

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THE NEW RIVER GORGE PRESERVE

THIS DECLARATION, made this day 4TH day of August, 2006 by New River Ledges Associates L.L.C., a West Virginia limited liability company, ("the Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property included in The New River Gorge Preserve and located in the Town of Fayetteville, County of Fayette, West Virginia, which is more particularly described on Exhibit A attached hereto (the "Property").

NOW THEREFORE, Declarant hereby declares that all of the Lots and Common Area, as hereinafter defined and which are a part of the Property, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Lots and Common Area and be binding on all parties having any right, title or interest therein or in any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS

- 1.1. **ARB** shall mean the Architectural Review Board provided for in Section 2 of Article IV of this Declaration.
- 1.2. **Association Inc.** shall mean and refer to The New River Gorge Preserve Homeowners Association, which includes the Bridgeview and Ledges neighborhoods. The Board shall mean the Board of Directors of the New River Gorge Preserve Homeowners Association, Inc.
- 1.3. **Common Area** shall mean all real property so designated on any recorded plat of the Property.
- 1.4. **Declarant** shall mean and refer to New River Ledges Associates, L.L.C., a West Virginia limited liability company, and any successors and/or assigns to whom it shall transfer its rights as Declarant provided herein.
- 1.5. **Lot** shall mean and refer to any numbered parcel of land designated for a single-family residence, which is shown on any recorded plat of any part of the Property.
- 1.6. **Member** shall mean every Owner of a Lot which shall be subject to the covenants and restrictions set forth herein.
- 1.7. **Owner** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including

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contract sellers, but excluding those having an interest merely as security for the performance of an obligation. An owner may be the owner of an interval of time for the use and enjoyment of the property. However the use of common areas shall be limited to the interval owned by the record owner. Interval owners are limited to one vote in total for the lot owned by the interval owner.

- 1.8. **Property** shall mean and refer to that certain real property described on Exhibit A hereto made subject to this Declaration. Additional property may be included at Declarant's sole election.
- 1.9. **Trail System** shall mean the trail system which may be developed at the New River Gorge Preserve for the common use of the Owners and members of The Club, and others as may be determined by Declarant. As trails are developed they will be shown on individual plat maps.
- 1.10. **The Club** shall mean the entity owning certain real property and any improvements and facilities privately owned and operated by persons other than the Association for recreational and related purposes, on a club membership basis or otherwise.
- 1.11. **Private Amenity** shall mean any and all related and supporting facilities and improvements which are owned and operated by persons other than the Association. Any property constituting a Lot, or Common Area hereunder shall not be a Private Amenity.
- 1.12. **Club Member** any member of The Club.
- 1.13. **Private Streets** shall mean streets within the New River Gorge Preserve that are owned by the Homeowners Association and may be used by all New River Gorge Preserve Homeowners and the members of the Club and their guests. Such streets shall be maintained by the Homeowners Association and the Town of Fayetteville shall have no responsibility for the construction or maintenance of such streets. Public service vehicles such as police and fire shall have access to such streets at all times.

Additional definitions appear in subsequent sections of this document and all such defined terms shall have the same meaning throughout this document.

2. PROPERTY RIGHTS

- 2.1. **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. Common areas are subject to use restrictions which may be detailed from time to time by the Association. These restrictions are intended to maintain the common area as a healthy West Virginia forest and enhance the

values of the New River Gorge.

2.2. **Delegation of Use.** Any Owner may delegate for temporary use in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and Trail System to the members of his family, his tenants, his invitees, or contract purchasers who reside on the Lot.

2.3. **Right of access by Club Members.** Members of The Club shall have a right of access to the Common Areas and Private Streets of the community subject to the same use restrictions as the home owner's.

3. USE RESTRICTIONS

3.1. **Vehicles.** All vehicles shall be operated within the Property so as to avoid excessive noise or speed.

3.2. **Recreational Vehicles.** No campers, motor homes, house trailers, horse trailers or other recreation vehicles or boats shall be parked on a street in the subdivision or on any Lot, except in a driveway or parking area shown on plans approved by the ARB. These recreation vehicles shall not be visible to other lots.

3.3. **Commercial.** No commercial vehicle, such as, by way of illustration and not by way of limitation, school buses, panel trucks or other commercial vehicle or equipment, shall be parked on any Lot or driveway on any street in the subdivision.

3.4. **Storage of Motor Vehicles.** Inoperative or unlicensed motor vehicles shall not be kept or stored unless inside an approved outbuilding or screened from any public or neighboring view in a manner approved by the ARB, and shall otherwise conform to the then existing ordinance pertaining to this subject in the Town of Fayetteville.

3.5. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic household pets may be kept on a Lot provided that they are not kept, bred or maintained for any commercial purpose. No animals shall be permitted to run at large on any Lot.

3.6. **Trash.** Trash, garbage, or other waste shall not be kept on any Lot except in sanitary and animal (including bear) proof containers and all equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be placed at an approved location and screened in an appropriate manner, except that it may be set out the night before trash pick-up. All containers must be removed from the street the same day as pick-up. No material, equipment, furniture or any other items shall be stored on any Lot unless within an enclosed building.

