See Amended Declaration of Covenants in Book No. 178 page 311

#1 Geo. I. Sponaugle II

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FISHER MOUNTAIN, SECTION ONE

THIS DECLARATION is made on the date hereinafter set forth by **LGI LAND WV, LLC**, a West Virginia Limited Liability Company, hereinafter referred to as "Developer,"

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract of land known as **"FISHER MOUNTAIN, SECTION ONE"** being a Subdivision of 50.50 acres of land situate in Bethel District, Pendleton County, West Virginia, and according to the plat ("Plat") of said FISHER MOUNTAIN, SECTION ONE, recorded in the office of the Clerk of the County Commission of Pendleton County, West Virginia, in Map Book No. 7, at page 8, (hereinafter referred to as the "Property" or the "Subdivision"); and

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future Owners of Lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes this Declaration upon the Subdivision known as FISHER MOUNTAIN, SECTION ONE and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each Owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve or Unrestricted Reserve on the Plat or to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Management Company" as hereinafter defined).

ARTICLE I
DEFINITIONS

Section 1.01 **"Annexable Area"** shall mean and refer to any additional property made subject to the jurisdiction of the Management Company pursuant to the provisions set forth herein, including, without limitation any other Sections of Fisher Mountain Subdivision, if any, Developer may plat any property adjacent to or in the proximity of the Property which the Developer may wish to include in the jurisdiction of the Management Company.

Section 1.02 **"Management Company"** shall mean and refer to Fisher Mountain Management Company, LLC, and its successors and assigns.

Section 1.03 **"FISHER MOUNTAIN"** shall mean and refer to this Subdivision and any other sections of Fisher Mountain hereafter made subject to the jurisdiction of the Management Company.

Section 1.04 **"Management"** shall mean and refer to the "Management" of the Management Company. The terms "Committee" and "Architectural Control Committee" as used herein shall mean and refer to the Management Company.

Section 1.05 **"Builders"** shall mean and refer to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

Section 1.06 **"Common Area"** shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Management Company for the common use and enjoyment of the Owners and/or any other real property and improvements.

Section 1.07 **"Contractor"** shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

Section 1.08 **"Developer"** shall mean and refer to LGI LAND WV, LLC, and its successors and assigns. Provided, however, no person or entity merely purchasing one or more Lots from LGI LAND WV, LLC, in the ordinary course of business shall be considered a "Developer".

Section 1.09 **"Lot"** shall mean and refer to any plot of land identified as a Lot or tract on the Plat of the Subdivision. For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Common Areas," "Reserves", "Restricted Reserves" or "Unrestricted Reserves", (defined herein as any Common Areas, Reserves, Restricted Reserves, Restricted Open Space Reserves, or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area. No Lot may be resubdivided without the prior written consent of the Management Company.

Section 1.10 **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot or Reserve which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

Section 1.11 **"Living Area"** shall mean and refer to the area computed using exterior dimensions of the entire living area of a residence that is heated and cooled; e.g. both floors of a two-story residence, excluding attic, garage, basement, breezeway or porch.

Section 1.12 **"Regulated Modification"** shall mean and refer (without implication that any matter contained in this definition is permitted or prohibited by the terms of this Declaration) the commencement, placement, construction, reconstruction or erection of or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, excluding such matters and activities conducted wholly within the interior or a residence which does not effect the exterior appearance of the residence, structure or improvement, including (but not limited to) by way of illustration:

(a) Any residence, building, garage, outbuilding, porch, shed, greenhouse, gazebo, pergola, outdoor kitchen; animal coup, animal cage, animal run, covered or uncovered patio or deck, swimming pool, hot tub, radio or television or any other antenna, satellite dish, microwave and similar systems, fence, wall, screening device or improvement, curbing, paving, wall, landscaping of any kind, fountains, statuary, lighting, signs, forts, ziplines, play structures, other temporary or permanent modifications or alterations;

(b) Any change to the design or appearance of the exterior of any residence or garage upon any Lot, or to any other approved outbuilding, including without limitation any change in the style, color grade or appearance of exterior brick or cladding, siding, shingles or other roof material, windows, doors, garages doors, external lighting, or other visible exterior features on a Lot;

(c) Any demolition of a residence; garage or outbuilding upon any lot, (demolition must be approved by the Architectural Control Committee under Article IV herein);

(d) Any excavation, fill, ditch, diversion, dam, drainage system, berm, pond, paving, hardscape or other thing, device or system which effects or alters the flow of surface or

subsurface waters to, from, upon, across, or under any Lot or any other portion of the Subdivision.

ARTICLE II
RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 **Recorded Subdivision Map of the Property.** The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be incorporated herein and made a part hereof and shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 **Easements.** Developer, subject to the provisions of Section 3.02 for Composite Building Sites, reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Pendleton County, West Virginia, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. The Management Company, the Developer and its assigns, further expressly reserves the right, but does not have the obligation, to enter upon any Lot for the purpose of improving, constructing or maintaining any natural drainage pattern, area or easement. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer, the Management Company nor any utility company, water district, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 **Title Subject to Easements.**

(a) It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Developer may convey title to said easements to the public, a public utility company or the Management Company.

(b) At the sole election of Developer and/or the Management Company, without necessity of obtaining consent from any Owner, shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes, including without limitation gas, electricity, telephone, sanitary or storm, cable television and similar services, along, over, above, across and under the Subdivision and/or any Lot (regardless of ownership at the time of the granting of the easement) expressly including and

not limited to any side of any Lot (front, side or back); provided such additional easements shall not be located in such manner as to encroach upon the footprint or foundation of any then existing building (including any residence) or any swimming pool. Any such easement shall not be effective unless and until notice thereof is filed in the Real Property Records of Pendleton County, West Virginia. Title to any Lot may not be held or construed in any event to include title to any easement established by this Section 2.03 or title to any utility improvement constructed or placed in the easement.

(c) Easements established or obtained pursuant to this Section 2.03 may not, once established or obtained, be adversely effected by any subsequent amendment of this Declaration. The foregoing does not limit subsequent abandonment or other modification of easement rights in accordance with applicable instruments covering any easement, by consent or agreement of the impacted parties.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents. Utility easements on side lot lines may be eliminated and canceled along adjoining Lot lines in a Composite Building Site in accordance with Section 3.02 hereof.

(b) No building, swimming pool bowl or other structure or Regulated Modification shall be located over, under, upon or across any portion of any utility easement. The deck and/or patio area adjacent to a swimming pool may encroach over, under, upon or across any portion of any utility easement with consent from the applicable utilities. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, walkways, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, walkways, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(c) The Owner of each Lot hereby indemnifies and holds harmless Developer and Management Company, and public utility companies having facilities located over, on, across or under utility easements from any loss, expense, suit or demand resulting from death, injuries to persons or damage to property in any way occurring, incident to, arising out of or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within utility easements, expressly including where such death, injury or damage is caused or alleged to be caused by the sole or contributory negligence of such public utility or the Developer or the Management Company, their respective employees, officers, contractors, or agents.

Section 2.05 Roads and Streets. The roads and streets in this Subdivision, as shown on the Plat, are private roads and streets owned by the Developer and shall be maintained by the Management Company. The roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated as roadways for ingress and egress for the property owners of Fisher Mountain, the members and guests of the golf course and club house, and their respective guests and invitees. In addition, the roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated as utility easements for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property.

Section 2.06 Wastewater Treatment Plant. A Wastewater Treatment Plant ("Plant") will be installed within the property of the golf course, but not within the property of Section One. The area of the Plant and any and all associated buildings, sheds, tanks, equipment houses, pumps, lines, pipes, ponds and/or retention ponds, retaining walls, bulkheads, foundations, lighting, machinery, conduits and any other equipment installed therein or thereon or used in connection therewith. The Plant and its activities and operations may be associated with it noise involved in the operation of the Plant machinery, pumps and equipment; and/or olfactory issues such as unpleasant odors. The noise and odors may emanate beyond the bounds of the location of the Plant.

(a) Developer has contracted with a third party for the installation of the Plant for the treatment of the wastewater from this Subdivision. Septic Tanks **may also only be installed** on the following lots:

1, 2, 3; 6-9; 19-25; 38, 39, 51, 52, 60, 61, 67-77; and 83-87.

These lots have available space to justify 10,000 square feet for a septic system and replacement area if the future home owner strategically plans the location of the home, driveway, water line and septic system for each lot. If the home owner fails to place the septic system where the recommendations are made, then they are not guaranteed to be able to have a septic system on that particular lot, which may lead them into having to connect to the central wastewater treatment system.

ARTICLE III
USE RESTRICTIONS

Section 3.01 Single Family Residential Construction.

(a) No building shall be erected, altered, placed or permitted to remain on any Lot or Building Site other than one single-family dwelling unit ("Dwelling") per each Lot or composite building site to be used solely for residential purposes. No guest/servants house may be built. Each Dwelling shall have a fully enclosed garage for not less than one (1) cars or more than five (5) cars, which garage is available for parking automobiles at all times without any modification being made to the interior of said garage. Dwelling garages shall have a minimum of 220 square feet of parkable area. Free standing garages may be permitted, with approval of the Architectural Control Committee, only when attached to the dwelling by a contiguous roofline. No detached garages, Recreational Vehicle garages or workshops are permitted. A carport is not an acceptable substitute for the garage requirements herein, although the Committee may consider supplemental carports constructed of the same design, materials and colors as the residential structure and which is integrated with (and not free standing) the residential structure. No carport shall be erected or permitted to remain on any lot without the express written approval of the Committee through the process described in Article IV to this Declaration.

(b) An outbuilding is defined as any structure which is not attached to the main structure. This may include storage sheds, gazebos, greenhouses, arbors, pergolas, playhouses/forts, potting sheds, pool houses or other similar structures. One or more outbuildings may be permitted per lot and/or composite building site, if 1) it is situated in the rear yard; 2) it is concealed from the view of the public including any adjacent property owners; 3) the plans for the outbuilding are approved in writing in advance by the Architectural Control Committee; 4) the outbuilding shall correspond with the main dwelling structure in architecture, style, color, design and materials; 5) the height of the outbuilding is limited to a maximum of ten feet (10') in height (inclusive of the roof); and 6) said outbuilding shall be limited to a maximum of five hundred (500) square feet.

