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DECLARATION OF COMMON INTEREST COMMUNITY

FOR

VILLAGE AT SLEEPY HOLLOW

**a residential Planned Community in
Monongalia County, West Virginia**

THIS DECLARATION OF COMMON INTEREST COMMUNITY FOR VILLAGE AT SLEEPY HOLLOW, effective the 30th day of June, 2005, by Sleepy Hollow Properties, LLC, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements for itself and its grantees and assigns, hereby make the following declaration:

I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP:

Declarant does hereby submit as a Planned Community the real estate dedicated hereby, together with all roadways, improvements and other permanent fixtures now and later situated thereon and thereof and all rights and privileges pertaining thereto (hereinafter referred to as "Subdivision") to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act").

II. SUBDIVISION NAME AND LOCATION:

The name by which this Subdivision is to be identified is Village at Sleepy Hollow. The property comprising the Subdivision is located in Clinton Tax District, Monongalia County, West Virginia.

III. THE LAND:

The Subdivision is being developed in multi-lot Phases and only one such Phase, namely Phase I, is dedicated to the Subdivision hereby. Additional real estate comprised of Units, Phases, Common Elements and Limited Common Elements may be added to the Subdivision by subsequent dedication and the recordation in the Monongalia County Clerk's Office of Additional Maps and Plats.

Phase I, of the Subdivision is hereby dedicated as depicted and shown on that certain Map or Plat entitled Phase 1 Plat of Village at Sleepy Hollow, Sleepy Hollow Properties, LLC, prepared by Potesta & Associates, Inc., dated April, 2005, and recorded in the Office of the Clerk of the

County Commission of Monongalia County, West Virginia, in Map Cabinet D in Envelope No. 32A.

Total acreage of parent tracts	
Total acreage dedicated as Phase I	16.834 Acres
Remaining parent tract acreage not dedicated as Sleepy Hollow Subdivision but which may be dedicated as future Units	51.663

Total acreage of Phase I	16.834 Acres
Number of Units in Phase I	14 Units
Total acreage of all Units in Phase I	14 Acres
Total acreage of Common Elements in Phase I	2.83 Acres
Total acreage of Limited Common Elements in Phase I	0

Phase I is depicted on the map or plat attached as **Exhibit A** and recorded as aforesaid and is comprised of part of the real property owned by Declarant and described on **Exhibit B**. Declarant reserves the right to develop some or all of the real estate described and identified on **Exhibit B**, and also all adjoining tracts of real estate described on **Exhibit C**, as additional Phases in the Subdivision, and to create additional Units, Common Elements and Limited Common Elements thereon from time to time by recording amendments to this Declaration and recording additional maps or plats. The Declarant reserves the privilege but has no duty to exercise such rights and such future Phases, Units, Common Elements and Limited Common Elements, if dedicated to the Subdivision, shall be subject to the covenants, restrictions, limitations and conditions set forth herein. Declarant reserves the right to impose additional restrictions on such future Phases, Units, Common Elements and Limited Common Elements as may be reasonable or beneficial to Declarant as more particularly set forth herein below. Any portion of the real estate described in **Exhibits B and C** which is not dedicated as a Phase in the Subdivision is not subject to this Declaration except to the extent that the declarant has: (1) reserved the right to add such real estate to the Subdivision at a later date; and (2) Declarant has reserved rights, rights-of-way and easements in this Declaration for the benefit of said real estate.

IV. DEFINITIONS:

Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless, as used elsewhere, the text or context in which such terms as

used indicates another contrary or more specific definition:

1. Association: Sleepy Hollow Community Association, Inc., a non-profit corporation, its successors and assigns, which Association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the Subdivision.
2. Board: The Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with this Declaration and this Declaration shall govern in the event of any dispute or conflict between such documents.
3. Builder: Any entity which purchases one or more Units for the purpose of constructing improvements for resale to consumers in the ordinary course of its business, or which purchases one or more parcels of land for further subdivision, development and/or resale in the ordinary course of its business. Declarant reserves the right to determine when and whether a purchaser qualifies as a Builder.
4. Building Control Committee: Initially, a Committee of the Declarant appointed to set and maintain construction standards in the Subdivision (including Construction Standards as defined herein and such Construction Guidelines as may be from time to time established by the Declarant or Association) and to approve or disapprove construction plans and specifications for all buildings, structures, driveways, walls, fences, drainage systems, utility systems, walkways and all other improvements of all sorts, including trees and foliage, which may be erected, placed or cultivated on any Unit. The Building Control Committee is vested with power and authority to make all approvals and said authority shall be exclusive to the Building Control Committee. Declarant shall assigns all of its BCC Rights, powers and authority to the Association not later than when the Declarant no longer owns any Unit in the Subdivision. Beginning at the time of such assignment, the Building Control Committee shall be a committee of the Association.
5. BCC Rights: The right initially vested in the Declarant, and eventually to be vested in the Association, to administer, approve, and establish guidelines for all improvements and construction on any Unit. BCC Rights are initially reserved to the Declarant and shall be assigned to the Association prior to the sale of Declarant's final Unit in the Subdivision. Because BCC Rights are independent rights reserved to the Declarant due to Declarant's business interests and investments in the Subdivision, BCC Rights are independent and separate from Declarant's initial control of the Association, which said control must terminate as set forth hereinbelow. Declarant's BCC Rights may continue after termination of Declarant's control of

the Association. Declarant's BCC Rights shall be assigned by Declarant to Association not later than when Declarant no longer owns any Unit in the Subdivision.

6. By-Laws: The By-Laws of the Association as the same may be amended from time to time and which govern the daily operation of the Association to the extent not specified in the Declaration and Articles of Incorporation. To the extent that there is any dispute or conflict between the provisions of the By-Laws and the Articles of Incorporation, the Articles of Incorporation shall govern.
7. Common Elements: All dedicated portions of the Subdivision other than the Units, including, without limitation, all roadways, all easements dedicated or reserved to the Association, and all the improvements and appurtenances thereto, central utilities and services, and areas of common use. References to "Common Elements" on the Plat are solely for general information, and do not define or limit the Common Elements contrary to this document. Rather, depictions on the plat are physical representations of the actual metes and bounds of the Common Elements dedicated hereby. Limited Common Elements, as hereinafter defined, are a subvariety of Common Elements.
8. Common Expense(s): Expenditures made by, or financial liabilities of, the Association, including but not limited to costs incurred by the Association in the management, operation, maintenance and upkeep of the Common Elements and Limited Common Elements. Common Expenses also include the cost of insurance, administrative fees, taxes and all other costs reasonably incurred by the Association in fulfillment of its obligations hereunder. Limited Common Expenses, as hereinafter defined, are a subcategory of Common Expenses.
9. Common Expense Liability: The liability apportioned to each Unit by this Declaration for the Common Expenses of the Association.
10. Common Interest Community: A Common Interest Community is a group of Units, for which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of real estate described in this Declaration other than a Unit. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options. The Common Interest Community is only those Units, Common Elements and Limited Common Elements which have been dedicated to the common interest community form of ownership by recordation of this Declaration, or amendment to this Declaration (including appurtenant maps or plats). Land which may be dedicated in the future is not part of the Common Interest Community.
11. Construction Guidelines: Rules and Regulations of the Association pertaining to changes, modifications or improvements made to the exterior of a Unit or dwelling. Construction

Guidelines differ from Construction Standards set forth herein to the extent that Construction Guidelines will be implemented from time to time by the Association or Declarant after the recordation of this document.