3.7. **Tree Removal.** No trees measuring four (4") inches or more DBH (diameter breast height) above ground level may be removed without written permission of the Declarant or ARB, except in the approved development and building zones on each Lot. There shall be no removal of vegetation of any size within the twenty five (25')

foot set back on all sides of the Lot without ARB permission. All tree removal must be done by a certified Arborist approved by the A.R.B. Any removal of trees contrary to this provision may result in a fine by the Association of up to one and one half (1 1/2) times the value of the trees removed and a requirement of replanting appropriate replacement vegetation by the Association, at Owner's expense. Any contractor who removes trees without approval may be prohibited from entering and doing business at the New River Gorge Preserve for a period of up to three (3) years.

- 3.8. **Lot Maintenance.** The Owner of each Lot shall maintain it and the improvements thereon in a well kept condition, including, but without limitation, any lawns, landscaping, driveways, and exterior finishes.
- 3.9. **Underground Utility Lines.** All electrical, telephone, gas, water and sewer utility service lines and connections, including wires, cables, pipes and mains which are installed to serve any Lot or the Common Area or are connected with any improvement thereon, shall be installed underground in conformity with the specifications of the utility company involved and the ARB. Only such equipment as is required by a utility company may be located above-ground.
- (a) **Antenna.** No exterior television or other antennas, including without limitation "dish" or similar types, shall be permitted without written approval of the ARB.
- (b) **Swimming Pools.** All swimming pools shall require approval of the ARB. Portable wading pools for small children are exempted from this paragraph. No swimming pools shall be permitted on Lots that border the National River Boundary.
- 3.10. **Fences.** No fence shall be erected on any Lot without ARB approval.
- 3.11. **Window Air Conditioning Units.** No portable or window air conditioning units will be placed in any window or elsewhere on the exterior of building if visible from a public street.
- 3.12. **Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance, public or private, to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.
- 3.15 **Retail and Commercial Business Activities.** No retail or commercial business activities that require employees, clients or customers to park in violation of the standards set forth herein may be conducted on the Property. This provision shall not prohibit social activities that may be associated with a commercial enterprise or

political activities. This provision shall not prohibit the maintenance of home offices, so long as the activities conducted therein do not cause disturbances.

3.16 Application of Use Restrictions. Except as otherwise expressly provided herein, all provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the governing documents, including these Declarations, and the Articles and By Laws of the Homeowners Association.

3.17 Authority to Promulgate Additional Use Restrictions and Rules. Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may amend the Use Restrictions and may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Notice of any such proposed action shall be posted in a prominent place within the Properties or published in the Association's newsletter, if any, at least 5 business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any such action shall become effective after compliance with this Section unless disapproved at a meeting to consider disapproval by at least 67% of the total Members, as defined in section 5.3 herein. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws submitted within 10 days following Board Meeting at which such action was taken. If a meeting to consider disapproval is requested by the Members prior to the effective date of such action, the action may not become effective until after such meeting is held.

3.17.1.1 Alternatively, the Members, at a meeting duly called for such purpose, may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously adopted rules by a vote of at least 67% of the total Members and the approval of the Declarant, so long as the Declarant owns any Property described in Exhibit "A".

3.17.1.2 At least 30 days prior to the effective date of any action under this Section, a copy of the amendment or rule, specifying the effective date, shall be posted in a prominent place within the Property or published in the Association's newsletter, if any. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Lienholder.

3.18. Owner's Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited

thereby, (b) the Board and/or the Members may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions in accordance with the terms provided herein and (c) the Declarant may amend the Use Restrictions or other portions of this Declaration in accordance with the terms herein so long as Declarant owns any of ("the Property") in Exhibit "A".

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

4. ARCHITECTURAL CONTROL

4.1. **Declarant.** So long as Declarant is the Owner of a Lot or property in Exhibit "A" or ("the Property") Declarant shall exercise the authority for architectural review which is provided in this Article 4. Such authority shall pass to and become the obligation of the Association when Declarant no longer owns a Lot. Declarant may, by notice in writing to the Association, in form for recordation, terminate its authority under this Article 4, and it shall thereupon become the obligation of the Association.

4.2. **Architectural Review Board.** (ARB) An Architectural Review Board shall, after Declarant ceases to have the right to act pursuant to this Article 4, be appointed by the Board of Directors of the Association and shall be responsible for review of the matters referred to herein and shall coordinate each residence and Lot and generally coordinate the aesthetic development and overall planning, as generally set forth in this Declaration, as it may be from time to time amended, all for the protection and value enhancement for each homeowner in The New River Gorge Preserve. The original members of the ARB shall serve for a term of one (1) year, thereafter members of the ARB shall be elected and serve as provided in the Bylaws of the Association.