(c) Occupancy shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more that two (2) persons who are not so related living

together as a single household unit. It is not the intent of the Developer to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. All dwellings must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property and according to the guidelines adopted by the Committee. There shall be no workshops or barns constructed, erected, placed or permitted in the Subdivision. The term "dwelling" does not include single or double wide manufactured homes, modular homes, trailers, mobile homes, any old houses or used houses to be moved on the Lot, and said manufactured and modular homes, trailers, mobile homes, and old houses or used homes are not permitted within the Subdivision. All Dwellings, shall have a minimum of 1,500 square feet of living area, excluding porches, and be built with new construction materials.

(d) Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within twelve (12) months from the setting of forms for the foundation of said building or structure. The exterior wall area of dwellings and garages shall be constructed of materials approved in writing by the Architectural Control Committee. However, the following materials will not be approved by the Architectural Control Committee for use on the exterior wall area of dwellings and garages: vinyl siding and aluminum siding. The roof of any Dwelling shall be constructed of either 40 year composition shingles, copper, tile, slate, standing seam metal or other material approved by the Architectural Control Committee and according to the guidelines adopted by the Committee, prior to construction. The use of sheet metal or similar material on the roof or exterior sides of any Dwelling other than as flashing is prohibited. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes, trailers, single or double wide manufactured homes, and modular homes being placed on said Lots, or the use of said Lots for duplex houses, churches, condominiums, townhouses, garage apartments, or apartment houses; and no Lot shall be used for business, educational or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes.

(e) An Owner may maintain a home office in a Dwelling so long as: 1) the existence or operation of the business activity does not involve persons coming onto the property who do not reside on the property, or door-to-door solicitation of residents of the property; 2) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the property; and 3) the existence or operation of the business activity is consistent with the residential character of the property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the property, as may be determined in the sole discretion of the Board.

(f) Notwithstanding the provisions this section establishing minimum and maximum size requirements for single family residential construction, and the provisions this section defining residential purposes as prohibiting and excluding condominiums and townhouses being used or placed on said Lots, Developer reserves in its sole discretion (1) the right to construct, place, and use condominiums and townhouses on said Lots, including the right to authorize the construction, placement, and use of condominiums and townhouses on said Lots; and, (2) the right to decrease the minimum size requirements and increase the maximum size requirements established for single family residential construction in this section, for any residential construction that Developer constructs on or authorizes to be constructed on said Lots.

Section 3.02 **Composite Building Site.** Any Owner of one or more adjoining Lots (or portions thereof) may, with prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting composite site, in which case the side set-back lines along the common lot lines shall be eliminated and said set-back lines shall thereupon be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated on the Plat. Composite Building Site status may not be granted until an application for construction of a

dwelling has been approved by the Architectural Control Committee, and will be applicable for the next assessment calendar year. Further, any utility easements along said common lot lines shall be eliminated and abandoned upon approval of a Composite Building Site provided such easements are not then being used for utility purposes. Any such Composite Building Site must have a front building set-back line of not less than the minimum front building set-back line of all Lots in the same block and the main dwelling must cross at least one of the original common Lot lines.

Section 3.03 **Location of the Improvements upon the Lot.** No building of any kind shall be located on any Lot nearer to any side or rear property line, or nearer to any public road or waterway than as may be indicated on the Plat; provided, however, as to any Lot, the Architectural Control Committee may waive or alter any such setback line if the Architectural Control Committee, in the exercise of the Architectural Control Committee's sole discretion, deems such waiver or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Pendleton County, West Virginia. All dwellings placed on Property must be equipped with septic tank or connect to the sewage disposal system meeting all applicable laws, rules, standards and specifications, and all such dwellings must be served with water and electricity. The main residential structure on any Lot shall face the front of the Lot towards the street or road, unless a deviation is approved in writing by the Architectural Control Committee. On corner lots, the Front of lot is defined as (i) on a rectangular lot; the narrowest property line facing a street or (ii) on a square lot the property line facing a secondary road. The Recorded plat will show all building line set-back lines and in the event of a conflict with these Restrictions, said Plat shall control.

(a) The minimum dimensions of any Lot and the building set back lines shall be as follows (provided, any conflict with the building set back lines set forth on the Plat shall be controlled by the Plat):

(1) The building set back line along the front of each Lot shall be twenty-five feet (25') unless otherwise shown on the Plat.

(2) The building set back line along the side of each Lot shall be ten feet (10') on all Lots unless otherwise shown on the Plat. The building set back line on lots with a drainage easement as indicated on the plat, will begin at the edge of the drainage easement.

(3) The building set back line along the rear of each Lot, except for Lots adjoining the golf course, shall be fifty feet (50') on all Lots, unless otherwise shown on the Plat.

(4) The building set back line along the rear of each Lot adjoining the golf course, shall be seventy-five feet (75'), unless otherwise shown on the Plat.

Section 3.04 **Residential Foundation Requirements.**

(a) All building foundations shall consist of either: (i) concrete or (ii) piers and beams, with the entire building being skirted with brick or materials which match the outside of the building as may be approved by the Architectural Control Committee. Provided, however, the Architectural Control Committee may approve a different type of foundation when circumstances such as topography of the Lot make it impractical to use one of the above foundations for all or any portion of the foundation of the building improvements constructed on the Lot.

(b) All references in this Declaration to required minimum elevations and/or any elevations approved by the Committee do not constitute a guaranty by the Developer, the Committee or the Management Company, that the residence will be free of flood or related damage, or whether the required minimum elevations are adequate for the intended construction.

(c) All foundations are required to be engineered and designed by a licensed, registered engineer based upon appropriate soils information taken from the specific Lot in question as recommended by such engineer. However, at the minimum, the Lot Owner/Builder shall perform a sufficient soil investigation to determine proper foundation design and sufficient structural integrity and approval of any plans by the Committee and/or Developer is not a warranty or representation as to the adequacy of the foundation design for the intended construction.

(d) The residential foundation plans to be used in the construction of the Dwelling must be submitted to the Committee along with the plans and specifications for the residence as provided in Section 4.01. All foundation plans must be signed, sealed and dated by the engineer designing said foundation plans. The Committee and/or Developer shall rely solely upon Owner/Builder's engineer as to the adequacy of said foundation design when issuing architectural approval of the residence to be constructed. No independent evaluation of a foundation plan will be made by the Committee. The Committee's sole function as to foundation plans are to determine if the plans have been prepared by a licensed registered engineer, as evidenced by the placement of an official seal on the plans.

(e) The Owner/Builder shall establish and construct the residence and garage slab elevation sufficient to avoid water entering into the Dwelling and garage in the event of a heavy rain. A special drainage structure, as recommended and designed by a licensed engineer or other person on behalf of the Owner is recommended wherein the basement or first floor slab elevation is lower that the road ditches.

(f) The granting of approvals of foundation plans and the Dwelling and garage slab elevation shall in no way serve as warranty as to the quality of the plans and specifications and/or that Dwelling shall be free from flood damage from rising or wind driven water or the flow of surface water from other locations within the Subdivision and in no event shall the Developer, the Committee or the Management Company have any liability as a result of the Committee's approval or disapproval of the resulting improvement.

Section 3.05 **Type of Construction, Materials and Landscaping.**

(a) The exterior wall area of dwellings and garages shall be constructed of materials approved in writing by the Architectural Control Committee. In general, exterior walls should be constructed of masonry, natural or cultured stone, Hardi Plank, stucco or natural wood material such as logs or large timbers. However, the following materials will not be approved by the Architectural Control Committee for use on the exterior wall area of dwellings and garages: vinyl siding and aluminum siding. All chimneys shall be of masonry construction.

(b) No external roofing material other than slate, tile, metal, built up roof, composition (where the type, weight, quality and color has been specifically approved by the Committee) shall be used on any building in any part of the Subdivision without the written approval of the Committee. All roofing material must be applied in accordance with the manufacturer's specifications. Roof vents, vent stacks, galvanized roof valleys and other roof items must be painted to match the roof materials. Galvanized roof valleys must be primed before being painted to insure the prevention of peeling.

(c) No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building in any part of the Subdivision.

(d) All roof ventilation (other than ridge ventilators) shall be located to the rear of the roof ridge line and/or gable of any structure and shall not extend above the highest point of such structure, so as not to be visible from any street. The Committee shall have the right to approve the exceptions to the foregoing in cases where energy conservation and heating/cooling efficiency require ventilators that, because of the particular roof design, cannot be hidden from view.

(e) All homes must be landscaped within one year of the setting of the forms for the dwelling. The landscape layout and plans must be approved by the Architectural Control Committee, at least thirty (30) days prior to the final grade of the main dwelling. Landscape shall be a well-designed balance of mature trees, shrubs and lawn grass around the perimeter of each dwelling. No artificial vegetation and/or plantings will be permitted on any portion of the property. All exterior landscape lighting must be approved by the Architectural Control Committee except for traditional holiday decorative lights, for commonly recognized holidays, which may be displayed for the month during which the holiday occurs only.

(f) Summer/Outdoor Kitchens may be permitted in accordance with Summer/Outdoor Construction Specifications as adopted, amended, altered and repealed from time to time, by the Board of Directors. All applications must be submitted in accordance with the Architectural Control Review Process.

(g) No clear cutting of lots will be permitted. No more than 25% of the lot and/or composite building site, exclusive of the pad site for the proposed dwelling shall be permitted to have trees removed. No tree in excess of six inches (6") caliper may be removed without approval of the Architectural Control Committee, except a diseased, dying or damaged tree may be removed to protect the dwelling and its occupants. The Management Company may levy a fine for clear cutting that will be collected as any other assessment and may enforce a reforestation requirement that all lot Owners that clear cut will have to adhere to. If a lot has an onsite septic system installed, then no more than 40% of the lot and/or composite building site, exclusive of the pad site for the proposed dwelling shall be permitted to have trees removed.