12. Construction Standards: Protective and restrictive covenants governing, limiting and setting the criteria for any change, modification or improvement made to the exterior of a Unit or dwelling. Construction Standards are set forth in Article X hereinbelow.
13. Declarant: Sleepy Hollow Properties, LLC, and its successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns.
14. Declaration: This Document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC and portions thereof which may be added from time to time.
15. Dedicate, Dedication, Dedicated: Recordation in the office of the Clerk of the County Commission of Monongalia County, West Virginia, of this Declaration or any amendment hereto whereby Declarant makes real property part of one or more Phases of the Subdivision and by operation of said Declaration or amendment, the real property must be owned, held, transferred, sold, granted, conveyed, leased, and occupied subject to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration or any amendments hereto.
16. Development Rights: Any rights or combination of rights reserved by Declarant in the Declaration to (1) add real estate to a Subdivision; (2) create Units and Common Elements within the Subdivision; (3) subdivide Units or convert Units into Common Elements; (4) add real estate to, or withdraw real estate from, the Subdivision, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.
17. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.
18. Governing Documents: Collectively and individually, this Declaration (including the Construction Standards set forth herein) and all Exhibits and amendments hereto, the By-Laws, Articles of Incorporation, Construction Guidelines hereafter specified by the Association or Declarant, and Rules and Regulations of the Association.
19. Limited Common Elements: Those Common Elements which are dedicated for use by less

than all Units.

20. Limited Common Expense: Those Common Expenses which are attributable exclusively to Limited Common Elements. Limited Common Expenses are payable by only those Units which are allocated use, enjoyment and benefit of Limited Common Elements.
21. Limited Common Expense Liability: The liability apportioned by this Declaration to Units entitled to use of Limited Common Elements for the cost of the Limited Common Expenses.
22. Member: Any and every person or entity which is a Unit Owner as hereinafter defined.
23. Patio-Homes and Patio Home Units: Declarant reserves the right to dedicate certain Phases of the Subdivision for construction of smaller single family dwellings known as "Patio-Homes" which do not exceed two (2) stories in above ground elevation, and the Units on which Patio-Homes are constructed are "Patio-Home Units". Patio-Homes may be detached single family dwellings or Patio-Homes may be attached by a common, shared or "party-wall". All provisions of these covenants shall be applicable to Patio-Homes and Patio-Home Units except to the extent specifically set forth herein or otherwise in the Amendment to this Declaration by which the Phase containing Patio-Home Units is dedicated. Patio-Home Units will be slightly larger than the Patio-Home and the land surrounding Patio-Homes will be a Limited Common Element dedicated to and for the exclusive use and enjoyment of the Patio-Home Units, with the cost of maintaining said land a Limited Common Expense allocated to only the Patio-Homes Units.
24. Plats: Those plats of survey and plans of the Subdivision heretofore described and recorded in the aforesaid Clerk's Office, together with those plats of the Subdivision hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.
25. Sewage Treatment Facility: The Declarant is, at the dedication of Phase I, attempting to obtain all requisite approvals for an on-site comprehensive sewage treatment facility which, if installed, will be a Limited Common Element to be owned by the Association and which will service less than all Units in the Subdivision. The final determination as to whether a Sewage Treatment Facility will be installed will be based on financial feasibility of constructing, maintaining and operating the facility with the cost of constructing the Sewage Treatment Facility, if built, to be factored into the initial sales price of all Units serviced by the same. At the execution hereof, it is the intent of the Declarant that the Sewage Treatment Facility will not service Units in Phase I because the topography of the Subdivision does not facilitate gravity flow from Phase I to the Sewage Treatment Facility and Units in Phase I are of sufficient size to support on-site Unit septic systems sufficient to accommodate sewage from each Unit. Unless Declarant designates to the contrary when each subsequent Phase is dedicated, all subsequent Phases

shall be serviced by the Sewage Treatment facility, and the cost of maintaining, operating and replacing said facility shall be a Limited Common Expense allocated to only those Units entitled to utilize the Sewage Treatment Facility.

26. Smiths: Robert C. Smith and Helen L. Smith, the current owners of land contiguous to the Subdivision and former owners of land being developed as part of the Subdivision.
27. Smith Covenants: The use restrictions set forth in that certain Right-of-Way and Restrictive Covenant Agreement by and between Round Table Development, LLC, and Robert C. Smith and Helen L. Smith and which is recorded in the Office of said Clerk in Deed Book No. 1279 at Page No. 531
28. Smith Property: That certain real estate owned by Smiths and more particularly described and identified on **Exhibit D**.
29. Special Declarant's Rights: Rights expressly reserved for the benefit of a Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and signs advertising the Subdivision and model Units and model homes; (iv) use easements through the Common Elements 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 Subdivision of the same form of ownership; and (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant's control.
30. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described. A Unit shall be one lot. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS, AND A FRACTIONAL LIABILITY FOR COMMON EXPENSES AS DETERMINED BY ARTICLE VIII.
31. Unit Owner: Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding an interest merely as security for performance of an obligation, and including, in respect to all unsold Units, as a Unit Owner the Declarant.

V. THE DECLARANT AND DEVELOPMENT OF THE SUBDIVISION:

1. Declarant is the owner of all land dedicated as Phase I in the Subdivision. The Subdivision is comprised of Units or lots which will eventually be owned by individuals and Common Elements such

as roadways, drainage system and easements which will benefit all Units and will be owned by the Association. Declarant will complete paving to the roadways, all improvements to the Common Elements, and installation of underground utilities to each unit as set forth below. With the exception of those services to be provided by Declarant, the Unit Owners are responsible for all maintenance, improvement and upkeep of the Units and the Association is responsible for all maintenance, improvement and upkeep of the Common Elements.

2. Any land dedicated as a Common Element will be deeded from Declarant to the Association prior to completion of the Subdivision and it is not necessary that Declarant complete all improvements to Common Elements prior to delivery of such deed.

3. Declarant Rights: Declarant excepts and reserves from the land dedicated to the Subdivision, the following perpetual rights both appurtenant to its ownership of Units in the Subdivision and also as appurtenant to its vested interest as Declarant and owner of land which may be, but has not yet been, dedicated for development of the Subdivision:

- A. To complete improvements including, but not limited to those improvements indicated on plats and plans filed with the Declaration;
- B. To maintain sales offices, management offices, and signs advertising the Subdivision, Units and models;
- C. To use easements through the Common Elements, Limited Common Elements and Units for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision and to grant others the right to do so;
- D. To merge or consolidate a Subdivision with another Subdivision of the same form of ownership;
- E. To appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant's control;
- F. To appoint or remove a majority of members of the Building Control Committee of the Association during any period that Declarant owns at least one (1) Unit in the Subdivision and thus the BCC is initially a committee of the Declarant rather than the Association. Also the right to assign all BCC Rights and control of the Building Control Committee to the Association at which time the BCC shall be only a committee of the Association;
- G. To approve all revisions and modifications to the Construction Guidelines and Rules

and Regulations during any period that Declarant owns at least one (1) Unit in the Subdivision;

- H. To add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised with regard to any tract or parcel of real estate described herein or otherwise identified on **Exhibits B and C**;
- I. To create Units, Common Elements and Limited Common Elements;
- J. To subdivide Units, combine Units, adjust boundaries between Units or convert Units into Common Elements or Limited Common Elements;
- K. To withdraw Common Elements or Limited Common Elements, or any part thereof, and develop the same into Units or add the same to Units;
- L. To store construction equipment and materials on Common Elements, Limited Common Elements, or Units notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;
- M. To maintain construction signage, contractor signage, broker signage, material supplier signage, financier signage, or other advertisements on Units, Common Elements and Limited Common Elements, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;
- N. The right to enter into and onto any Common Element, Limited Common Element or Unit and fix, modify and change the grades and elevations of easements and rights-of-way and all streets within the Subdivision;
- O. To exercise a first right of refusal with regard to any top or other soil removed from any Unit within the Subdivision. In the event that Declarant shall exercise such right, the soil shall be deposited by the Unit Owner in such area of said Subdivision as may be determined by Declarant. In the event that Declarant does not desire said soil, it may then be deposited or disposed of by the Unit Owner elsewhere; and
- P. To deed and otherwise transfer ownership of Units, Common Elements and Limited Common Elements to the Association.
- Q. To grant easements and licenses permitting any individual or entity to utilize utilities and utility systems, stormwater management systems, and infrastructure servicing and benefitting the Subdivision in connection with the development, use, and enjoyment

thereof

- R. To construct and maintain signage, traffic controls and other necessary improvements within the set backs and easements reserved herein, which such improvements specifically include, but are not limited to, stop signs, speed limit signs and signage advertising the Subdivision and Units therein.