4.3. Introduction.

(a) **PURPOSE OF ARCHITECTURAL GUIDELINES.** The purpose of these guidelines is to promote conservation and preservation in agreement with the philosophy of The New River Gorge Preserve, which is to build a forest community in harmony with the West Virginia forest. By dictating a sensitive interaction with the environment, we conserve the rich natural qualities of The New River Gorge Preserve (the "Property"). By strictly enforcing high standards of design and construction, we preserve the value of the environment and community, and ultimately the value of the homes in The New River Gorge Preserve. Through the review process, the goals of the community and the individual homeowner are reconciled. Customary conflicts between these interests must be carefully mediated to insure that the privacy and independence of each Owner is ensured, without

jeopardizing the common interests of the community. Owner's and Builders are encouraged to consult the guidelines of the U.S. Green Building Council for guidelines on energy efficient buildings and other environmental considerations. The Association from time to time may issue additional guidelines that will expand on those contained in this section

- (b) **SUMMARY OF REVIEW PROCESS.** The New River Gorge Preserve Declaration of Covenants (the "Covenants") establishes the Architectural Review Board (the "ARB") to review and approve architectural and landscape architectural design. The review process mirrors the natural design/construction process, generally as follows:
- 4.3.b.1. **Planning Meeting.** Prior to beginning the preliminary design, the Owner, and designer or builder, will meet at the site with Declarant or a representative of the ARB for a Planning Meeting where general planning issues are discussed.
- 4.3.b.2. **Preliminary Design Review.** Upon completion of the preliminary design process the Owner will submit proposed design documents to the ARB for its Preliminary Design Review. After careful study, and within 30 days, the ARB will issue its approval or recommendations as to changes. Once preliminary design approval is achieved, the designer or builder can begin final design documents. It is strongly recommended that final document preparation not be commenced until preliminary approval is granted.
- 4.3.b.3. **Final Design Review.** The Final Design Review process insures that the final plans conform in all respects with the approved preliminary documents and ARB requirements. Within 30 days of receipt of the final design plans, the ARB will issue its approval or recommendations as to corrections. Upon approval of the final plans the ARB will issue a notice to proceed with construction.
- 4.3.b.4. **Construction.** The Construction period is the first time that the activities of the Owner physically affect the community. As such, the ARB will monitor the construction activities to ensure that disruption to all residents is kept to a minimum.
- (c) **OTHER DOCUMENTS.** These guidelines are intended to coordinate with other documents, including, but not limited to, the Articles of Incorporation and Bylaws of The New River Gorge Preserve Owner's Association, any Site Studies (which are graphic descriptions of each lot, a copy of which is on file with the ARB), and application forms and schedules which the Association or the ARB may, from time to time, promulgate. It shall be the Owner's sole responsibility to insure that his applications conform to all of the documents then in force which pertain to the design review process. Failure of the ARB or Association to enforce any provision of said documents does not relieve the Owner from the responsibility to adhere to the provisions of those documents.

(d) GENERAL PROVISIONS.

4.3.d.1. **Enforcement.** Enforcement of the provisions of this Article shall be the right and responsibility of the Association and may be exercised by the Association and/or any committee of the Association or ARB.

4.3.d.2 **Access.** The ARB and Association reserve the right to enter upon the Lot and job site to verify that the provisions of these guidelines are met.

(e) **FUTURE ASSURANCES.** The development of the Property may span decades. As such, this document must play a dynamic role in guiding the development process through times of changing styles and technologies. It shall be the responsibility of the Declarant or the ARB to manage the evolution of these guidelines. The Declarant or the ARB is primarily charged with the responsibility of managing the review of individual homes, giving primary consideration to the totality of the community-wide design. Further, the Declarant or the ARB shall relentlessly promote quality, shall actively pursue diversity and shall protect the natural splendor of the Property. Ultimately, it is the collective responsibility of the Association and homeowners in The New River Gorge Preserve to ensure that these Design Guidelines fulfill their intended purpose.

4.4. The Plan

(a) **REVIEW PROCESS.** No building, fence, wall or other Improvement (as defined in the Covenants) shall be commenced, erected, removed, or maintained upon a Lot, nor shall an exterior alteration, change (including color changes), or addition be made to existing structure or landscape feature until plans and specifications shall have been submitted to and approved in writing by the ARB. A reasonable fee for the ARB's review of plans, plus reasonable expenses, may be charged to each applicant. Such fee shall be payable with the submission of Preliminary Design documents. The ARB, at its sole and absolute discretion, shall have the right to disapprove any such plans, specifications, or locations which, in its opinion are not suitable or desirable for aesthetic or other reasons or which do not conform to the provisions of these Design Guidelines. In the event that the ARB fails to approve or disapprove any submission within the time limits herein stated, the Owner shall notify the ARB in writing of such failure. Should the ARB fail to approve or disapprove the application within (10) days of receipt of such note this Article shall be deemed to have been fully complied with. No decision of the ARB shall be interpreted as precedent setting. All approvals by the ARB shall be based solely upon the merits of the application before it. The decisions rendered by the ARB shall be final.

(b) **SELECTIONS OF ARCHITECTS AND DESIGNERS.** All architectural work shall be performed by competent architects, designers, or builders, experienced in very high quality residential design and who shall have been approved by the ARB prior to the Planning Meeting. All landscape architectural work shall be performed by

competent landscape architects or designers, experienced in very high quality landscape design and who shall have been approved by the ARB. The ARB may maintain a list of preferred native and regional landscape materials. The ARB may maintain on file a list of approved designers or builders. Additionally, Lot Owners may submit for approval architects, landscape architects or designers. The ARB may require an interview of the Owners's designer(s). The ARB shall approve or disapprove such application within fourteen (14) days or receipt by the ARB of such application or within 14 days of such interview, whichever comes later.