Section 3.06 **Driveways.** All driveways in the Subdivision shall be constructed of concrete, asphalt or concrete aggregate and shall be completed within twelve (12) months from the setting of forms for the foundation of said building or structure as indicated in Section 3.01. Further, the driveway or entrance to each lot, from the pavement of the street shall be paved with concrete, asphalt or concrete aggregate and a county approved culvert shall be installed to cross any roadside drainage ditch. All driveway culverts shall be shall be installed with the flowline level with the final grade of the ditch, or as may be required by Pendleton County, West Virginia. Culverts shall be made of concrete or other materials approved by the Architectural Control Committee. It is the responsibility of every Property Owner to ensure that the construction, size and placement of any culvert on their property meets the guidelines and approval of the Architectural Control Committee. It is understood that should the Architectural Control Committee or other appropriate governmental authority require the removal, replacement, correction, modification or repair of any culvert, it shall be the responsibility of the Property Owner to pay for such work. Should the appropriate governmental agency require Developer to remove, replace, correct, repair or modify any culvert as a precondition to acceptance of the subdivision roads into the county and/or state road system, Developer shall have to right to undertake such work and Property Owner shall reimburse Developer for all costs incurred. The Architectural Control Committee may allow driveways to be placed on the side building line.

Section 3.07 **Use of Temporary Structures and Sales Offices.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities and signage in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision.

Section 3.08 **Water Supply.** Developer has contracted with a third party for the installation of a central water system for the Subdivision. All residential Dwellings in this Subdivision shall be equipped with and served by a central fresh water system installed, operated and continuously maintained in accordance with applicable utility company and governmental requirements, and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or

used except upon approval of the Architectural Control Committee and any required governmental authorities. Wells may be drilled by the Developer or Management Company for use in watering common areas and filling of detention lakes or ponds in common areas. All Dwellings must tap into and remain connected to the central water system for the Subdivision.

Section 3.09 **Electric Utility Service.** Prior to beginning any construction on a Lot, each Lot Owner, at his expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Lot. Further, each Lot Owner may expect to pay a charge for connection to such electric utility service, and the Owner is obligated to contact the electric utility company providing service to the Subdivision to determine the amount of such charge and make arrangements for the installation of said electrical service lines and connection to the electrical distribution system. Owner shall also be responsible for all charges for all utility service furnished to Owner's Lot.

Section 3.10 **Sanitary Sewers.** No outside, open or pit type toilets will be permitted in this Subdivision. Prior to occupancy, all dwellings constructed in this Subdivision must have a septic system or connect to the central waste water treatment system, installed by the Developer, to comply with the requirements of the appropriate governing agency or agencies.

Section 3.11 **Walls, Fences and Hedges.**

(a) Walls and fences, if any, must be approved prior to construction by the Architectural Control Committee and no wall, fence, planter or hedge in excess of seven feet (7') in height including ornamental iron, split wood rail, or three (3) board wood fence shall be erected, planted or maintained on any Lot. No wall, fence, planter or hedge shall be erected, planted or maintained outside of the lot lines of a Lot. The following additional restrictions shall apply to walls, fences, planters or hedges on corner lots, to-wit:

(1) **Corner Lot.** Except for a Non-Privacy Fence, as hereinafter described, no fence or wall of any kind shall be erected, planted or maintained on a corner lot.

(2) **Golf Course Lots.** Lots adjoining the golf course may only have a four (4) foot rod iron fence at the rear boundary line where the Lot adjoins the golf course and at other boundary line locations where the Lot adjoins the golf course.

(b) Lots on Pathway Easements may have a fence as allowed for that lot but the fence must be placed on the lot owner's side of the pathway.

(c) A Non-Privacy Fence is an iron ornamental fence no more than six (6') feet in height, of a design and color approved by the Committee that does not obstruct the view of adjoining Lots.

(d) All other fences and walls will be constructed of ornamental iron, wood, masonry or synthetic materials in harmony with the guidelines established by the Committee, provided no electric wire, temporary fences, vinyl fence, split rail fence or picket fence shall be allowed unless the Architectural Control Committee approves a variance to allow such type of fence prior to its construction. Privacy fences shall not be constructed any closer to the front of the lot than 50% of the depth of the Dwelling. No barbed wire or chain link fences shall be allowed, provided, an Owner may obtain permission from the Committee to construct a cage, kennel or dog run out of chain link fence, provided any such outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which cannot be seen, heard or smelled by anyone other than the subject Lot Owner provided such must be approved as to materials, size and location by the Architectural Control Committee in its sole and absolute discretion. Driveway entrances may be constructed of masonry columns, ornamental iron or similar materials in harmony with the Dwelling on said Lot as may be approved by the Architectural Control Committee. The Owner of any Lot upon which the Developer may have constructed a fence shall be responsible for the maintenance and repair of said fence.

Section 3.12 **Prohibition of Offensive Activities.** Without expanding the permitted use of the Lots, no activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision and for home offices described in Section 3.01 hereof. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the Subdivision. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Exterior patio speakers may be permitted on the rear of the dwelling, but at no time are the exterior speakers permitted to become an annoyance or a nuisance to adjacent property owners. Without limitation, the discharge or use of firearms is expressly prohibited. The Management Company shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance. Activities expressly prohibited, include, without limitation, (1) the use or discharge of firearms, firecrackers or other fireworks within the Subdivision, (2) the storage of ammonium nitrate, flammable liquids in excess of five gallons (3) Garage Sales (unless organized by the Management Company), (4) hunting and camping, (5) the use of ATVs, motorized dirt-bikes, and similar motorized vehicles within the boundaries of Fisher Mountain, (6) the use of any lot as a drill site, or (7) other activities which may be offensive by reason of odor, fumes, dust, smoke, noise, vision, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion.

Section 3.13 **Swimming Pools.** No swimming pool may be constructed on any Lot without the prior written approval of the Committee. Each application made to the Committee shall be accompanied by two sets of plans and specifications for the proposed swimming pool construction to be done on such Lot, including a plot plan showing the location and dimensions of the swimming pool and all related improvements, together with the plumbing and excavation disposal plan. An application fee and/or deposit of not less than $1,000 must be submitted with the application for a pool. A portion of the deposit may be refunded as determined by the Board of Directors. The Committee's approval or disapproval of such swimming pool shall be made in the same manner as described in Article IV hereof for other building improvements. The Owner shall be responsible for all necessary temporary erosion control measures required during swimming pool construction on said Lot to insure that there is no erosion into Detention Lakes or natural waterways. Swimming pool drains shall be piped into the ditch in the front of the Lot or other approved drainage area. In no event shall swimming pools be drained or discharge water into the Detention Lakes. The swimming pool drain outfall shall be terminated through a concrete pad constructed flush with the slope of the ditch so as not to interfere with the maintenance or mowing of the ditch. The Swimming Pool bowl be erected within any utility easement; however, the pool deck may encroach into the utility easement with consent of the applicable utility company. No portion of a swimming pool shall be erected in front of a Dwelling. Pools may be erected outside the rear building line setbacks as long as the pool has no permanent structure built above pool deck.

Section 3.14 **Excavation.** The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with ponds, the landscaping of or construction of improvements on such Lot.

Section 3.15 **Removal of Trees, Trash and Care of Lots During Construction of Residence.**

(a) All Owners, during their respective construction of a residence, are required to remove and haul from the Lot all tree stumps, trees, limbs, branches, underbrush and all other trash of rubbish cleared from the Lot for construction of the residence, construction of other improvements and landscaping. No materials or trash hauled from the Lot may be placed elsewhere in the Subdivision or on land owned by Developer whether adjoining the Subdivision or not. Burning on the lots shall be permitted as long as it does not violate any governmental rules or regulations and/or create an annoyance or nuisance to any other resident in the Subdivision.

(b) All Owners, during their respective construction of a residence, are required to continuously keep the Lot in a reasonably clean and organized condition. A trash container is required on Lot(s) during construction and papers, rubbish, trash, scrap, and unusable building materials are to be kept picked up and hauled from the Lot. Failure to install a trash container/ dumpster during construction shall result in a fine against the property owner's account and shall be collectable as any other assessment. Other usable building materials are to be kept stacked and organized in a reasonable manner upon the Lot. It is recommended that a lockable container be placed on the Lot during construction for unused building materials.

(c) No trash, materials, or dirt is allowed in the street or street ditches. All Owners shall keep street and street ditches free from trash, materials, and dirt. Any such trash, materials, or excess dirt or fill inadvertently spilling or getting into the street or street ditch shall be removed by the Owner causing same without delay, not less frequently than daily. Erosion control fences must be used by an Owner to control silt from entering roadside ditches until grass is established. Failure to install erosion control fences during construction shall result in a fine against the property owner's account and shall be collectable as any other assessment.

(d) No Owner or Contractor may enter onto a lot adjacent to the Lot upon which he is building for purposes of ingress and egress to his Lot before, during or after construction, unless such adjacent Lot is also owned by such Owner, and all such adjacent Lots shall be kept free of any trees, underbrush, trash, rubbish and/or any other building or waste materials during or after construction of building improvements by the Owner of an adjacent Lot.

(e) Unless otherwise approved by the Developer or the Management Company, no trees shall be removed from any Lot except as may be required during the construction of the Main Dwelling on the Lot. No clear cutting of trees on a Lot is permitted. Subsequent to the construction of the main dwelling on a Lot, no tree may be cleared or removed unless prior written permission is obtained from the Committee.

(f) All Builders, Owners and their Contractors shall be responsible for any damage caused to the roads, roadside ditches and easements during the construction of improvements on a Lot. Further, any Builder or Contractor shall be required to deliver to the Management Company -a damage deposit as may be determined by the Board of Directors prior to beginning construction of any Dwelling or other building. This damage deposit shall be returned to the Builder or Contractor upon completion of said Dwelling or other building provided the Management Company determines that no damage to the roads, ditches or easements was caused by said Builder or Contractor and no fines have been incurred as a result of failure to comply with these requirements. Further, any Owner, Builder, Contractor shall supply and maintain a portable toilet and trash bins for construction trash during the construction of a Dwelling in the Subdivision. All Builders, Owners and their Contractors shall be responsible for keeping construction site free of debris and trash and a concrete clean out area must be provided by the builder. Concrete clean out in roadside ditches is prohibited.

Section 3.16 Inspections. An application fee, inspection fee and/or deposit may be determined by the Board and must be paid to the Management Company at such time as application for architectural approval is made to the Committee, which fee shall be used for an independent inspection and to defray the expense for before and after building inspections. In the event construction requirements are incomplete or rejected at the time of inspection and it becomes necessary to have additional building inspections, a fee, in an amount to be determined by the Committee, must be paid to the Committee prior to each building inspection.