Any and all Development Rights and Special Declarant Rights are and shall be perpetual in duration.

4 Any or all of Declarant's rights and obligations set forth in this Declaration or the Governing Documents may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary.

VI EASEMENTS AND RIGHTS-OF-WAY:

Declarant excepts and reserves the following easements, rights-of-way and other rights:

1. Roadway and Common Element Use Easements: Declarant reserves unto itself its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights as follows:

- A. To make vehicular and pedestrian use of all roads in the Subdivision;
- B. To utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements for the conveyance, transportation, distribution and use of electricity, telephone equipment, gas, sewer, water, drainage, and other public or private conveniences or utilities within the right of way of the roads and Common Elements of the Subdivision. Declarant reserves the aforesaid easement and rights-of-use for the benefit of Declarant and for any real property contiguous to the Subdivision and all real property which Declarant owns or may hereafter acquire. For the purpose of this document, land is contiguous to the Subdivision and may be added to or dedicated as future Phases of the Subdivision notwithstanding the fact that the land is physically separated from the Subdivision by a State or County Road. Therefore, Declarant expressly reserves the right to add to Sleepy Hollow non-contiguous tracts which are located adjacent to the Subdivision but on the opposite side of Sleepy Hollow Road

or U.S. Route 119/WV Route 119 (the "Grafton Road").

2. Set-Back and Boundary Perimeter Easements: Declarant reserves unto Association and also to Declarant, its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way ten (10) feet wide along each side of all road rights-of-way and along each side of each non Patio-Home Unit boundary for the purpose of:

- A. installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of:
 - 1. utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and
 - 2. lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and disbursing surface water, storm water and drainage within the Subdivision.
 - 3. traffic and directional signage and signs advertising Units and the Subdivision and its various Phases, Common Elements, Limited Common Elements, appurtenances and improvements..
- B. cutting and installing mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance.
- C. installing, constructing and completing the infrastructure and improvements to serve the Subdivision, including, but not limited to, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, storm water drainage systems, irrigation systems, sanitary sewer systems, street lights and signage;
- D. inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to the Subdivision.
- E. exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein.

3. Exercise of Easement Rights: Each easement, right-of-way and right reserved to Declarant and

Association as aforesaid expressly includes the right to cut any trees, tree roots, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations, surface water control and to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any licensee of Declarant or Association but this reservation shall not be considered an obligation of Declarant to provide or maintain any such drain system, utility or service. All drainage systems installed by Declarant are owned and maintained by the Association. All drainage systems installed by any Unit Owner are owned and maintained by the Unit Owner. There is further reserved the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to remove any improvement located therein or thereon whenever and wherever such action may appear to Declarant and/or Association to be necessary. Neither Declarant nor Association shall be liable to any Unit Owner for damage by reason of the exercise of these easement rights, including the cutting of any trees, tree roots, bushes, foliage, brush or shrubbery, gradings of the soil, or other similar action. To the extent that any trees, tree roots, bushes, foliage, brush, shrubbery, soil or improvement which is damaged or removed is located partially within the aforesaid easement, the same shall be deemed to be entirely within said easement for the purposes of this paragraph. Declarant and/or Association may exercise any right, power or authority with regard to same, without liability to the Unit Owner by reason of trespass, conversion or any other tort notwithstanding the fact that said tree, foliage, brush and/or improvement is not entirely located within the aforesaid easement. Said easements and rights-of-way are reserved to Declarant and Association for the benefit of Declarant and Association in their exercise of the powers and authorities set forth herein below.

4. Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Element or Limited Common Element and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Unit Owner claiming the benefit of such easement. Declarant may not grant such easements pursuant to this Paragraph as: (A) would render a Unit unsuitable for construction of a dwelling; or (B) would lie within any existing dwelling.

5. Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements in, over and across Units, Common Elements and Limited Common Elements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property which is within the Subdivision, or any property which Declarant has reserved the right to incorporate into the Subdivision as future Phases thereof. Declarant may exercise such right and power for the benefit of such additional property regardless of whether such

additional property is dedicated as future Phases of the Subdivision. In the event that such easement is over or through a Unit, the Owner of the Unit to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Unit Owner of the burdened Unit, which approval shall not unreasonably be withheld, delayed or conditioned.

6. Minimal Interference. All work associated with the exercise of the easements described in subsections 1, 2, 3, and 5, shall be performed in such a manner as to reasonably minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Unit Owner or occupant.

7. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Elements and Limited Common Elements for the purposes of enjoyment, use, access, and development of the Subdivision and all real property which Declarant has reserved the right to incorporate into the Subdivision, whether or not such property is made subject to this Declaration. The lands to which Declarant reserves such easement are described on **Exhibits B and C**. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements and Limited Common Elements for construction of roads and for connecting, laying, building, using, maintaining, and installing any and all utilities on such property and that Declarant shall cause same to be reasonably restored. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements and Limited Common Elements as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property or any portion thereof benefitting from such easement which is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along roadway providing access to such property.

8. Easements for Maintenance, Emergency and Enforcement. An easement is reserved to the Association whereby the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Unit Owner.

9. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within the Subdivision, including Units, and a perpetual, nonexclusive easement of access throughout the Subdivision to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10. Transfer of Easement Rights: Any or all of the above easement rights reserved to Declarant may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary.

11. Easements to Serve Smith Property: Robert C. Smith and Helen L. Smith, the owners of a 4.875 acre parcel of land contiguous to and immediately north of the Subdivision, have the right to utilize certain roadways in the Subdivision. Specifically, on August 30, 2004, the Smiths granted to Round Table Development, LLC, a 7.923 acre parcel of land. The 7.923 acre parcel was subsequently conveyed to Declarant and Declarant has caused a portion of the 7.923 acre tract to be dedicated as Phase I, and Declarant reserves the right to dedicate the remaining real estate in the future. In exchange for the 7.923 acre parcel, Round Table Development, LLC, conveyed to Smiths a 4.875 acre parcel and agreed to grant Smith the right to utilize one road in the Subdivision and the right to construct two (2) driveways from the one (1) road to the 4.875 acre parcel. Declarant has caused the precise location of said road and driveways to be shown on the Subdivision Plat. The specific terms of said right-of-way are recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1279 at Page No. 531. Declarant expressly excepts and reserves the right to, on such terms as Declarant may deem reasonable, grant to Robert C. Smith and Helen L. Smith the right to install, construct, lay, utilize and maintain utility systems within the one (1) road and two (2) driveways for the purpose of extending utility underground utility services from the Subdivision to contiguous lands owned by Robert C. Smith and Helen L. Smith on August 30, 2004.