- (c) **PLANNING MEETING.** Prior to preparing preliminary plans, each Lot Owner and his architectural designer or builder shall meet with one or more representatives of the ARB to explore and resolve design or construction issues and to receive the ARB's advice and guidance regarding appropriate structures to be built on each Lot. To avoid misunderstanding, the ARB may communicate in writing the issues discussed.
- (d) **REVIEW OF PLANS.** One goal of the review process is to limit wasted design expenses on the part of the Owner and wasted time on the part of the ARB. It is strongly recommended that final working drawings not be commenced until preliminary approval has been granted by the ARB for all design expenses, and fully releases and indemnifies the ARB against claims relating to design expenses.

4.4.d.1. **Preliminary Plan Review.** The preliminary plan submission shall include five (5) completed copies of the Preliminary Plan Review Application (Attachment B), and five (5) sets of design documents including, but not limited to the following:

- 4.4.d.1.1. **Site Plan.** The Site Plan must show all proposed structures and landscape construction, including, but not limited to driveways, entrance structures, retaining walls, fences, terraces, decks, exterior stairs, steps, and walks, swimming pools and other recreational structures. The proposed area of tree cutting and vegetation clearing must be clearly shown.
- 4.4.d.1.2. **Building Plans.** At one eighth inch equals one foot or greater scale, floor plans, roof plans and elevations of all exposed exterior surfaces of all proposed structures showing existing and proposed grades and with notations as to any energy conserving or producing elements.
- 4.4.d.1.3. **Exterior Finish Schedule.** Proposed finish materials including but not limited to: roofing materials, wall and trim materials, flashing materials, foundation and retaining wall materials, paint colors and glazing materials must be provided with the preliminary plans.
- 4.4.d.1.3 **Landscape Plan.** At one inch equals twenty feet or greater scale, a preliminary landscape plan which indicates all proposed plantings

showing planting beds, trees, lawn areas and landscape construction, including a plant species schedule from which the final plant selection will be drawn. No invasive plants may be used. Exotic species may be used in select areas near the house. Use of regional plants is highly encouraged and the ARB will maintain a list of recommended plants and prohibited plants. Non-native plants and exotic landscaping can only be used upon approval. Many lots are not conducive to swimming pools. All water features must be included in the preliminary landscape plans. No landscaping may be commenced until the ARB approves the plan in writing.

- 4.4.d.1.4. Other Improvements. Improvements which are contemplated but which will not be built with the main structure are to be shown on the site plan and noted as future Improvements. Complete drawings of such accessory structures of Improvements shall be subject to review and approval by the ARB prior to construction of said Improvements.
- 4.4.d.1.5. Preliminary Field Stake Out. The Owner shall stake out all proposed structures and site Improvements in conjunction with submission of the Preliminary Plans, and shall flag all trees proposed to be removed. The building corner stakes shall be connected to each other by string. All stakes shall have colored flagging attached to simplify their study.

In reviewing the preliminary documents the ARB may require that the Owner and his architectural and/or landscape designer(s) meet with the ARB or may require that the Owner submit other information for the purpose of clarifying the proposed plans. The ARB shall review the documents and indicate its opinion in writing within thirty (30) days of receipt of all necessary information by the ARB. In the event that the ARB shall disapprove in whole or in part the documents submitted, the ARB shall communicate to the Owner in writing any comments or required corrections, changes or modifications. The owner shall then correct the plans and resubmit the corrected documents to the ARB. Should the plans not be resubmitted within 180 days of disapproval, the application may be deemed abandoned. The ARB shall review the corrected documents and shall indicate its approval or disapproval in writing within thirty (30) days of receipt by the ARB of the documents. Should more than one revision be required the ARB may charge an additional fee.

4.4.d.2.Final Plan Review. Upon completion of the final design documents and prior to commencement of construction, the Owner shall submit to the ARB four (4) sets of complete and finished working drawings and specifications which conform in all respects to the approved preliminary plans, including all modifications required by the ARB in its preliminary approval. The ARB shall review such final plans for:

- 4.4.d.2.1. their conformity to the approved preliminary documents.

4.4.d.2.2. follow through as to design intent and quality.

4.4.d.2.3. conformance with all ARB requirements.

In reviewing the final documents the ARB may require that the Owner and his architectural and/or landscape designer meet with the ARB or may require that the Owner submit other information for the purpose of clarifying the proposed plans. The ARB shall review the documents and indicate its opinion in writing within thirty (30) days of receipt of all necessary information by the ARB.

4.4.d.3. **Construction Period Documents.** The final plan submittal shall include the following document:

4.4.d.3.1. **Construction Schedule.** This schedule of construction shall show the general phases of construction with commencement and completion dates for each phase. The schedule must show to the satisfaction of the ARB that the project will proceed efficiently and with dispatch. Said schedule shall anticipate normal weather conditions.

4.4.d.3.2. **Construction Period Site Plan.** This site plan shall indicate the proposed locations of the sanitary facilities, trash dumpster, material storage areas, job site office and erosion control structures.