Section 3.17 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not

be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3.18 **Junked Motor Vehicles Prohibited.** No Lot shall be used as a depository for abandoned or junked motor vehicles. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailers, house trailers or the like, shall be kept on any Lot other than in a garage or other structure approved by the Architectural Control Committee.

Section 3.19 **Signs.** Except as authorized herein, no signs, advertisement, billboard or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Control Committee, except:

(I) one (1) sign not more than twenty-four inches by thirty-six inches (24" x 36") square advertising the builder of the Owner's dwelling may be placed on such Lot during the construction period of such residence from the forming of the foundation until completion not to exceed a twelve (12) month period;

(II) Security Signs/Stickers may be displayed by an Owner of a commercial security or alarm company providing service to the dwelling so long as the sign is not more than 12" x 12" or the sticker if no more than 4" x 4". There shall be no more than one sign per Lot and no more than one sticker on any of the doors, and stickers on no more than one window per side of the dwelling. Other than as permitted herein and in Section 3.07 hereof no signs of any kind, whether for sale by owner or by builder, shall be permitted on unimproved Lots. Developer or any member of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 3.20 **Livestock and Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. Dogs, cats or other common household pets of a reasonable kind and number (which may be determined by the Management Company in its sole discretion) will be allowed on any Lot, provided that they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Owners.

(a) In no event shall such household pets be allowed to run loose in the Subdivision.

Section 3.21 **Logging & Mineral Development.** Except within the areas designated as Drill Site locations on the Plat, and easements related thereto, no commercial logging, oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot, and, no derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the Subdivision may be developed from adjacent lands by directional drilling operations or from the Drill Sites designated on the Plat of various Sections of the Subdivision.

Section 3.22 **Drainage.**

(a) Each Owner of a Lot agrees for himself, his heirs, legal representatives, assigns or successors-in-interest that he will not in any way interfere with the established drainage pattern over his Lot

from adjoining or other Lots in the Subdivision, that an Owner will not plant vegetation, including but not limited to any wildflowers, and he will make adequate provisions for the drainage of his Lot in the event it becomes necessary to change the established drainage over his Lot (which provisions for drainage shall be included in the Owner's plans and specifications submitted to the Committee and shall be subject to the Committee's approval). For the purposes hereof, "established drainage" is defined as the drainage which existed at the time that the overall grading of the Subdivision, including landscaping of any Lot in the subdivision, was completed by Developer.

(b) Each Owner (including Builders), unless otherwise approved by the Committee, must finish the grade of the Lot so as to establish good drainage from the rear of the Lot to the front street or from the building site to the front and rear of the Lot as dictated by existing drainage ditches, and swales constructed by Developer or Utility Districts for drainage purposes. No pockets or low areas may be left on the Lot (whether dirt or concrete) where water will stand following a rain or during watering. With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing underground pipe and area inlets or by installing an open concrete trough with area inlets, however, the drainage plan for such alternate drainage must be submitted to and approved by the Committee prior to the construction thereof. The Committee's sole function in reviewing drainage plans is to see if the drainage pattern has been or will be altered by the proposed construction and to make a determination if the Owner/Builder has evaluated the effects of their construction to other properties and of the effect of potential flowing and rising water that may affect the submitted improvements.

(c) The Subdivision has been designed and constructed utilizing surface drainage in the form of ditches and swales and, to the extent these drainage ditches and swales are located in front, side or rear Lot easements, the Owners shall not regrade or construct any improvements or other obstruction on the Lot which adversely affects the designed drainage flow. The Owner shall be responsible for returning any drainage swale disturbed during construction or thereafter to its original line and grade, and the Owner shall be responsible for maintaining the drainage ditches or swales appurtenant to said Owner's Lot in their original condition during the term of his ownership. The Management Company may repair swales, should the Lot Owner fail to do so, and has the ability to recover its expenses and/or fine for the repairs.

(d) All Owners and/or Builders shall comply with the National Pollutant Discharge Elimination Rules and Regulations applicable to their respective Lot(s) as required by EPA under the Water Quality Act of 1987 amending the Clean Water Act, as said laws, rules and regulations may be amended from time to time.

(e) The Management Company the Developer and their successors and assigns shall have the right but not the obligation, to enter upon any Lot or Reserve in Section One for the purpose of improving, constructing or maintaining the drainage facilities in the drainage easements shown on the Plat of the Subdivision. Without limitation, the Management Company may remove accumulated silt from the drainage easements and may regrade drainage easements as may be necessary to maintain roadside drainage and prevent damage to the roadside.

(f) Except as provided in Sections 3.24 (j) and 3.24 (k), the Management Company may clean, mow, dredge, clear, regrade, repair or otherwise maintain the drainage ditches in the Subdivision as shown on the Plat. The Management Company shall have the power to levy any necessary drainage assessment to pay for such work.

(g) Further, no fences shall be constructed within or across any drainage easement as shown on the Plat of the Subdivision or within or across any outside drainage easement referenced on the Plat. For the purposes hereof, the drainage easements include the drainage easements shown on the Plat, and all drainage which existed at the time that the overall grading of the Subdivision, was completed by Developer.

Section 3.23 **Lot Maintenance.** All Lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon (outside of natural vegetation areas) cut and shall in no event use any Lot for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees solely during Lot clearing shall be permitted and the burning of leaves or other natural debris shall be permitted on Lots containing at least one (1) acre, provided such burning shall not exceed twice a year on any such Lot. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring Lots, streets or other property. All Owners shall perform necessary maintenance of their Lot, including, but not limited to the following:

(a) Prompt removal of all litter, trash, refuse, and wastes.

(b) Lawn mowing (outside of the natural vegetation areas).

(c) Tree and shrub pruning (outside of the natural vegetation areas).

(d) Keeping exterior lighting and mechanical facilities in working order.

(e) Keeping lawn and garden areas alive, free of weeds, and attractive.

(f) Keeping parking areas, walkways and driveways in good repair.

(g) Complying with all government health and policy requirements.

(h) Repainting of improvements.

(i) Repair of exterior damage to improvements.

(j) Mowing and keeping clean the drainage ditches and/or swales on their Lot.

(k) Repairing any damages done by Owner to the drainage ditches and/or swales on their Lot.

(l) Obtain necessary burning permits.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Management Company or its designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, to cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus a fee of $25.00 for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.24 **Exterior Maintenance of Building.** In the event the Owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Management Company and/or the Developer will give such Owner written notice of such

conditions. Thirty (30) days after notice of such condition to Owner, and failure of Owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Management Company and/or the Developer in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may at its sole discretion enter upon said premises, without liability, to do or cause to be done any work necessary to correct said situation. The Owner thereof shall be billed for cost of necessary repairs, plus ten (10%) percent.

All monies so owed the Management Company will be an additional Maintenance Charge and shall be payable on the first day of the next calendar month. These monies shall become an assessment against the Lot and collectable as any other assessment.

Section 3.25 **Storage of Vehicles and Equipment.** Without limiting the foregoing, the following restrictions shall apply to all Lots:

(a) No boat, jet-ski, aircraft, travel trailer, motor home, camper body, tractor, lawn equipment or similar vehicle or equipment (collectively called "Vehicles and Equipment") may be parked for storage in the front of any Dwelling or parked on any street in the Subdivision, nor shall any such Vehicles and Equipment be parked for storage to the side or rear of any Dwelling unless completely concealed from public view. Vehicles and Equipment located on a Golf Course Lot (a lot adjoining the golf course) shall be stored in a garage. All boats so parked on any Lot must at all times also be stored on a trailer, unless stored in a garage. No Vehicles or Equipment shall be used as a residence whether temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for construction, maintenance or repair of a Dwelling in the Subdivision.

(b) Trucks with tonnage in excess of one and one-half tons shall not be permitted to park overnight within the Subdivision except those used by a builder during the construction of improvements in the Subdivision. No vehicle shall be permitted to park overnight on any Lot or street within the Subdivision except for those vehicles used by a builder during the construction of improvements on Lots or Common Areas in the Subdivision.

(c) No Commercial vehicle, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes shall be parked on any lots or Common Areas within the subdivision. Notwithstanding the foregoing, service and delivery vehicles may be parked on the property during the daylight hours for such period of time as is reasonably necessary to provide services or to make a delivery to the dwelling.

(d) No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

(e) No vehicles or similar equipment shall be parked or stored in an area visible from any Street except passenger automobiles, passenger vans, motorcycles and pick-up trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of West Virginia, and all such vehicles shall be parked in a driveway or garage and may not be parked in a yard.

Section 3.26 **Views, Obstructions and Privacy.** In order to promote the aesthetic quality of "view" within the Subdivision, the Committee shall have the right to review and approve any item placed on a Lot including, but not limited to the following:

(a) The probable view from second story windows and balconies and decks (particularly where there is potential invasion of privacy to an adjoining neighbor);

(b) Sunlight obstructions;

(c) Roof top solar collectors;

(d) Flagpoles, flags, pennants, ribbons, streamers, wind sock and weather vanes;

(e) Exterior storage sheds;

(f) Fire and burglar alarms which emit lights and sounds;

(g) Children playground or recreational equipment;

(h) Exterior lights;

(I) Ornamental statuary, sculpture and/or yard art visible from a street or common area excluding those which may be a part of an otherwise approved landscape plan;

(j) The location of the Residential Dwelling on the Lot;

(k) The location of satellite dishes and antennas; and

(l) Any Regulated Modification.

(j) **Prohibited Items**. The following items are prohibited on any Lot:

(1) Above ground swimming pools;

(2) Window unit air conditioners;

(3) Signs (except for signs permitted in Section 3.20 hereof);

(4) Unregistered, unlicensed, inoperable or junked motor vehicles;

(5) duplex houses or other structures designed for occupation by more than one family; and

(6) mobile homes, modular homes, pre-manufactured homes, or similar pre-fabricated residential structures of any kind.

Section 3.27 Antennas and Satellite Dishes.

(a) No electronic antenna or device for receiving or transmitting any signal other than an antenna for receiving normal television, marine signals, citizens band signals or cellular telephone signals shall be erected, constructed, placed or permitted to remain on any Lot, house, garage or other buildings unless otherwise approved by the Committee. The Committee's decision shall be final.