12. Miscellaneous Easements: To the extent that any drainway, access way, road, utility or other right-of-way or easement is shown on any Map or Plat, and also to the extent that any utility system, drainage system or component thereof is shown on any Map or Plat, express, alienable, transferrable and non-exclusive rights-of-way and easement are reserved to Declarant and Association for same.

13. View Easements: In addition to the Building Control Standards and other easements set forth

herein, the Association and Declarant reserve the right to impose certain "View Easements" for the purpose of maintaining the visibility of Unit and the visibility of surrounding properties and countryside from Units. The View Easements shall be imposed on a Unit per Unit basis at the time construction plans and specifications are approved for the purposes of assuring that the improvements to any Unit do not unreasonably impact the views from, and value of, other Units. All view easements shall be based on the competing interests of all affected Unit Owners and shall be based on a balancing test wherein each respective interest is compared to all remaining interests. Provided, however, that under no circumstances shall any view easement render any Unit or Units unsuitable for the construction of a dwelling. View easements may expressly limit the size, type, location and height of dwellings and improvements.

VIII COMMON ELEMENTS/EXPENSE ALLOCATIONS:

Common Elements are all land, and improvements thereon, owned by the Association. Common Elements are dedicated for use by all Unit Owners and, when completed by the Declarant shall be owned by and under the control and supervision of the Association. The use of all Common Elements is subject to the Governing Instruments including, but not limited to, such Rules and Regulations as may be, from time to time, promulgated by the Association.

Each Unit is apportioned fractional equitable ownership of the Common Elements and fractional liability for the costs of ownership, maintenance, upkeep and operation of Common Elements. This liability is part of the Common Expense of the Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below.

Limited Common Elements are a variety of Common Elements and are owned by the Association. Limited Common Elements, are restricted to use by less than all Units and equitable ownership and Common Expense Liability for the Limited Common Elements is apportioned only among those Units entitled to use of same. The term "Common Elements" as used herein includes Limited common Elements in the absence of specific contextual language to the contrary.

Neither the Building Control Committee nor the Association are vested with any plan, construction or other approval rights with regard to the completion and improvement of the Common Elements and Limited Common Elements by the Declarant.

The Subdivision contains or may contain various Common Elements which are generally described as follows:

- 1 Streets. The streets and roadways are Common Elements allocated to all Unit Owners and which must be completed by Declarant. Declarant covenants that the entrance way and streets

- as designated on the plats of the Subdivision shall be paved and completed not later than six (6) months after the sale by Declarant of its final Unit in the Subdivision. Prior to the completion of all Units in the Subdivision, Declarant shall maintain high quality gravel roads and/or base-coat (type II aggregate asphalt) in the Subdivision. The completed streets shall be paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted thickness of two (2") inches of road base (type II aggregate asphalt) and a one (1") inch average thickness wearing course (type I aggregate asphalt) . Roadways will not be paved to Department of Highways standards. Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving and maintenance of any section of street or roadway beginning at the time that the "wearing" course of type I aggregate asphalt is applied to same.
- 2 Parks: The parks shown on the Maps or Plats are Common Elements allocated to all Unit Owners and which must be completed by the Declarant. The Declarant may transfer ownership and maintenance obligations for one or more park area to the Association at any time.
 - 3 Sewage Treatment Facility: If constructed and installed, the Sewage Treatment Facility shall be a Limited Common Element, dedicated to only those Units which utilize same. Only Units which utilize the Septic Treatment Facility shall have equitable ownership of, and Common Expense Liability with regard to, same. The Sewage Treatment Facility is expressly limited to use by those Units in the Subdivision, or which may be added to the Subdivision, to which the Sewage Treatment Facility is dedicated. Neither Declarant nor the Association may grant any easement, right-of-way or right-of-use permitting any dwelling, structure or land not a dedicated part of the Subdivision to utilize the Sewage Treatment Facility.
 - 4 Parks/Trails/Ponds: Declarant has designated certain areas as Common Elements and Limited Common Elements labeled "park", "trail", "pond" or similarly delineated on the plats of the Subdivision. If built by the Declarant, use of the parks, trails and ponds, and all improvements and amenities therein or thereon, is limited to the Unit Owners, their families and guests and such use shall be from time to time regulated by the Association to assure beneficial and to the greatest extent mutual benefit of the parks, trails and ponds by all members of the Association. Use of the parks, ponds and trails is a privilege appurtenant to ownership of a Unit, and such right of use may be limited or suspended by the Association from time to time as a result of unpaid assessments, violations of the Governing Instruments, liability and other Association concerns. The Association is vested with exclusive authority to promulgate reasonable rules and regulations pertaining to the frequency, method, and time of use of the parks, trails and ponds. The Association may further provide for limited exclusive use of, and reserved use of, certain park areas for Unit Owner parties and Unit Owner events and the Association may impose a reasonable charge for such exclusive uses. It is the intent of this provision to permit the Association to make available for, and if appropriate to "rent", park areas to Unit Owners for

exclusive use in hosting birthday parties and similar events, which said limited and exclusive uses are a benefit of ownership and an enhancement to the Subdivision as a whole.

Allocated Interest, Use and Enjoyment of Common Elements and Limited Common Elements:

1 Each Unit is allocated as appurtenant thereto an undivided ownership and use interest in the Common Elements and a share of the undivided obligation of the Common Expenses of the Association. Common Expenses are the Association's operating costs and include the cost of maintaining the Common Elements. Limited Common Elements are the portions of the Common Elements which may only be used by certain Units. The expense of Limited Common Elements is a Limited Common Expense which is allocated only to those Units entitled to utilize the Limited Common Element.

2 Each Unit's allocated share of the Common Expenses of the Association will depend on the total number of Units in the Subdivision and will vary as Units are created, subdivided and/or withdrawn from the Subdivision.

3 With regard to Units entitled to utilize Limited Common Elements, each Unit's allocated share of the Limited Common Expense attributable to the Limited Common Element will depend on the total number of Units entitled to utilize the Limited Common Element and may vary as Units are created, subdivided and/or withdrawn from the Subdivision.

4 Declarant reserves the right to create not more than 200 total Units in all phases of the Subdivision. The final Common Expense liability and Limited Common Expense liability for each Unit will depend on the total number of Units created by Declarant and the extent to which Limited Common Elements are dedicated. Final Common Expense Liability and Limited Common Expense Liability will not be determined until all Units in all Phases, present and future, are dedicated. Because there are 14 Units in Phase I, the total Common Expense Liability of Units in Phase I shall not be less than 1/14th of the total Common Expense of the Association.

5 Unit Owners can determine their allocated interests by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units in the Subdivision. Likewise, any Limited Common Expense liability is allocated by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units entitled to utilize the Limited Common Element (total Units to which the Limited Common Element is allocated).

EXAMPLE A:

If there are 90 Units in the Subdivision then each Unit shall be allocated a one-ninetieth

(1/90th) interest in the Common Elements and a 1/90th share of the Common Expenses.

EXAMPLE B:

If there is a Limited Common Element dedicated to 5 Units, then each such Unit shall be allocated a one-fifth(1/5th) interest in the Limited Common Element and a one-fifth (1/5th) share of the Limited Common Expense attributable thereto.