4.4.d.3.3. **Schedule of Subcontractors.** This schedule shall list the subcontractors for the project including mailing addresses and telephone numbers as well as contact name for emergencies.

4.4.d.3.4. **Building Permit.** A copy of the building permit issued by the City of Fayetteville shall be submitted for the ARB's record.

4.4.d.4. **Final Field Stake Out and Tree Protection.** The Owner shall confirm the original field stake-out, making any adjustments which are necessary to accurately reflect the approved final design documents, including the flagging of trees proposed to be removed. Further, the Owner shall construct whatever barriers are necessary to protect trees which are proposed to remain and which are within the building area and subject to damage. Such protection shall, wherever reasonably possible, be placed outside the canopy line of each tree to be protected.

4.4.d.5. **Pre-Construction Meeting.** Prior to the commencement of construction, the Owner and Owner's general contractor shall meet with a representative of the ARB to review the procedures and provisions of these guidelines and to coordinate the construction activities with The New River Gorge Preserve's best interests.

4.4.d.6. **Notice to Proceed.** Upon finding that all documents and field stake-outs are

in conformance, and that the tree protection measures are in place, the ARB shall provide the Owner a written notice to proceed with construction. The ARB will stamp the approved documents. The Owner shall distribute one approved set each to the designer(s), and the general contractor. The general contractor shall maintain one ARB-approved set on site at all times. Should the construction not commence within two (2) years of final approval, the plans and specifications shall be resubmitted to the ARB for review. The ARB shall have the right at its sole discretion to waive any or all of the review procedures in such a case.

- 4.5. **Construction.** Each construction job site shall be maintained in a safe, neat and orderly fashion and as follows:
- (a) **Signs.** One (1) sign indicating the name of the general contractor and designer or architect shall be permitted at each job site. Subcontractor signs shall be prohibited. All signs shall be subject to the review and approval of the ARB.
 - (b) **Parking.** All construction vehicles must comply with prevailing parking regulations promulgated by the ARB, Declarant or the Association.
 - (c) **Sanitary facilities.** Portable toilets shall be provided for the construction workers and shall be located, oriented, and maintained appropriately.
 - (d) **Storage of materials.** Construction materials shall be stored neatly within the boundaries of the Lot and shall be removed upon completion. No materials shall be stored within the dripline of protected trees.
 - (e) **Trash and debris.** Appropriate trash receptacles shall be required on each site. All trash shall be placed in the receptacles at the end of each workday. Trash shall not be piled openly. Under no circumstances shall trash be burned on site.
 - (f) **Safety.** Each job site shall be maintained in as safe and hazard-free a manner as is reasonable and consistent with good construction industry standards and practice.
 - (g) **Soil Erosion.** Soil Erosion control measures shall be implemented on each construction site in accordance with the Construction Period Site Plan prepared by the designer per Article II (c). Erosion control structures shall be properly maintained throughout the construction period and shall be subject to the inspection of the Association.
 - (h) **Road Maintenance.** Each Owner and contractor shall take measures to insure that damage and disturbance of the Street is minimized, including the following:
 - (i) **Construction Entrances.** Immediately upon commencement of construction, stone mud traps shall be installed which help remove mud from tires before entry onto the Streets. A temporary yard hydrant shall be installed near the construction entrance

to wash excessively muddy tires and to periodically wash the Street in the entrance area.

- (j) **Driveways and Parking Areas.** As soon as possible, driveways shall be graded to their final grade and alignment, and stone placed to sufficient depth to prevent mud from rising through the stone base. To the greatest extent possible, parking areas shall also be graded to their final alignment and covered with stone.
- (k) **Damage to Streets.** In accordance with the Covenants, any damage to the Streets caused by the Owner, his Contractor or subcontractors shall be repaired immediately at the expense of the entity causing such damage. For the purpose of this paragraph, damage shall include any extensive staining by mud or other substances. Upon completion of construction, the Streets shall be cleaned and repaired as necessary.
- (l) **Pollution.** Due to the sensitive nature of The New River Gorge Preserve watershed, no construction activities shall be permitted which allow inordinate or unusual pollution to occur. The developer will provide areas for disposal of extra concrete and for washing of concrete trucks. Hazardous materials shall be stored in appropriate structures so as to minimize the possibility of pollution. Hazardous by-products of construction shall be removed from the site and disposed of in accordance with state health department regulation.

Nothing herein stated shall be construed to have created a direct relationship between the ARB or Association and the Owner's general contractor or subcontractors. All communications between the ARB or Association and the Owner's general contractor shall be through the Owner except in the case of emergency.

4.6. Design Guidelines. SITE IMPROVEMENTS. The importance of well planned landscape architecture and site Improvement cannot be overstated. While the structures can be contained in a specific area, the site stretches to touch the Streets, Common Property and neighboring Lots. As such, the development of sensitive site Improvements are critical and will be subject to the greatest scrutiny. Successful site development will gracefully negotiate the transition from the 'public' spaces of the Streets and Common Property to the private spaces of the home, while also mitigating the impact of development on nature's design. All Site Improvements shall be reviewed with strong emphasis given to their compatibility with the site.