(b) No satellite dish may be maintained on any portion of any Lot outside the building lines of said Lot or forward of the front of the improvements thereon. A satellite dish may not exceed thirty-seven (37") inches in diameter and must be mounted as inconspicuously as possible to the rear of the home. However, in no event may the top of the satellite dish be more than two (2') feet above the roofline for roof mounted antennas or receivers. All dishes shall be of one solid color of black or earth tones of brown, grey, or tan. No multicolored dishes shall be permitted. Not more than two satellite dishes will be permitted on each Lot. No transmitting device of any type

which would cause electrical or electronic interference in the neighborhood shall be permitted. Architectural approval is required prior to the installation of any satellite dish. The Management Company reserves the right to seek the removal of any device that was installed without first obtaining approval or any dish that violates these restrictions. The Committee may vary these restrictions only as is necessary to comply with the Federal Communications Act (the "Act") and the Committee may promulgate rules and regulations in accordance with the Act.

Section 3.28 **Solar Panels.** All Solar Panels installed shall be framed in such a manner so the structure members are not visible. The framing material shall be one that is in harmony with the rest of the structure. Architectural approval from the Committee is required prior to the installation of any solar panels. The Management Company reserves the right to seek the removal of any solar panel that was installed without first obtaining approval or for any solar panel that violates these restrictions. Solar panels shall be installed in a location not visible from the public street in front of the residence.

Section 3.29 **Wind Generators.** No wind generators shall be erected or maintained on any Lot if said wind generator is visible from any other Lot or public street.

Section 3.30 **Generators.** Prior to installing a generator, the Lot Owner must submit to an application, a $50 review fee, a survey with proposed generator location (generator may not encroach into the side or rear set-back lines) and plans or drawings of equipment wall detail and/or landscape detail. If installation is proposed to be in an enclosed generator room, a full set of architectural drawings must be submitted to the Committee for review. Obtaining any necessary permits from Montgomery County is the responsibility of the Lot Owner. The generator shall be installed by a licensed electrical contractor and must be wired directly to the electrical panel through a manual or automatic transfer switch in order to meet National Electric Code minimums. The generator must be set to run on a timer, and may only be operated from 10:00 a.m. until 12:00 a.m., Monday through Friday, except on holidays. Only generators operated by natural gas shall be installed and must be directly connected to the natural gas line. Generators shall be self-contained and enclosed with an equipment wall and landscaping. The generator exhaust shall be installed according to the manufacturer's guidelines.

Section 3.31 **Drying of Clothes in Public View.** The drying of clothes in public view is prohibited, and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds, Detention Lakes or other facilities where the rear yard or portion of the Lot is visible to the public, shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

Section 3.32 **Mailboxes.** Mailboxes must be constructed, installed or placed in the front of all Dwellings by the Owner. Only mailboxes installed or approved by the United States Postal Service and installed in accordance with the guidelines set by the Committee shall be permitted. Mailboxes must be constructed from the same masonry as the house or ornamental iron. The design of a mailbox structure must be reviewed and approved by the Architectural Control Committee.

Section 3.33 **Hazardous Substances.** No Lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Lots or the Subdivision, and all activities on the Lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or

which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

Section 3.34 **Roads.** The roads within Fisher Mountain, excluding Lot Owner driveways, are private roads owned by the Developer and shall be maintained by the Management Company.

ARTICLE IV
ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 **Basic Control**

(a) No building, Regulated Modification, or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until: (i) the payment of the applicable damage deposit, construction application fees, inspection fees and processing fees and any related fees (including the compliance deposit described in 4.10 if applicable) determined by management; and (ii) the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, compliance with any minimum construction standards established by the Committee, quality of materials, drainage, harmony of external design and color with existing and proposed structures in the Subdivision and location with respect to topography and finished grade elevation. The granting of approval shall in no way serve as a guaranty or warranty as to the quality of the plans or specification nor the habitability, feasibility or quality of the resulting improvements.

(b) The authority for determining whether construction plans and specifications for proposed improvements are in compliance with the provisions of this Declaration as to quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography, finished grade elevations and other relevant factors, rests with the Committee. Disapproval of plans and specifications, including location of the proposed improvements, may be based by the Committee on any facts that seem sufficient in the discretion of the Committee. The decision of the Committee shall be final.

(c) Each application made to the Committee shall be accompanied by two sets of professionally drawn plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Management Company. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set application and inspection fees, as well as, the damage deposit set forth in Section 3.17 hereof. The Owner must obtain from the Committee a receipt for said plans indicating the date said plans are received by the Committee. The plans and specifications submitted must specify such detail and forms about the proposed project/construction/Regulated Modification as the Committee may reasonably request, which may include but is not limited to:

(1) the location upon the Lot where the Regulated Modification will occur or be placed or sited (sometimes called a plot plan or a site plan);

(2) the dimensions, elevations, expected appearance, nature, kind, shape, and height, of the Regulated Modification;

(3) the exterior colors and materials to be used;

(4) any information concerning structural, mechanical, electrical, plumbing, grading, paving, decking, drainage, and landscaping details and materials;

(5) intended use(s); and

(6) such other information, plans or specifications as may from time to time be required or requested by the Committee, which in the sole opinion of the Committee is reasonable or necessary for it to fully and fairly evaluate the proposed Regulated Modification.

Section 4.02 **Architectural Control Committee of the Management Company.** The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the selection of the Architectural Control Committee of the Management Company (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee," as used in this Declaration, shall mean or refer to the Developer or to the Architectural Control Committee composed of members of the Management Company appointed by management.

Section 4.03 **Effect of Inaction.** Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within forty-five (45) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof. The time to approve or disapprove shall not commence until professionally drawn plans are submitted to the Committee. Professionally drawn plans shall mean those plans prepared by an architect, engineer or certified house planner in sufficient detail to allow the Committee to review in accordance with the criteria set forth herein.

Section 4.04 **Effect of Approval.**

(a) The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

(b) Despite approval by the Committee, the person or entity making application to the Committee shall be solely responsible for full compliance with all permitting requirements of any authority with jurisdiction over the Subdivision, including any governmental agencies having jurisdiction,

and shall apply for and diligently pursue and obtain all required permits prior to starting any construction approved by the Committee. The Committee is expressly authorized to condition approval upon compliance with applicable permitting requirements, or deny approval pending certification satisfactory to the Committee that permits have either been received or that no such permitting is required.

(c) Despite approval by the Committee, the person or entity making application to the Committee shall be solely responsible for insuring that every Regulated Modification, as proposed and as completed, is in compliance with applicable governmental laws, ordinances, rules and regulations (including any building codes, permits, or licensing requirements) and with all applicable requirements of this Declaration and any Minimum Construction Standards adopted by the Committee. The Committee and/or Developer shall not be responsible for reviewing for making any inspection, determining compliance with, nor shall approval of any improvement or modification or Regulated Modification be deemed an approval as to, safety or safety standards, conformance with building codes, laws, governmental rules or regulations.

Section 4.05 **Minimum Construction Standards.** The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Developer or Committee shall not be bound thereby.

Section 4.06 **Variance.** The Developer or after Control Transfer Date, the Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee or the Management Company when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines, minimum square footage of the residence, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

Section 4.07 **No Implied Waiver or Estoppel.** No action or failure to act by the Committee shall constitute a waiver or estoppel with respect to future action by the Committee with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Committee of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other materials submitted with respect to any other residential construction by such person or other Owners.

Section 4.08 **Disclaimer.** No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

Section 4. 09 **Compliance Deposit Agreement.** For any Regulated Modification with a value (in the sole opinion of the Committee) of more than $50,000.00, the Committee shall condition approval of the Regulated Modification on the completion of a Compliance Deposit Agreement and deposit of the penal sum required in the Compliance Deposit Agreement with the Management Company. No project approval for which a Compliance Deposit Agreement is required shall be

final until the Agreement is signed and the deposit has been provided to the Management Company.

Section 4.10 **Inspection Rights.** Any member of the Committee, Developer, Management of the Management Company, or any of their designated representatives, may enter upon a Lot without liability for trespass or otherwise for purposes of inspecting any Lot to determine compliance with this Declaration, to aide in the review of any application for a Regulated Modification; to assist the Committee in any way they deem reasonable or necessary in their sole discretion; to examine compliance with the Committee's approval (or non-approval) of any Regulated Modification, to assess compliance with any compliance deposit agreement required by the Committee or Management Company.

ARTICLE V
PROPERTY OWNERS ASSOCIATION

Once the Management Company exercises its authority under Section 8.14 of Article VIII herein, creates a Property Owners Association for Fisher Mountain, and transfers in writing the Property Owners Association to the Lot Owners of Fisher Mountain, each property owner will automatically become member of the Association. When creating and establishing the Property Owners Association, the Management Company will incorporate the following provisions:

Section 5.01 **Membership.** Every person or entity who is a record Owner of any Lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, the Directors of the Association must be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. The initial Board of Directors of the Association shall be designated by the Management Company.

Section 5.02 **Non-Profit Corporation.** The Property Owners Association, Inc. will be a non-profit corporation, and shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03 **Amendment of Articles of Incorporation and Bylaws.** The Management Company shall form the initial Property Owners Association. After formation, the Membership of the Association may amend the Articles of Incorporation and Bylaws of the Association in any manner it may choose to govern the organization, ~~or~~ operation of the Subdivision, and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 **Owner's Right of Enjoyment.** Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;

(b) the right of the Association to make rules and regulations regarding use of any Common Area and to charge reasonable admission and other fees for the use of any facility situated upon the Common Areas and the right of the Association to offer membership to non-residents, whose membership fee shall be determined by the Board of Directors, but in no case, shall the non-resident membership fee be less than the annual assessment paid by the Owners;

(c) the right of the Association, in accordance with its Articles and Bylaws to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;

(d) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;

(e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations," defined in Article VIII hereof, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation; and,

(f) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to the provisions of this Declaration.

Section 5.05 **Delegation of Use**. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Member's immediate family living in the Member's residence, and his contract purchasers who reside on the Lot (collectively, the "Related Users").