EXAMPLE C:

If there are 90 Units in the Subdivision, and a Sewage Treatment Facility is constructed as a Limited Common Element and allocated to Units 11 through 90, and a park is dedicated as a Limited Common Element allocated to Units 11 through 20, then:

All Units would be allocated one-ninetieth (1/90th) of the cost of maintenance and upkeep of Common Elements such as roads;

Units 11 through 90 would each be allocated one-eightieth (1/80th) of the cost of the Limited Common Element Sewage Treatment Facility; and

Units 11 through 20 would each be allocated one-tenth (1/10th) of the cost of the Limited Common Element Park.

Example C Table	Cost of Common Elements (roads, etc.)	Cost of Limited Common Element (Sewage Treatment Facility)	Cost of Limited Common Element (Park)
Units 1-10	Allocated (1/90 each)	Not Allocated	Not Allocated
Units 11-20	Allocated (1/90 each)	Allocated (1/80 each)	Allocated (1/10 each)
Units 21-90	Allocated (1/90 each)	Allocated (1/80 each)	Not Allocated
Total Units to which cost is allocated	90 Units	80 Units	10 Units

IX CONSTRUCTION APPROVAL AND BUILDING CONTROL COMMITTEE:

The following are covenants running with the land for the benefit of the Declarant, the Association and all Unit Owners:

1. The Building Control Committee ("BCC") is initially a committee of the Declarant charged with monitoring, reviewing, approving and overseeing all construction in the Subdivision, on-going maintenance of improvements and compliance with the Building Control Standards ("BCS"), Building Control Guidelines ("BCG") and maintenance of the character, harmony, esthetics and appearance of the Subdivision. BCC does not, however, have construction approval or oversight authority with regard to completion of Common Elements, Limited Common Elements, drainage or utility systems by Declarant. BCC shall initially be a committee of the Declarant but Declarant shall assigns all of its BCC powers and authorities to the Association not later than when the Declarant no longer owns any Unit in the Subdivision. Beginning at the time of such assignment, the Building Control Committee shall be a committee of the Association. So long as the BCC committee is controlled by the Declarant, the BCC shall be composed of three (3) members, at least one of whom shall be a Unit Owner and two of whom shall be appointed by Declarant. When Declarant assigns its construction approval rights to the Association, all members of the BCC shall be appointed by the Board of Directors of the Association. In the event of any tie vote between the members (due to absence, vacancy or abstention) of the BCC: (1) if during a period of Declarant Control of the BCC, Declarant reserves the right to cast a deciding vote on that issue; and (2) if subsequent to termination of Declarant Control of the BCC, the Board of Directors shall cast a deciding vote on that issue. All covenants set forth in Article IX and X are reserved to the Declarant and the Association with enforcement authority vested in the Declarant so long as BCC is a committee of Declarant and thereafter such authority shall be vested in the Association. Declarant may make one or more partial assignments of such authority to the Association during development of the Subdivision.

2. No improvement, dwelling, structure, fence, pool, or wall may be constructed, placed or maintained upon any Unit, and no material modification or alteration to any improvement, including landscaping, may be undertaken, commenced, caused or permitted by any Unit Owner until plans and specifications for the improvement or modification have been approved in writing by BCC. Provided, however, that no such approval is required with regard to any improvement to the interior of any dwelling or structure if such improvement is not visible from the exterior of the dwelling or structure. Matters for which BCC approval is required include, but are not limited to, cutting of trees, structural improvements, modification, removal or creation of any drainage system or component thereof, excavation, grading or fill, and movement, placement or removal of dirt. **All prospective Unit Owners are advised to obtain written preliminary construction plan approval from BCC prior to purchasing a Unit in the Subdivision. It is further recommended that if the prospective purchaser has any doubt as to whether the proposed plans will be approved, the purchaser's contract be made contingent upon such preliminary approval.**

3. BCC shall review such plans and specifications with regard to issues which include, but are not limited to: (1) exterior color; (2) exterior construction materials; (3) structural design; (4) plot plan/site-layout location on the Unit; (5) utility entrances; (6) driveway entrances; (7) walls, (8) exterior elevations, topography, finished grades; (9) landscaping and location of structures, improvements,

walkways and driveways, (10) impact on existing vegetation; (11) surface water and drainage control measures and concerns including sedimentation control; (12) parking; (13) grading and elevations; (14) traffic visibility; (15) view easements benefitting Common Elements and other Units; (16) impact and effect on other Units; (17) dimensions; (18) exterior lighting; (19) general appearance and traditional residential character; and (20) any matter addressed by the BCG or BCS. The BCC may also include with regard to any application any factors which it deems relevant including, without limitation, harmony of exterior design and color with surrounding structures and environment. With regard to color: (a) BCC expressly reserves the right to require color variation within the Subdivision to prevent color redundancy in certain areas; and (b) to limit primary finish colors of structures to those commonly identified as earth tones and certain other usual and customary traditional house colors.

4. BCC may require Units owners to submit such additional detail and supporting data, studies, samples, architect's renderings, and reports as may be reasonably necessary for BCC to adequately review the proposed plans and specifications. BCC may reasonably require the Unit 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.

5. BCC shall approve or disapprove plans and specifications within thirty (30) days from the time that all materials required by BCC have been submitted. The BCC 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, welfare of the Subdivision, any Unit Owner, Association or Declarant. During the period of Declarant control of BCC, decisions of BCC shall be subject to appeal or review by Declarant. After assignment of BCC Rights from Declarant to Association, decisions of BCC shall be subject to appeal or review by the Board of Directors of said Association.

6. A pre-condition to plan approval and authorization by the BCC for any Unit Owner to commence construction is that the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against Declarant, BCC 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.

7. Once the plans of a residential dwelling have been approved by the BCC, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Unit, the improvements must be substantially completed, including the exterior work and grading and landscaping, in accordance with the plans and specifications as approved, within eight (8) months, subject to weather conditions only.

8. The Declarant, Association and BCC shall not under any circumstances be liable to any Unit Owner for damage or injury resulting from the approval of construction plans whether said plans be for the injured party's Unit or another Unit in the Subdivision. All Unit Owners by acceptance of a deed subject to the Governing Instruments release Declarant, BCC and Association from liability for injury and damage directly or indirectly resulting from such plan approval. Each Unit Owner in improving his/her own Unit bears all liability for injury to person or property resulting from such improvement and shall indemnify, defend and hold harmless Declarant, Association and BCC from all claims, causes of action and liabilities resulting from said improvement. All Unit Owners are charged with developing and improving their property in a reasonable and prudent manner so as to avoid injury or damage to person, property, other Units, Common Elements or Limited Common Elements.

9. All Unit Owners and prospective Unit purchasers are advised that the BCC standards and aesthetics standards shall change during development of the Subdivision and that construction of dwellings and improvements on other Units will limit the style, color and placement of homes on nearby Units. No preliminary approval shall be deemed to constitute a waiver of the BCC's right to withhold approval of final plans when submitted. Approval of any appurtenance, color, material or improvement on any Unit does not establish a standard that similar appurtenances, color, materials or improvements will be approved on other Units. All approvals are subjective and specific to the request submitted and shall not be deemed to apply to any substantive modification to such plans or and subsequent request.

10. 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 Unit Owner. Review and approval of any application by the BCC is made on the basis of aesthetic considerations only and BCC, Declarant 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 Units.

