7279 as soon as you purchase real estate.

20.8 Individuals with certain disabilities and individuals over the age of 65 are eligible for a Homestead exemption on Class 2 properties. This exemption causes the assessed value to

be reduced from 60% of the appraised value to 40% of the appraised value. You must contact the Assessors' Office on the second floor of the Courthouse and personally apply for the Homestead Exemption.

- 20.9 In the event that you have any questions with regard to taxation, you may contact the Sheriff's Tax Office at (304) 291-7244 or the Monongalia County Assessor's Office at (304) 291-7220. The tax and assessment information relating to land in Monongalia County is available from the websites maintained by said offices at <http://129.71.117.38:8383/> and <http://www.assessor.org/> and you can always check taxes and assessments at your convenience.
- 20.10 When Units are initially platted for sale by Declarant they are part of a larger parent tract for tax purposes. Depending on the date the plat of subdivision is recorded, those new Units may, or may not, be separately assessed and taxed apart from the larger parent tract during the succeeding tax year. In some cases, the assessment process may tax two (2) years before each Unit is taxed separately. When each Unit is originally sold by the Declarant, the then current calendar year taxes will be prorated based on the most recent published tax ticket. Until a separate ticker is issued for a Unit, Declarant shall continue to pay all taxes prior to delinquency but the Unit Owner shall reimburse to Declarant, within twenty (20) days of demand, their pro rata share of such taxes.
- 20.11 Tax liability runs with the land regardless of the name in which the ticket is issued. Tax tickets are issued based on the owner of the land on July 1 of the preceding year but are payable by the owner of the land thereafter regardless of the name on the ticket.

This Public Offering Statement and the Exhibits hereto, submitted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by:

Sleepy Hollow Properties, LLC,  
A West Virginia limited liability company,

By: \_\_\_\_\_

Its: \_\_\_\_\_