ARTICLE VI
MAINTENANCE FUND

Section 6.01 **Maintenance Fund Obligation**. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Management Company, in advance, an annual maintenance charge on January 1st of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments, charges or fines hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees and fines, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 6.02 **Basis of the Maintenance Charge**

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Management Company annually, in advance, on or before the FIRST day of January of each calendar year, or on such other date or basis (monthly, quarterly or semi-annually) as the Developer or Management Company may designate in its sole discretion.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (I) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Management Company may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.

(c) The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer and/or the Management Company during the quarter preceding the due date of the Maintenance Charge and can be increased to meet the needs of the Management Company. **The annual Maintenance Charge shall be a minimum of $595.00 for an unimproved lot and $1,190 for an improved lot.** ***If a property owner buys two (2) lots that are contiguous, the property owner will only be charged one maintenance fee.*** Lots are only considered contiguous if they are connected side-by-side. Lots that are connected back-to-back are not considered contiguous. If the owner sells one of the contiguous lots, then both lots will be charged a maintenance fee. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Management Company.

(d) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall not apply to the Lots owned by the Developer. The Developer and the Management Company reserve the right at all times in their own judgment and discretion, to exempt any Lot ("Exempt Lot"), in the Subdivision from the Maintenance Charge, in accordance with Section 6.07 hereof. If an Exempt Lot is sold to any party, the Maintenance Charge shall be automatically reinstated as to the Exempt Lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer and the Management Company shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Management Company in order for the Management Company to carry out its duties hereunder.

(e) The Management Company may levy and impose, against each Lot in the Subdivision, a special assessment and/or drainage assessment for a specific amount, which shall be equal for each such Lot, for the purpose of repairing drainage easements, purchasing equipment or facilities for Roadways, Common Areas or Common Facilities in the Subdivision and/or for defraying in whole or in part the cost of constructing new capital improvements or altering, remodeling, restoring or reconstructing previously existing capital improvements upon such Roadways, Common Area or Common Facilities, including fixtures and personal property related thereto. The Owner of each Lot subject to such assessment shall pay his special assessment to the Management Company at such time or times and in such manner as the Management Company directs.

Section 6.03 Creation of Lien and Personal Obligation.

(a) In order to secure the payment of the Maintenance Charge, and other charges and assessments (including, but not limited to, attorney's fees incurred in the enforcement of these Restrictions) hereby levied, a vendor's (purchase money) lien for the benefit of the Management Company, shall be and is hereby reserved in the deed from the Developer to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Management Company, including but riot limited to the provisions of Chapter 36B of the West Virginia Code, entitled Uniform Common Interest Ownership Act, (and any successor statute).

(b) In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Management Company may, in addition to enforcing the lien

hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

(c) It is the intent of the provisions of this Section 6.03 to comply with the provisions of the West Virginia Code dealing with the enforcement of assessments, charges, and liens for the maintenance and improvement of the common areas of the development, and, in the event of amendment of Chapter 36B of the West Virginia Code, and other provisions of the West Virginia Code dealing with the enforcement of assessments, charges, and liens for the maintenance and improvement of the common areas of developments, hereafter enacted, and to that end, Developer and/or the Management Company, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Pendleton County, West Virginia, amend the provisions hereof so as to comply with said amendments.

Section 6.04 **Notice of Lien.** In addition to the right of the Management Company to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Management Company may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Management Company or other duly authorized agent of the Management Company. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Management Company shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Management Company to cover the preparation and recordation of such release of lien instrument.

Section 6.05 **Liens Subordinate to Mortgages.** The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such transferee of title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Management Company's lien for Maintenance Charges or other charges or assessments. The Management Company, if requested in writing, shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Management Company's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Management Company's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Management Company pursuant to the provisions of this Article VI. If requested, the Management Company may prepare a non-assignable sixty (60) day letter for a mortgage company, for a reasonable fee to be determined by the Management Company. Said fee may be payable to the Management Company or the individual or entity providing the service of preparation of the sixty (60) day letter.

Section 6.06 **Purpose of the Maintenance Charge.** The Maintenance Charge levied by the Developer or the Management Company shall be used exclusively for the purpose of promoting the recreation, health and welfare of the Owners of the Subdivision and other portions of the Annexable Area which hereafter may become subject to the jurisdiction of the Management Company. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Management Company's duties described herein, including the maintenance of the Common Areas, Parks, any Greenbelt or Drainage Easements, Roads, or rights-of-way, and the establishment and maintenance of a reserve fund for maintenance of the Common Areas, Parks, any Greenbelt or Drainage Easements, Roads, or rights-of-way. The Maintenance Fund may be expended by the Developer or the Management Company for any purposes which, in the judgment of the Developer or Management Company, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Management Company of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Management Company. Payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions, and conditions affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in common areas, utilities, insurance, taxes, employing policemen and doing any other things or things necessary or desirable in the opinion of the Management Company to keep the Properties neat and in good order, or which is considered a general benefit of the Owners or occupants of the properties, it being understood that the judgment of the Management Company in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health, and welfare of the Owners of the Subdivision and other portions of the Annexable Area which may hereafter become subject to the jurisdiction of the Management Company.

Section 6.07 **Exempt Property.** The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Management Company or a charitable or nonprofit organization exempt from taxation by the laws of the State of West Virginia; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge.

Section 6.08 **Handling of Maintenance Charges.** The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Management Company.

Section 6.09 **Maintenance Charges as Independent Covenant.** The obligation to pay the Maintenance Charge and any other charge or assessment levied hereunder is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation (i) by non-use of any Common Areas, community amenities or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by the Management Company, Developer, Committee or any of their officers, directors, agents or employees, whether or not required under this Declaration, (iii) for inconvenience or discomfort arising from repairs or improvements which are the responsibility of the Developer or Management Company, (iv) by reason of any action taken by the Management Company or Developer to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

ARTICLE VII
DEVELOPER'S RIGHTS AND RESERVATIONS

Section 7.01 **Period of Developer's Rights and Reservations.** Developer shall have, retain and reserve certain rights as hereinafter set forth, which rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 **Right to Construct Additional Improvements in Common Area.** Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. The additional improvements, if any constructed, shall be managed by the Management Company.

Section 7.03 **Developer's Rights to Use Common Areas in Promotion and Marketing of the Property and Annexable Area.** Developer shall have and hereby reserves the right to reasonable use of the Common Area in connection with the promotion and marketing of land within the boundaries of the Property and Annexable Area. Without limiting the generality of the foregoing, Developer: (i) may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property and Annexable Area; (ii) may use vehicles and equipment within the Common Area for promotional purposes; and (iii) may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners, to use the Common Area at reasonable times and in reasonable numbers. Further, the Developer and/or the Management Company may establish Rules and Regulations for the use of the Common Areas in the Subdivision.

Section 7.04 **Developer's Rights to Grant and Create Easements.** Developer shall have and hereby reserves the right, without the consent of any other Owner, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to other public roads for the benefit of Owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Management Company; and (ii) permit Owners of property within the Annexable Area which is not made subject to the jurisdiction of the Management Company to use the recreational facilities and other Common Area, provided that said Owners pay to the Management Company their proportionate share of the cost of operating and maintaining said recreational facilities and Common Areas.

Section 7.05 **Developer's Rights to Convey Additional Common Area.** Developer shall have and hereby reserves the right, but shall not be obligated to, add additional real property and improvements thereon, if any, as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner.

Section 7.06 **Annexation of Annexable Area.** Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to

the jurisdiction and benefit of the Management Company, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Management Company by the Developer. The Owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Management Company, shall be entitled to the use and benefit of all Common Areas, that are or may become subject to the jurisdiction of the Management Company, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

ARTICLE VIII
DUTIES AND POWERS OF THE MANAGEMENT COMPANY

Section 8.01 **General Duties and Powers of the Management Company.** The Management Company has been formed to further the common interest of the Property Owners. The Management Company acting through its Management or through persons to whom the Management has delegated such powers shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the Owners, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness and desirability of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Management Company. The Management Company shall have the authority to act as the agent to enter into any and all contracts on behalf of the Owners in order to carry out the duties, powers and obligations of the Management Company as set forth in this Declaration.

Section 8.02 **Duty to Accept the Property and Facilities Transferred by Developer.** The Management Company shall accept title to any of the Common Areas or other real property, including any improvements thereon and personal property transferred to the Management Company by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Management Company by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Management Company by Developer shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Management Company by Developer shall, except to the extent otherwise specifically approved by resolution of Management, be transferred to the Management Company free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by Management, no property or interest in property transferred to the Management Company by the Developer shall impose upon the Management Company any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Management Company by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management, maintenance, replacement and operation thereof.

Section 8.03 **Duty to Manage and Care for the Common Areas and Pathways.** The Management Company, its successors or assigns shall have the right to enter upon any Lot or Reserve, including but not limited to all drainage easements on lots as designated in Article III, Section 3.23(e) herein for the purpose of improving, constructing or maintaining the drainage facilities in the drainage easements, Pathway Easements, and Pathway Reserves as shown on the Plat of the Subdivision. The Management Company at its expense, shall maintain all drainage facilities and Pathways as shown on the Plat of the Subdivision as well as any outside drainage

easements referenced on the Plat. Without limitation, the Management Company shall remove accumulated silt from the drainage easements and shall regrade drainage easements as may be necessary to maintain roadside drainage and prevent damage to the roadside. For the purposes hereof, the drainage easements include the drainage easements and any Detention Areas or Lakes shown on the Plat, and all drainage which existed at the time that the overall grading of the Subdivision was completed by Developer.

Section 8.04 **Other Insurance Bonds.** The Management Company shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Management Company shall deem necessary or desirable.

Section 8.05 **Duty to Levy and Collect the Maintenance Charge.** The Management Company shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 8.06 **Duties with Respect to Architectural Approvals.** The Management Company shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 8.07 **Power to Acquire Property and Construct Improvements.** The Management Company may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Management Company may construct improvements on the Property and may demolish existing improvements, without the consent of any Owner.

Section 8.08 **Power to Adopt Rules and Regulations.** The Management Company may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Management Company.