11. Once asphalt is applied to any road surface in the Subdivision, each Unit Owner shall be required to post a road bond with the Association in an amount to be determined at the discretion of the BCC, for the purpose of assuring compliance with the roadway requirements set forth in the Governing Documents. Specifically, the Unit Owner has an affirmative duty to take reasonable and necessary steps to assure that all contractors, subcontractors, laborers, builders, delivery persons and other individuals or entities participating in construction or improvement of a Unit comply with the Governing Documents and do not damage the existing pavement. All road bonds shall be held in the Association's Road Fund Account and all interest accrued thereon shall belong to the Association. During 2005, road bonds shall be posted in the amount of \$1,000 per Unit for the purpose of initial construction of a dwelling on a Unit. The BCC may increase or decrease road bond amounts in the future commensurate with the actual risk to the roadways and the actual needs of the Association. The amount of all road bonds shall be subjective based on construction plans submitted by the Unit Owner and the amount of road bonds need not be uniform. Provided, however, that so long as Declarant owns at least one (1) Unit in the

Subdivision, the BCC may not increase the road bond amount beyond \$1,000 for any Unit absent Declarant's prior written consent. In the event that approved construction is completed in substantial compliance with BCC construction approval, the road bond shall be refunded within twenty (20) days after notice of completion by the Unit Owner. The BCC, may, however, withhold in the Road Fund Account and not refund to any Unit Owner, such sums as are: (a) reasonably necessary to repair or remedy damage actually caused to the roads and directly attributable to construction on or improvement of the Unit; or (b) reasonable fines or penalties as a result of repeated and willful failure to utilize the construction entrance or to comply with Subdivision traffic regulations including, but not limited to, parking restrictions, speed limits, and stop or yield signs.

X CONSTRUCTION STANDARDS (Building Control Standards or "BCS"):

The following Construction Standards ("BCS") are restrictive covenants, limitations, regulations and agreements imposed upon all Units for the benefit of Declarant, the Association, and the owners of other Units. The BCS are restrictive covenants and shall be binding upon all purchasers of Units or any and all other parties having any interest therein, and are covenants running with the land. The Construction Standards do not apply to improvement and construction of Common Elements, Limited Common Elements, drainage or utility systems by the Declarant. The BCS may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should obtain copies of the current Governing Documents from the Association prior to transfer of any ownership interest in any Unit.

1. Only one single family detached dwelling is permitted on any Unit. No Unit may contain more than one (1) other structure (one [1] detached garage nor more than one [1] additional structure such as a storage or out building). Provided, however, that in the event one or more Phases are dedicated by Declarant for construction of Patio-Homes, Patio-Homes may be constructed only in the locations designated by Declarant for construction of same. If Patio-Homes are approved and constructed in any one or more Phases of the Subdivision, patio homes may be attached or connected by "party-walls" with such attached or "party-wall" forming the common boundary between Patio-Home Units. No Unit Owner other than Declarant, may construct Patio-Homes without the express prior written consent of Declarant.
2. No apartment or condominium may be constructed or operated on any Unit. This provision expressly prohibits subdivision of any Unit wherein there are horizontal delineations of ownership such as multistory dwellings with separate ownership of the floors or situations where a floor or ceiling forms the boundary between dwellings.
3. All dwellings, buildings and structures shall be of traditional residential character and the BCC

is vested with exclusive authority to determine what constitutes traditional residential character. BCC shall consider in making such determinations the character and aesthetics of the Subdivision and the impact of the proposed dwellings on the neighborhood, community and other Units. The following are not of traditional residential character and may not be constructed in the Subdivision: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) log homes; (e) art-deco houses; and (f) other non-traditional houses which are not common in Monongalia County, West Virginia. Flat and non-peaked roofs are not permitted. Vertical siding is only permitted for trim purposes and vertical siding may not be used as a cover or facade for more than five (5%) per cent of any side of any dwelling.

4. No Unit nor residence thereon shall be occupied until the same has been substantially completed.
5. All structures and improvements constructed or placed on any Unit shall be built of new material or approved reconditioned material. The BCC shall provide and maintain a listing of those materials which are not approved for use in the Subdivision and all Unit Owners are advised to obtain such approved material list prior to purchasing a Unit.
6. No mobile or modular homes commonly known as "double wides" are permitted within the Subdivision. Panelized construction, pre-engineered homes and modular construction are permitted. BCC retains exclusive authority to determine whether any structure is permitted or excluded by the provisions of this paragraph.
7. No dwelling may be constructed more than three (3) stories above ground at any point and the front of each dwelling shall not be constructed more than two (2) stories above ground. For the purpose of this document, the ground level or ground floor of any dwelling shall be the lowest level or floor which contains a "walk-out" exit or doorway. The BCC is vested with absolute and unilateral discretion to make final determinations as to which floor or level of a dwelling is the ground level or ground floor. No Patio-Home may be constructed more than one and two (2) stories above ground.
8. No dwelling, except Patio-Homes shall contain less than **Two Thousand (2000)** square feet, of total finished living area. For the purpose of calculating "finished living area" walk-out basements which are finished with dry-wall may be included in area calculations but non-walk-out basements, porches, decks and finished garages may not be included in such calculations. Provided, however, that in the event Patio-Homes are constructed in any one or more Phases of the Subdivision, no Patio-Home dwelling shall contain less then **One Thousand Four Hundred (1,400)** square feet, of total finished living area.
9. No dwelling or building shall be located nearer to the perimeter of the Unit than the established

set-back lines set forth in the Declaration for the Phase in which such Unit is located. Provided, however, that due to the topography of the Units, and utility and septic concerns, the minimum set-back lines for certain Units may be reduced as designated or shown on the plats of the Subdivision. Declarant and the Association are each vested with authority to grant reasonable variances to the established set-back lines to prevent undue hardship and accommodate unforeseen and unknown circumstances. Provided, however, that any Unit Owner, by acceptance of such a variance, waive and release any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant with regard to any and all damages that might arise with respect to such variance.

10. The construction set-backs are the following number of lineal feet from as follows:

	Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side boundary(s)	Minimum distance from any Unit boundary which is also the perimeter of the Subdivision	Minimum distance from any Unit boundary abutting a Road or Common Element
PHASE I	50 feet	15 feet	15 feet	25 feet	25 feet
Future Phases	To be determined	To be determined	To be determined	To be determined	To be determined

Specific Phase I Set-Back Variances:

Due to topography and the facing directions imposed on certain Units in Phase I, the minimum set-back requirements for Units 1 and 6 in Phase 1 are reduced as follows: (a) the front set-backs for Units 1 and 6 are 45 feet rather than 50 feet; and (b) the rear set-backs for Units 1 and 6 are 20 feet rather than 25 feet. To the extent that the set-backs set forth in this paragraph differ from those shown above or on the Plat, this paragraph shall govern notwithstanding any provisions to the contrary elsewhere herein.

Set-backs applicable to future Phases will vary depending upon the size of the Units in such Phases, topography, geological condition, whether the Sewage Treatment Facility is constructed and various other factors including, but not limited to, whether the Unit is dedicated for construction of Patio-Homes. For the purpose of this restriction, eaves, balconies and retaining walls shall not be considered as part of the construction; provided, however, that this

shall not be construed to merit any portion of a building or structure on any Unit to encroach upon any adjoining Unit or Common Element. All of the above set backs are subject to Unit specific waiver and/or modification by the Declarant or BCC. To the extent that any set-back is specifically shown on any plat of any Phase or modified in any deed from Declarant, said modification shall govern and supersede the provisions in this Declaration and any Amendment hereto. In the event Patio-Homes are constructed in any one or more Phases of the Subdivision, the Patio-Home Unit will be only slightly larger than the physical perimeter of the Patio-Home constructed thereon and special restrictions specific to the Patio-Homes shall be included in the Amendment to this Declaration whereby the Phase or Phases containing the Patio-Homes are dedicated.