- (a) **Existing Conditions.** The designers shall thoroughly analyze the existing conditions as a prerequisite to the design process. Submittals must represent clear statement as to how the proposed project responds to the natural qualities of the site. The successful design will conserve, wherever possible, existing habitat, vegetation, drainage patterns and topography to the extent that they are beneficial to wildlife, watershed and the community. Construction will primarily use indigenous materials such as wood and stone in a manner that carries on the best traditions of craftsmanship. Enhancement of existing natural features will be encouraged. Mitigation of impact upon the site shall be required.

- (b) **Access.** Driveways shall enter the subdivision road system at the locations shown on the Site Study.
- (c) **Entrances.** Entrances shall identify location and signify arrival without being overbearing. Consideration shall be given to the effect of the entrance on the experience of driving or walking on the road. Light sources shall be concealed and shall not shine toward the Street. Entrance plantings and structures shall not create unsafe conditions. All structures shall not create an unsafe condition. All structures, mail and newspaper boxes, lighting and landscaping shall be subject to the approval of the ARB. The ARB may specify the design of mail and newspaper boxes.
- (d) **Driveways.** Driveways serve as the transition area between the 'public' road experience and the private home experience. Long, straight driveways are discouraged. Gracefully curved or offset driveways which are nestled into the earth will be encouraged. Driveways should meander around, not through, significant land forms. Driveways shall be sufficient in width, section and geometry to accommodate service, utility and emergency traffic normally associated with residential uses. All driveways shall be surfaced with an approved material. Dirt driveways shall be prohibited. A list of approved driveway surfaces may be maintained by the ARB.
- (e) **Parking and House Entrance Areas.** All parking areas shall be screened from view from adjoining Lots, Common Property and Streets. All parking areas shall be surfaced with an approved material. Parking areas shall provide for a reasonable number of guest vehicles and shall be sufficient in section and geometry to accommodate normal residential uses. House entrance areas shall be private areas and shall not be overly visible from the Streets; they should become clearly visible only after the driveway transitional experience.
- (f) **Grading and Drainage.** Due to the fragile nature of the local watershed, emphasis must be placed on retaining existing drainage patterns, where possible, and implementing new drainage patterns which limit pollution and runoff impact upon neighboring Lots, Common Property and The New River Gorge Preserve. Concentrated run off shall be minimized in favor of street flow run off. Drainage ways should be lengthened to provide for settling out of fertilizers, silt and sedimentation. Any off site damage resulting from runoff shall immediately be repaired at the expense of the source Lot Owner. Drainage structures, swales, pipes and ditches shall be maintained in good repair by each Lot Owner.
- (g) **Planting.** Landscape plantings represent the single most important method of site enhancement and impact mitigation available to the Owner. Each house site shall be planted in a thorough and complete manner before the completion of original construction.
- (h) **Trees and shrubs.** Native species shall be encouraged. Invasive species which would be difficult to contain within the Lot are prohibited. The ARB shall maintain

a list of recommended plants and prohibited plants. Large plant sizes shall be employed so that planting areas "filled-in" in a short time.

- (i) **Lawns.** Significant lawn areas are discouraged as not consistent with the forest preserve nature of the development. Non-invasive grasses shall be planted which are suitable for the local climate. Over-seeding and reseedling shall follow the original planting as necessary to achieve a complete and uniform coverage. Mowing patterns shall not accentuate property lines. Nothing stated in this Article shall prohibit the future enhancement of landscape plans, however all plantings shall be subject to the approval of the ARB. Use of commercial lawn services for spraying or fertilizing must be approved by the ARB.
- (j) **Screening.** Screening as called for in this Article shall be achieved by a combination of land forms, plantings and, where appropriate, structures. Screening is not meant to accentuate property boundaries.
- (k) **Land forms** should be shaped so as to appear natural, not applied, and should blend gracefully into the surrounding natural topography.
- (l) **Plantings** shall be varied so as to appear natural; native species shall be encouraged. Large plants shall be employed and close spacings shall be encouraged so as to quickly fulfill the screening purpose.
- (m) **Walls and fences,** due to their imposing nature, shall be employed advisedly. Walls in close proximity to the homes and which are incorporated into the architecture will be encouraged. Walls at or near the property lines, other than entrance structures, will be discouraged. Fences will generally be discouraged. All fencing must obtain approval of ARB.
- (n) **Exterior Lighting.** Due to its intrusive nature, exterior lighting shall be carefully implemented so as to limit its impact on Streets, Common Property, New River Gorge, and neighboring Lots. Lighting in fixtures shall not be directly visible and must be directed downward. Homeowner's are encouraged to follow the following guidelines. Exterior lighting must be designed such that all exterior luminaries with more than 1000 initial lamp lumens are shielded and all luminaries with more than 3500 initial lamp lumens meet the Full Cutoff IESNA classification (IESNA- Lighting for Exterior Environments (RP-33-99) (Language from LEED_ND Light Pollution Reduction section) At a minimum light sources shall be concealed to the greatest extent possible and positioned to limit spill-over onto adjacent Lots. Colored lights, high and low pressure sodium, mercury vapor and similar intrusive lighting shall be prohibited. General flood lighting will be discouraged except as employed for security purposes in very limited areas, and will be subject to ARB approval.
- (o) **Recreational Equipment and Facilities.** Due to the imposing stature of some recreational equipment, their design and placement shall be carefully planned. High

structures, such as tennis court backstops and basketball goals shall be screened with appropriate landscaping. Not all sites are conducive to recreational equipment. All recreational equipment for lots bordering the New River Gorge National River must receive a special approval from the ARB. All recreational equipment shall be maintained in good condition, including the replacement of netting, painting and maintaining supports in square, true and plumb alignments. Play areas shall be screened appropriately.