Section 8.09 **Power to Enforce Restrictions and Rules and Regulations.** The Management Company (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as it deems necessary or desirable to cause such compliance by each Owner and each Related User. Without limiting the generality of the foregoing, the Management Company shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Management Company by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Management Company to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Owner of Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Owner or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by levying and collecting, after notice and hearing, an assessment against any Owner for breach of this Declaration or such Rules and Regulations by such Owner or a Related User which assessment reimbursed the Management Company for the costs incurred by the Management Company in connection with such breach; (v) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of

the Management Company, from any Owner or Related User for breach of this Declaration or such Rules and Regulations by such Owner or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Owners, plus attorneys' fees incurred by the Management Company with respect to exercising such remedy.

Each day a violation continues shall be deemed a separate violation. Failure of the Management Company, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8.10 **Power to Grant Easements.** In addition to any blanket easements described in this Declaration, the Management Company shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

Section 8.11 **Power to Convey and Dedicate Property to Government Agencies.** The Management Company shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Management Company shall deem appropriate. The Management Company may convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

Section 8.12 **Power to Establish Property Owners Association.** The Management Company, in its sole discretion, shall have the authority to form a Property Owners Association to be known as the Fisher Mountain Property Owners Association, or such other name as it elects, and to transfer all of its rights, duties and obligations to said Property Owners Association. At such time as the Management Company may elect to form the Property Owners Association, each property owner is required to become member of the Association. Membership in the Property Owners Association by property owners is mandatory.

ARTICLE IX
GENERAL PROVISIONS

Section 9.01 **Term.** The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including the Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

Section 9.02 **Amendments.** This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those Owners, including the Developer, entitled to cast not less than two-thirds (2/3rds) of all of the votes may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Owners, including the Developer, ~~)~~ duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. A quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Owners (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Pendleton County, West Virginia, accompanied by a certificate, signed by a majority of the Management of

the Management Company, stating that the required number of Owners, including the Developer executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Management Company for a period of not less than three (3) years after the date of filing of the amendment or termination.

Section 9.03 **Amendments by the Developer.** The Developer shall have and reserves the right at any time and from time to time without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any Owner of other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Management Company or will adversely affect the property values within the Subdivision.

Section 9.04 **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 9.05 **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 9.06 **Successors and Assigns.** The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Management Company, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.07 **Effect of Violations on Mortgages.** No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.08 **Terminology.** All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.09 **Developer's Rights and Prerogatives.** The Developer may file a statement in the Real Property Records of Pendleton County, West Virginia, which expressly provides for the Developer's (i) discontinuance of the exercise of any right or prerogative provided for in this

Declaration to be exercised by the Developer or (ii) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the date that said assignee files a statement in the Real Property Records of Pendleton County, West Virginia, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Management Company or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Developer's Assignment of its rights to the Management Company, the Management Company shall be entitled to exercise all the rights and prerogatives of the Developer.

Section 9.10 Limitation of Liability.

(a) Neither the Developer, Management Company, nor the Committee are liable to any Owner, or person or entity making an application to the Committee for any actions or failure to act in connection with any approval, conditional approval, or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plan(s) or specifications and no issuance of any minimum construction standards may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification or item referenced in the application will comply with legal requirements, code, or the health, safety, workmanship or suitability of any purpose of the Regulated Modification.

(b) **NO COVENANTS, REPRESENTATIONS, GUARANTIES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, AND INCLUDING EXCLUSION OF ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE, SHALL BE DEEMED TO BE GIVEN OR MADE BY DEVELOPER, OR DEVELOPER'S OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, BY ANY PROVISIONS OF THIS DECLARATION REGARDING ANY DEVELOPMENT ACTIVITIES OR OTHERWISE. WITHOUT LIMITATION OF THE FOREGOING DEVELOPER EXPRESSLY DISCLAIMS ALL COVENANTS, REPRESENTATIONS, GUARANTIES AND WARRANTIES, EXPRESS AND IMPLIED, AND BY OPERATION OF LAW (I) AS TO ANY FUTURE DEVELOPMENT, (II) FOR MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK BY ANY BUILDER, VENDOR OR SUPPLIER NOT DIRECTLY EMPLOYED BY DEVELOPER, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THIS DECLARATION AS TO ANY SUCH PARTY, (III) THE NATURE, CONDITION, APPEARANCE, USE AND ALL OTHER MATTERS PERTAINING TO ANY PROPERTIES ADJACENT TO OR IN THE AREA OF THE SUBDIVISION, OR WHICH ARE NOT OTHERWISE SUBJECT TO THIS DECLARATION, INCLUDING WITHOUT LIMITATION ANY OBLIGATION NOW OR IN THE FUTURE TO INCLUDE IN THE SUBDIVISION OR IN ANY MANNER TO OTHERWISE SUBJECT ANY SUCH PROPERTIES TO THIS DECLARATION, (IV) THE MANAGEMENT OR OPERATION OF THE MANAGEMENT COMPANY, (V) AS TO ENFORCEMENT OF ANY PROVISIONS OF THE DECLARATION AS TO ANY OWNER, TENANT OR ANY OTHER PERSON, AND (VI) AS TO ANY ENVIRONMENTAL HAZARDS OR CONDITIONS AFFECTING THE SUBDIVISION, INCLUDING ALL LOTS, COMMUNITY PROPERTIES AND RESERVES, OR AFFECTING ANY AREA OR ADJACENT PROPERTIES.**

(c) ***IN ADDITION THE MANAGEMENT COMPANY AND EACH OWNER HEREBY RELEASES DEVELOPER FROM, AND THE AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS DEVELOPER, AND DEVELOPER'S***

EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO, CONNECTED WITH OR ARISING OUT OF ANY OF THE DEVELOPMENT OF EACH OWNER'S LOT, THE DEVELOPMENT OF THE COMMON AREAS, THE OPERATION OF THE MANAGEMENT COMPANY, INCLUDING WITHOUT LIMITATION THE COST OF ANY REMOVAL OF HAZARDOUS SUBSTANCES OR CONTAMINANTS OF ANY KIND FROM THE PROPERTY AND ANY OTHER REMEDIAL COSTS REGARDING ANY ENVIRONMENTAL HAZARD OR CONDITION, OR THE OWNERSHIP, LEASING, USE, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PROPERTY. THE PROVISIONS OF THIS SECTION CONSTITUTE A COVENANT OF RELEASE AND INDEMNIFICATION RUNNING WITH THE LAND (INCLUDING EACH LOT AND ALL PROPERTY SUBJECT TO THIS DECLARATION), AND IS BINDING UPON EACH OWNER AND ANY TENANTS, AND THEIR RESPECTIVE FAMILY OR OTHER HOUSEHOLD MEMBERS, SUCCESSORS IN TITLE OR INTEREST, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.

Section 9.11 **Security Measures.** The Developer and/or Management Company are under no obligation to, but may from time to time engage in activities or provide Subdivision Facilities, including activities, devices or services which may have the effect of enhancing safety or security within the Subdivision, and are under no obligation to but may from time to time provide information through newsletters or other sources of communication regarding same (all such matters and all activities, services or devices of this nature are referred to in the Declaration as, "*Security Measures*"). Each Owner and their tenants covenant and agree, with respect to any and all Security Measures provided directly or indirectly by the Developer and/or Management Company, as follows:

(a) **SECURITY IS THE SOLE RESPONSIBILITY OF LOCAL LAW ENFORCEMENT AGENCIES AND INDIVIDUAL OWNERS AND THEIR TENANTS – NOT THE DEVELOPER OR MANAGEMENT COMPANY.** Security Measures may be provided at the sole discretion of the Developer or the Management Company. The providing of any Security Measures at any time will in no way prevent the Developer or Management Company from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Security Measures, in whole or in part. Owners and their tenants hereby covenant that they do not and will not rely on any Security Measures for their safety or the safety of their property.

(b) Providing of any Security Measures may never be construed as (i) an undertaking by the Developer or the Management Company to provide personal security as to any Owner, or tenant, or as to any other Person, or (ii) a representation or undertaking that any Security Measures will be effective, functional, or continued, or (iii) a representation, guarantee or warranty that the presence of any Security Measure will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause. **WITHOUT LIMITATION OF THE FOREGOING, DEVELOPER AND THE MANAGEMENT COMPANY SHALL NOT HAVE ANY DUTY WHATSOEVER TO WARN, ADVISE OR INFORM ANY MEMBER, OWNER, TENANT OR ANY OTHER PERSON AS TO CRIMINAL CONDUCT OF ANY KIND OR AS TO ANY OTHER MATTERS REGARDING OR RELATING TO SECURITY MEASURES, PAST OR PRESENT.**

(c) **DEVELOPER AND THE MANAGEMENT COMPANY HAVE NO DUTY, OBLIGATION OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE OR IN ANY OTHER MANNER INFORM ANY MEMBERS, OWNERS, TENANTS, OR ANY OTHER RESIDENTS OR OCCUPANTS OF ANY LOT OR SUBDIVISION PROPERTIES, OR**

ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED OR KNOWN CRIMINAL ACTIVITIES OF ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"), regardless of whether the Criminal Matters involve the Subdivision, other areas in the vicinity or any other place. The Management Company may (but has no obligation to) from time to time disclose and/or transmit information concerning Criminal Matters to Owners, tenants, and any other occupants of Lots, to any law enforcement agencies, and to any other Person which the Management Company's management, officers, directors, agents, and employees in their sole discretion deem advisable. Any such disclosure and/or transmittal of information shall in no way be deemed an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current or future Criminal Matters.

(d) ***Developer and/or the Management Company are not liable for, and each Owner, and tenant indemnify, and hold Developer and the Management Company harmless from, any injury, loss or damages whatsoever, including without limitation any injury or damages caused by any crime, including but not limited to theft, burglary, trespass, assault, vandalism or any other crime, to any person or property arising, directly or indirectly, from the providing or failure to provide any Security Measure, the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement or use of any Security Measure, or the providing or failure to provide any warning or disclosure regarding actual or suspected Criminal Matters.***

ARTICLE X
MANDATORY DISPUTE RESOLUTION PROCEDURES AND LIMITATIONS PERIODS

Section 10.01 **"Dispute" or "Disputes" and "Disputing Parties" Defined; Scope.** "Dispute" or "Disputes" means any claim, demand, action or cause of action, and all rights or remedies regarding same, whether in contract or tort, statutory or common law, or legal or equitable, claimed or asserted by the Management Company, by the Committee, by any Member or Owner or any other person not associated with or employed by Developer (the "Disputing Party"), against or adverse to Developer regarding any aspect of **(i)** the design, construction, development, operation, maintenance, repair or management of the Subdivision, including any Management Company or Committee matter including any property transferred to the Management Company under this Declaration, expressly including any matters pertaining to drainage within or from the Subdivision, **(ii)** the design, construction, sale, maintenance or repair of each Lot, including the residence and/or improvements thereon and all appurtenances thereto, **(iii)** the establishment, operation or management of, and any acts or omissions of, the Management Company or the Committee, **(iv)** the construction, operation, application or enforcement of any provisions of, or otherwise arising out of or relating to, this Declaration or the breach thereof, and **(v)** all other matters relating directly or indirectly to any of the foregoing.