11. With the exception of Patio-Homes, no dwelling may be of substantially identical architectural design to any dwelling approved for construction on, or constructed on, any adjoining Unit.
12. The exterior wall surfaces of all buildings shall be of either masonry construction, wood, or attractive vinyl siding with not less than ten (10%) per cent of the front facing of each dwelling being "Masonry Construction". Specific and appropriate variances to this requirement may be granted on a Unit basis under special circumstances, depending on the style, location, size, character and over-all post construction esthetics of the dwelling at issue. Synthetic sidings such as "Hardy Plank" are permitted. "Masonry Construction" shall be limited to that of brick, drive type material, stucco or natural or cultured stone. No building or other improvement shall have concrete or cinder blocks or concrete masonry exposed in any manner.
13. No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected either to the individual on-site septic system servicing the Unit or the Sewage Treatment Facility, if constructed. Storm water shall not be allowed to flow into the Sewage Treatment Facility, if built.
14. All driveways and sidewalks are to be constructed of concrete, or paved with asphalt, brick or pavers. Non-fitted stone or gravel driveways are not permitted. Driveways and sidewalks shall be completed within eight (8) months of commencement of construction. No Unit, other than a Patio-Home Unit, may share a common or joint driveway or sidewalk with another Unit absent prior written consent of the BCC.
15. Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any Political Subdivision of the State of West Virginia, under sidewalks and/or driveways in order to facilitate the proper drainage of storm sewers along the streets of the Subdivision. All such culverts shall be no less than fifteen (15) inches in diameter and in compliance with the drainage plan for the Subdivision. Each Unit Owner shall continuously maintain all culverts, ditches and drainage

lines and drainways on his or her property, whether installed by the Developer, the Association or the Unit Owner, so as to prevent the restriction of water flow through the same. Culverts, ditches, drainage lines and drainways may not be modified without written approval of the Association and a recommendation as to the suitability and appropriateness of the modifications from a licensed and insured Engineer approved by the Association's Board of Directors. Such written recommendation shall be addressed to and assure the Board of Directors 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. Written request of changes to drainage systems must be made to the Association Board of Directors by the Homeowner at least thirty (30) days in advance of the next Board meeting.

16. Prior to construction of a driveway or walkway, each Unit Owner shall cause a four (4") inch schedule 40 P.V.C. electrical conduit with caps on each end to be buried under the portion of pavement which runs over top of the utility right of way, and the exact depth and location is to be designated by Allegheny Power Company and/or Declarant, their successors or assigns. Such conduit shall be suitable in all manners for future installation of utility distribution and transmission services and Declarant expressly reserves, for and in behalf of itself, its successors and/or assigns the right to utilize, and to permit others to utilize, such electrical conduit for such purposes.
17. BCC shall establish standards for the size, color, style and appearance of all mailboxes and the structures to which same are mounted. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted. In the event Declarant shall establish a uniform mailbox and mounting system for uniform mailboxes, all Unit Owners shall purchase and install same and no non-conforming mailboxes shall be permitted.
18. Each Unit Owner shall install in and as a part of the approved mailbox mounting structure, natural gas lights or dusk-to-dawn photo-sensitive decorative electric lights. The Association is vested with exclusive authority to determine the size, height, color, style, design, bulb style and wattage of all such lights. The decorative lights must be maintained in working order by the owner of each unit and all lights must be approved by the Association. The decorative lights may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. All such lights shall be maintained operational by the Unit Owner at all times to assure safety and visibility in the Subdivision. The Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of replacing light bulbs or repairing the dusk to dawn lights which such right

may be exercised by the Association, at the cost of the Unit Owner, upon not less than five (5) days written notice. Declarant may, at Declarant's option, install Common Element lighting in Patio-Home Phases in lieu of a requirement that Patio-Home Units maintain on-Unit lights pursuant to this provision.

19. Each Unit shall have sufficient off-street parking to service the dwelling. There shall be no parking in or along streets in the Subdivision, on lawns or sidewalks. Declarant may designate certain parking areas as Limited Common Elements allocated to Patio-Home Units in lieu of requiring parking within or on the Patio-Home Units.
20. No Unit may contain any attached garage which accommodates more than three passenger vehicles and no detached garage may accommodate more than two passenger vehicles. The maximum foot print of the foundation of any detached garage shall not be greater than 700 total square feet in area unless .
21. All detached buildings and/or garages shall be constructed to match the residential dwellings and must further be reviewed and approved by the aforesaid Declarant or Building Control Committee. No more than one detached garage and one detached building are permitted on any Unit. No detached building other than a garage shall exceed 1 story in height. No detached building and/or detached garage is permitted on any Patio-Home Unit.
22. Each Unit Owner shall provide receptacles for garbage and recycling bins in a screened area, not visible from the road or neighboring Units, in accordance with Health Department suggestions or reasonable standards as established by the Declarant or Building Control Committee.
23. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
24. Declarant shall provide public natural gas service to each Unit. No Unit may be serviced by any fuel tank or similar fuel storage receptacle absent prior written consent of the BCC. In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located under ground or completely shielded from view by "year round" foliage or attractive screening. The fuel used in the dwelling or other structures shall be of the smokeless-type; however, so-called fireplaces and/or wood stoves, in which wood is used as a fuel shall be excepted from this provision. No such fire-place or

wood stove may, however, produce any fume, smoke or affluent which is an unreasonable nuisance or annoyance to the Subdivision. Wood stoves, fire-places, fire-pits, barbecue pits and wood burning appliances and/or devices are not permitted on the exterior of any Unit absent prior written consent of the BCC.

25. Above-ground swimming pools are not permitted in the Subdivision. In-ground or below-ground swimming pools must be properly fenced and secured at all times. All lots containing swimming pools must carry additional liability insurance in an amount deemed adequate by the Association.
26. All construction sites must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the development. However, such accumulations in small quantities may be kept towards the rear of the Unit or in a location upon the Unit as designated by the Developer or the BCC. Developer may store any quantity of construction materials on any portion of one Unit owned by the Developer at any given time. The Developer shall have the exclusive right to determine which Unit shall be used for material storage. Such construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner and kept under tarps or covers.
27. Any top or other soil removed from any Unit within the Common Interest Community shall be deposited by the Unit Owner in such area of said Common Interest Community as may be determined by Developer. In the event that the Developer does not desire said soil, it may then be deposited by the Unit Owner elsewhere.
28. In order to maintain the rural and wooded character of the Subdivision, no tree may be removed from any Unit or common element without the prior written consent of the BCC. Trees which measure ten (10") inches or greater in diameter at the base, which stand beyond a fifteen (15') foot perimeter of any structure or proposed structure shall remain, unless they create a hazard or potential hazard to any one or any property within the Subdivision or adjoining lands. For the purpose of this paragraph, driveways, decks, walkways, patios and porches are to be considered as structures.
29. Prior to any digging in a utility area, Unit Owner or contractor shall call the appropriate Utility providers for the location of utility lines.
30. Declarant shall retain the services of professional engineers for the purpose of designing and installing a comprehensive storm water drainage system within the Subdivision. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual lot, with any excess storm water discharged into the comprehensive storm water

drainage system to be installed by the developer. Each Unit Owner must retain the services of a qualified engineer for the purpose ascertaining the pre-construction and post-construction surface water conditions on the unit both with regard to the Unit and development of contiguous Units and Phases, and incorporating appropriate surface water controls into development of, and construction on, the unit. **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 lot; and (b) advising the purchaser and the purchaser's builder, contractor and landscaper with regard to construction on, and development of, the lot. No Unit may discharge storm water or surface water into the streets and roadways of the Subdivision.**