- (p) **Pet Areas.** Due to their unsightly appearance, fenced pet runs will be discouraged. Where pet containment is required, electronic invisible fencing will be encouraged. All pet structures, such as dog houses, shall be subject to the approval of ARB.

4.7. **Architecture.** All interior and exterior construction in The New River Gorge Preserve shall be of good quality. Accordingly, both the interior and exterior design shall be subject to the approval of the ARB.

- (a) **Style.** While it is not the intention of the ARB to design homes, it is the responsibility of the ARB to ensure that quality is maintained at a high level. Nowhere will the internal conflict of this statement become more apparent than during the design process where the stylistic needs and desires of the Owner, architect and community must all be reconciled. The ARB will review building and landscape designs in light of the following general statements:

4.7.a.1. In keeping with the community philosophy, homes must respond to their sites. Designs which do not take advantage of the natural qualities of their site shall be disapproved.

4.7.a.2. Imitative designs shall be faithful examples of the type which they follow. There shall be no abbreviation of detail and no prostitution of the parent style.

4.7.a.3. Architecture which utilizes natural exterior materials and colors will be encouraged, especially natural wood, brick, stone and glass.

4.7.a.4. Contemporary or traditional architecture is acceptable, given that it conforms otherwise with this Article.

4.7.a.5. Architectural context must be considered carefully. The goal is to avoid a row of architectural `statements' in conflict or competition with each other. The aggregate design of the Property must flow gracefully among the varying styles with necessary methods of blending, buffering and mitigation employed.

4.7.a.6. Architectural diversity shall be actively promoted. As such, designs may be disapproved which are deemed to follow too closely previously approved designs.

- (b) **Size.** As a general guide, homes should contain 1500 to 4500 square feet of more.

However, the emphasis shall be on quality.

- (c) **Location.** All buildings, outbuildings and any other Improvements shall be located on the Lot in conformity with applicable local governmental regulations. A building envelope will be suggested for each lot. Any change must be approved by the ARB. Unless an exception is granted there will be a setback for any building of 30 feet from the front lot line, 20 feet from any side lot line and 30 feet from any back lot line.
- (d) **Orientation.** Houses typically shall be oriented so that outdoor living areas, such as decks, terraces, swimming pools, etc. remain private and are not oriented toward the Streets or toward the outdoor living area of adjacent Lots. To provide for energy efficiency, consideration shall be given to solar gain and prevailing wind patterns when setting each house. Garage doors shall be oriented and screened to minimize their visual impact from Streets, Common Property and adjoining properties.
- (e) **Utility and Storage Areas.** Utility areas and areas for the storage of trash, firewood, garden equipment, pool equipment, etc. shall be screened from view. Trash storage areas shall be protected from animals.
- (f) **Utility Services and Equipment.** All utility services in The New River Gorge Preserve shall be run underground. All private cabling on Lots shall also be buried. Electric meters, pedestals, transformers and similar equipment shall be screened from view to the extent practicable. No television, radio, or similar antennas or dishes shall be mounted on the exterior of any structure. Satellite dishes shall be located so as to be unobtrusive, shall be properly screened from view, and shall be subject to the approval of ARB. Through wall or window mounted air conditioners are prohibited. Outdoor compressors shall be surrounded with plantings or other sound absorbing materials.
- (g) **Roof Designs.** Due to its prominence, the roof design of each dwelling shall be subject to great scrutiny. Roof accessories, plumbing and other vents must be located and painted so as to minimize their impact. Skylights must be located, sized and painted to enhance the overall roof design. Reflective roofs are prohibited.
- (h) **Solar Panels.** Solar panels must be located and implemented in a manner thoughtful of their visual impact from the Streets, Common Property and other Lots.
- (i) **Security Systems.** Private security systems are encouraged. Private systems must be coordinated with any security system The New River Gorge Preserve may have in place.
- (j) Additional restrictions, may be imposed by the ARB or Declarant on homes facing the Gorge. These restrictions may include, but are not limited to, the requirements that exterior finishes blend with the forest environment when trees are defoliated; exterior lighting facing the Gorge be extremely limited; window treatments not have light colored surfaces facing outward toward the Gorge; roofing treatments

minimize snow retention; and such other restrictions as are necessary to preserve the scenic beauty of the Gorge.

5. OWNERS' ASSOCIATION

5.1. **Association.** At such time as it shall deem appropriate. Declarant shall cause to be formed the New River Gorge Preserve Homeowners Association as a West Virginia non- stock corporation. The Association shall maintain the Common Area if authorized pursuant to the provisions of this Article 5.