Section 10.02 **Presentment of Dispute Required.** The Disputing Party must submit written notice to Developer by certified mail, return receipt requested, within the time as hereafter set forth, setting forth all Disputes, if any, claimed or asserted against or adverse to Developer (herein referred to as the "Dispute Notice"). The Dispute Notice must set forth each claim, demand, action and cause of action to be included in the Dispute, a reasonably detailed factual description thereof and all remedial action deemed necessary to remedy all Disputes, and a reasonably detailed description of the nature and extent and amount of all claims for damages, if any. Upon request of Developer, the Disputing Party must also provide Developer with any evidence that depicts the nature and cause of the Dispute, the nature and extent of all remedial action deemed necessary to remedy the Dispute, and the nature and extent and amount of all claims for damages, including

expert reports, photographs and videotapes to the fullest extent the evidence would be discoverable under the West Virginia Rules of Civil Procedure. **ALL DISPUTES NOT SET FORTH IN THE DISPUTE NOTICE, IF ANY, ARE WAIVED BY THE DISPUTING PARTY.**

Section 10.03 Settlement by Agreement. Developer and the Disputing Party agree to use reasonable efforts to resolve all Disputes set forth in the written Dispute Notice within sixty days after Developer's receipt of the Dispute Notice. To that end Developer may by written request require the Disputing Party to attend and participate in one or more meetings at Developer's office or a location selected by Developer within the County where the Subdivision is located during the sixty day period in an effort to resolve all Disputes. If requested by the Developer, the Disputing Party must submit a written proposal for resolution of all matters set forth in the Dispute Notice to the Developer at least two business days before any meeting.

Section 10.04 Mediation. If all matters set forth in the Dispute Notice have not been settled by written agreement within the sixty-day period described in the immediately preceding Section, then Developer by written request may require that all unresolved matters be submitted to non-binding mediation with a mediator agreed upon by the parties to the dispute. The mediator must meet the requirement of Rule 25, Mediation, of the West Virginia Trial Court Rules. The mediation must be conducted within thirty days after selection of the mediator. The mediation must be attended by a person or persons with authority and discretion to negotiate and settle all Disputes. The mediator shall determine the format and rules for the mediation; provided, the provisions of Rule 25, Mediation, of the West Virginia Trial Court Rules, regarding conduct of the mediator, effect of a written settlement agreement and confidentiality shall apply. Fees and expenses of the mediator shall be borne by the parties equally.

Section 10.05 Binding Arbitration.

(a) If all Disputes have not been resolved by agreement of the parties or through mediation as above provided within one hundred twenty (120) days after Developer's receipt of the Dispute Notice, then Developer or the Disputing Party may by written request, whether made before or after the institution of any legal action, require that all unresolved matters as set forth in the Dispute Notice be submitted to binding arbitration before a single arbitrator conducted in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American Arbitration Association ("AAA"). **SUCH ARBITRATION WILL BE BINDING AND FINAL TO THE EXTENT ALLOWED BY LAW, AND THE MANAGEMENT COMPANY, COMMITTEE, EACH OWNER AND THEIR RESPECTIVE RELATED PARTIES HEREBY WAIVE THE RIGHT TO PURSUE ANY OTHER RESOLUTION OF A DISPUTE, INCLUDING A PROCEEDING IN ANY JUDICIAL FORUM.**

(b) If necessary Developer may compel submission of Disputes to binding arbitration and/or participation in such arbitration by an action in any court having jurisdiction. Judgment on any award or decision rendered by the arbitrator may be entered in and otherwise enforced by any court having jurisdiction.

(c) The arbitrator must be a licensed attorney in the State of West Virginia, must have at least 3 years background experience with deed restrictions, homeowners associations, construction and real estate disputes. The arbitrator will be appointed by agreement of the parties from a list of arbitrators qualified as aforesaid to be provided by AAA; or if the parties cannot agree within ten days after receipt of the list, then an arbitrator will be appointed by AAA in accordance with its rules for appointment from a roster.

(d) The arbitration proceedings must be conducted in Pendleton County, West Virginia, and shall be conducted in accord with the West Virginia Rules of Evidence, and in accord with those West Virginia Rules of Civil Procedure that pertain to bench trials. In rendering its award, the arbitrator must determine the rights and obligations of the parties according to the substantive and

procedural laws of the State of West Virginia, and in accordance with applicable provisions of the Declaration and applicable AAA rules.

(e) Any provisional remedy that would be available from a court, including injunctive relief to maintain the status quo, shall be available from the arbitrator pending final determination of all Disputes, and any order of the arbitrator may be confirmed by a court in accord with Chapter 55, Article 10 of the West Virginia Code, as if it were an award of the arbitrator.

(f) Each party will bear the expense of its own counsel, experts, witnesses, and preparation and presentment of proof, unless the arbitrator decides otherwise. The parties will bear the costs of arbitration equally, unless the arbitrator decides otherwise. To the extent permitted by applicable law, the arbitrator has the power to award recovery of all costs, expenses and fees (including pre-award expenses, witness fees, attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party.

(g) To the extent not inconsistent with any provision in this Declaration, the parties agree that the West Virginia Arbitration Act, contained in Chapter 55, Article 10 of the West Virginia Code, shall apply to any arbitration under the Declaration. In the event of any inconsistency between this Declaration and the West Virginia Arbitration Act, this Declaration shall govern.

Section 10.06 **Developer's Rights of Inspection.** At any time during the existence of any Dispute which has not been finally resolved in writing, Developer and its designated representatives may make such inspections and conduct such surveys, tests and examinations as reasonably necessary to fully determine or confirm to Developer's satisfaction the nature, extent and possible cause of all Disputes, the nature and extent of repairs and other work involved and any other matters reasonably related to the Disputes.

Section 10.07 **WHEN DISPUTE NOTICE MUST BE GIVEN; COMPLIANCE AS CONDITION PRECEDENT. THE GIVING OF THE DISPUTE NOTICES AND SUBSTANTIAL COMPLIANCE WITH ALL OTHER APPLICABLE PROVISIONS OF THIS ARTICLE X ARE CONDITIONS PRECEDENT TO THE RIGHT TO BRING SUIT PERTAINING TO ANY DISPUTE. FURTHER:**

(a) **THE MANAGEMENT COMPANY, AND THE COMMITTEE AND THEIR RESPECTIVE MEMBERS, OFFICERS AND DIRECTORS MUST SUBMIT ALL DISPUTE NOTICES PERTAINING TO ANY ACT OR ACTION OF THE DEVELOPER PRIOR TO OR INCLUDING THE CONTROL TRANSFER DATE NOT LATER THAN ONE HUNDRED FIFTY (150) DAYS AFTER THE CONTROL TRANSFER DATE. ANY DISPUTES AGAINST THE DEVELOPER NOT SUBMITTED BY THE MANAGEMENT COMPANY OR THE COMMITTEE WITHIN THIS PERIOD ARE HEREBY AGREED TO BE WAIVED.**

(b) **EACH OWNER AND MEMBER MUST SUBMIT ALL DISPUTE NOTICES AGAINST THE DEVELOPER, MANAGEMENT COMPANY OR COMMITTEE, IF ANY, NOT LATER THAN ONE HUNDRED FIFTY DAYS AFTER ANY APPLICABLE CAUSE OF ACTION ACCRUES, REGARDLESS OF WHETHER THE CAUSE OF ACTION ACCRUES PRIOR TO OR AFTER THE CONTROL TRANSFER DATE. ANY DISPUTES NOT SUBMITTED BY AN OWNER OR MEMBER WITHIN THIS PERIOD ARE HEREBY AGREED TO BE WAIVED.**

Section 10.09 **Remedial Measures.** At any time during the existence of any Dispute which has not been finally resolved in writing, Developer may take all actions which in Developer's sole opinion are necessary or appropriate to address, correct, cure or otherwise deal with the asserted Dispute. For such purposes Developer may utilize any easements established by the Declaration, or by any Plat or otherwise, without the consent of or compensation of any kind to the Management Company, or any Owner, or any other person or entity. Except in case of an Emergency, Developer shall give at least ten days written notice to any party which will be directly affected by activities undertaken by Developer pursuant to the foregoing setting forth the

general nature of activities to be undertaken. **NO ACTION OR INACTION BY DEVELOPER PURSUANT TO THE FOREGOING SHALL EVER BE DEEMED AN ADMISSION OF LIABILITY, ASSUMPTION OF RESPONSIBILITY OR ACKNOWLEDGMENT OF VALIDITY IN ANY RESPECT AS TO ANY DISPUTE.**

Section 10.10 **Two Year Maximum Limitations Period. IN ADDITION TO THE PROVISIONS OF SECTION 10.08, ANY SUIT REGARDING ANY DISPUTE MUST BE FILED IN A COURT OF COMPETENT JURISDICTION NOT LATER THAN TWO YEARS AFTER THE DAY THE CAUSE OF ACTION ACCRUES.**

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this 17 day of June, 2008.

LGI LAND WV, LLC.

By: _____
CHRIS WREN, Manager

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 17 day of June, 2008, by Chris Wren, Authorized Agent of LGI LAND WV, LLC, in the capacity therein stated.

_____
Notary Public, State of Texas

LISA K. YOHNER
MY COMMISSION EXPIRES
August 30, 2009

State of West Virginia,
In Pendleton County Commission Clerk's Office, June 23 2008
The foregoing Covenants was this day presented in said office, and with the certificate of acknowledgement thereto, was admitted to record.
Testee: _____ Clerk