31. No Unit Owner, other than Developer exercising its Special Developer's Rights, may subdivide a Unit or combine two or more Units without the written consent of the BCC. Boundary adjustments are permitted pursuant to the provisions of WV Code Section 36B. In the event that two or more contiguous Units are consolidated as a single Unit single family residential building site, all set-back lines and easements along the contiguous sides of the consolidated Units shall be null and void so as a single family residential dwelling and attached appurtenances may be constructed across a Unit boundary line. Provided, however, all exterior set back lines and easements, shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements and Limited Common Elements, and the Common Expense Liability apportioned to said Unit as consolidated shall be on a Unit basis with the consolidated Units being one single Unit. Boundary lines may only be adjusted between Units by mutual agreement of the affected Unit Owners and with prior written consent and approval of the Association. Any subdivision of Units or combination of Units, or any adjustment of boundaries between Units shall be made by deed, accompanied by a plat of survey, which said deed shall be executed by all affected Unit Owners and the Association and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
32. Declarant may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be consistent with the tenor and integrity of those hereinbefore and hereinafter set forth, and in no event shall modifications be made that would alter the residential character of the Subdivision. Declarant specifically reserves the right to make reasonable modifications to the restrictive covenants set forth herein to the extent necessary to facilitate construction of Patio-Homes in certain future Phases.
33. All Unit Owners who construct a dwelling on any of the Units of the Subdivision after the paving of the streets of said Subdivision has commenced, shall deposit with the Association a construction bond in an amount equal to the sum of **One Thousand Dollars (\$1,000.00)** or

cash equivalency (as calculated on a U. S. Dollar value basis for the year 2005) to pay for the cost of any damage that might be done to the streets, flora or utilities by the owners or their contractor in the process of constructing and landscaping the Units. In the event that any damage is caused to the streets by said Unit Owners or their contractor, then the Association shall repair said damage deducting the cost of such repair from said deposit and shall refund the balance thereof to Unit Owners, if any. The Association may make reasonable concessions to the construction bond requirement with regard to any individual or entity constructing multiple Patio-Homes on multiple Patio-Home Units. For the purpose of this provision, no land is subject to the construction bond requirement until after the land is dedicated as a Unit by this document or an amendment to this document, and if construction commences prior to such dedication, no construction bond may thereafter be required with regard to construction which commenced prior to dedication.

34. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining lots and more particularly into the storm sewers or roadways. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.
35. If approved by the BCC, Fences are permitted in the Subdivision subject to the following limitations:
 - a Stone fences, wood fences and synthetic fences which have the appearance of wood or stone are permitted but hurricane, metal, chicken-wire, hardware cloth and other metal fences are not permitted;
 - b No portion of any fence may be constructed more than six (6) feet in height from grade;
 - c Fences must be located on the rear or side of the dwelling and no fence may be located nearer to the front of the Unit than the center of the dwelling thereon;
 - d No fence more than three (3) feet in height may be located within any set-back without prior written consent of the owner of the Unit which abuts said set-back;
 - e No fence may deny the Association or Declarant access to the easements and rights-of-way reserved to the Association and/or Declarant and neither Declarant nor Association shall be liable for any damage, cost or injury incurred in the removal of all or any portion of an approved or unapproved fence in the event that the same is located on, over or across any right-of-way or easement reserved to Association or Declarant herein.
 - f The owner of the Unit on which the fence is constructed shall be liable for the proper

maintenance, upkeep, construction and placement of the fence at all times.

- 36. No deck shall be constructed on the front of any dwelling, nor higher than the main floor of the dwelling and under no circumstance shall any deck be built more than fourteen (14) above ground.
- 37. Beginning at the time asphalt is applied to the entryway (the intersection of Horseman’s Trail and U.S. Route 119), all construction vehicles, construction material delivery vehicles, cranes, dump trucks, triaxle vehicles and construction equipment must utilize the construction entrance (which is located on Sleepy Hollow Road) to the Subdivision unless written permission to the contrary is given by the BCC. Each Unit Owner is charged with the affirmative duty to cause all contractors, invitees, licensees, agents, employees, subcontractors and material suppliers to comply with this provision. In the event of repeated violations of this provision by vehicles traveling to or from any certain and identifiable Unit, the Association may, after reasonable notice to the Unit Owner, assess reasonable fines or penalties to the Unit Owner for each violation hereof.
- 38. Declarant and BCC each reserve the right to designate the position and facing of any dwelling constructed on any Unit. With regard to any Unit which is contiguous to more than one street in the Subdivision, BCC and Declarant may designate which street the dwelling faces and which street the driveway servicing the dwelling intersects. Each the dwellings in each Unit in Phase I shall face the direction specified below, and the driveway servicing each Unit in Phase I shall intersect only the roadway specified below:

Phase I Unit	Front of dwelling shall face the following road	Driveway shall intersect/connect to the following road
1	Horseman’s Trail	Irving Court
2-5	Irving Court	Irving Court
6	Horseman’s Trail	Van Tassel Court or Irving Court but not both
7-14	Van Tassel Court	Van Tassel Court

- 39. **SPECIAL RESTRICTIONS WHICH PERTAIN TO LOTS 1 THROUGH 14, INCLUSIVE, IN PHASE I.** The following special restrictions apply to that portion of the Subdivision which was subdivided from a 7.923 acre parcel conveyed to Round Table

Development, LLC, by Deed from Robert C. Smith and Helen L. Smith dated August 30, 2004, and which is recorded in the Office of said Clerk in Deed Book No. 1279 at Page No. 527. Round Table Development, LLC, subsequently conveyed the land subject to said restrictions to Sleepy Hollow Properties, LLC. The restrictions are specifically set forth in document of same date recorded in Deed Book No. 1279 at Page No. 531:

- a. Absent prior written consent of Smiths, no dwelling shall be constructed on any Lot which contains an aggregate of less than one-half ($\frac{1}{2}$) of an acre in total area;
- b. Any natural gas, heating fuel or propane storage tank located on any Lot shall be located below ground or in such a manner that the same is not visible from the roadways or contiguous lots in the Subdivision. Attractive screening, fencing and other shielding of the tank from common view is permitted. Such storage receptacles shall be buried if possible. Any above ground fuel tank or fuel storage receptacle shall be painted green, brown or another natural color so as to sufficiently camouflage the same to the greatest extent possible.
- c. No dwelling shall be constructed on any [Unit] which, when completed, shall result in the dwelling and Unit having a fair market value of less than Two Hundred Thousand Dollars (\$200,000.00) based on the current dollars value effective July 1, 2004. The minimum dollar amount specified in this paragraph shall adjust annually effective July 1, 2004, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor ("Index"). If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.
- d. Town homes are not permitted on any portion of the 7.923 acre parcel.

40. **SPECIAL RESTRICTIONS WHICH PERTAIN TO LOTS LOCATED WITHIN 300 FEET OF LANDS OWNED BY ROBERT C. SMITH AND HELEN L. SMITH ON AUGUST 30, 2004.** The Subdivision is primarily being developed from a 65.84 acre tract of land. No mobile home, double wide or single wide (specifically including, but not limited to, vehicles licensed or titled by the West Virginia Department of Motor Vehicles or homes with axles for the purpose of transportation), may be located, placed or stored on, or at any time utilized as a residence on any portion of the 65.84 acre tract which is located within three hundred (300) lineal feet of any property owned by Robert C. Smith and Helen L. Smith on August 30, 2004. Provided, however, that the same may be utilized as temporary construction offices or storage sites during development and construction of the 65.84 acre tract.