5.2. **Member.** Every Owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

5.3. **Classes of Membership.** The Association shall have two (2) classes of voting membership:

5.3.1. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot all such persons shall be members. The vote of such Lot shall be exercised as they among themselves determine, but no more than one (1) vote shall be cast with respect to any Lot.

5.3.2. Class B. The Class B member shall be the Declarant and shall be entitled to six (6) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. The number of lots will include both platted and planned future lots, as determined by Declarant.

5.4. **Creation of the Lien and Personal Obligation of Assessments.**

The Declarant for each Lot owned within the Property hereby covenants and each Owner of any Lot by acceptance of a deed therefor whether or not it shall be so expresses in such deed is deemed to covenant and agree to pay the Association (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but shall remain a charge or lien against the lot transferred.

5.5. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Property and for the improvement and maintenance of the streets and Common Areas.

The Association shall pay any real and personal property taxes and other charges assessed against the Common Areas.

The Association shall maintain a policy or policies of liability insurance, insuring the Association and its agents, guests, permittees, and invitees and the Owners of the Lots against liability to the public or to the owners, their guests, permittees or invitees incident to the ownership or use of the Common Areas, in an amount not less than Five Hundred Thousand Dollars (500,000) for any one person being injured, One Million Dollars (1,000,000) for any one accident and Five Hundred Thousand Dollars (500,000) for property damage. The foregoing limits shall be reviewed at intervals of not less than three (3) years and adjusted if necessary to provide such coverage and protection as the Association may deem prudent.

5.6. Annual Assessment. The initial annual assessment for a Lot shall not exceed six hundred dollars (\$600.00) per Lot, shall be fixed by the Board of Directors of the Association, and shall be effective beginning with the first calendar month after conveyance to the Association by the Declarant of any part or all of the Common Area. The first annual assessment shall be prorated based on the number of months remaining in the calendar year. The assessment may be billed on an annual or monthly basis. The Association may also assess a monthly fee for the maintenance and replacement of sewage disposal systems. These systems and the monthly fee may vary depending upon the type of sewage system installed on the respective Members' Lots.

- (a) From and after January 1 of the year immediately following the effective date of the initial annual assessment, the annual assessment may be increased each year above the assessment for the previous year, without a vote of the membership, by not more than the greater of five (5%) or the percentage by which the costs of effecting maintenance and non-capital improvements to the Common Area and utilities shall have increased since the time at which the most recent previous annual assessment was determined.
- (b) The Board of Directors may fix annual assessment at an amount not in excess of the maximum.
- (c) From and after January 1 of the year immediately following the effective date of the initial annual assessment, the annual assessment may be increased without limit by vote of sixty percent (60%) of the Members, in person or by proxy, at a meeting duly called for this purpose.

5.7. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common

Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who vote in person or proxy at a meeting duly called for this purpose.

5.8. Notice and Quorum for Any Action Authorized Under Section 5.6 and 5.7.

Written notice of any meeting called for the purpose of taking any action authorized under sections 5.6 or 5.7 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.9. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments may be collected on a monthly or less frequent basis.

5.10. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of part or all of the Common Area to the Association, which shall be accepted by the Association when tendered by Declarant, and the Declarant shall have no further obligation of liabilities with respect to the Common Area conveyed. The Declarant shall in its sole discretion determine when the Common Area will be conveyed to the Association. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to status of assessments against a Lot is binding upon the Association as of the date of its issuance. The HOA may permit assessments to be paid on a monthly basis.

5.11. Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of prime plus 2% per annum. The Association may bring an action at law against the Owner to pay the same, or foreclose the lien against the Lot, provided, however, that no such lien shall be foreclosed until after expiration of thirty (30) days following written notice to, any Lien Holder as defined herein, and if the Lien Holder fail to satisfy such lien within such thirty (30) day period. No Owner may waive or otherwise escape liability for the

assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

- 5.12. **Subordination of the Lien.** The lien of the assessments provided for herein shall be subordinate only to the lien for real estate taxes and the lien of bona fide, duly recorded first deeds of trust. Sale or transfer of any Lot shall not affect the assessment thereafter becoming due from the lien thereof.

6. LIEN HOLDER

The following provisions are for the benefit of holders, insurers and guarantors of Deeds of Trust on Lots in the Property, hereinafter referred to as a "Lien Holder". The provisions of this Article apply to both this Declaration and to the Homeowners' Association By-Laws, notwithstanding any other provisions contained therein.

- 6.1. **Notices of Action.** A Lien Holder, insurer, or guarantor of a Deed of Trust who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Deed of Trust relates), will be entitled to timely written notice of:
- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a Deed of Trust held, insured, or guaranteed by such person or entity;
 - (b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Deed of Trust of such Lien Holder, or insurer or guarantor, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Deed of Trust is entitled to written notice upon request From the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws which is not cured within 60 days; or
 - (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- 6.2. **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the Lien Holder of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.
- 6.3. **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Deed Of Trust encumbering such Owner's Lot.

- 6.4. **Failure of Lien Holder to Respond.** Any Lien Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Lien Holder within 30 days of the date of the Association's request, provided such request is delivered to the Lien Holder by certified or registered mail, return receipt requested.

7. DECLARANT'S RIGHTS

- 7.1. **General.** In the event of a conflict between any special right given to Declarant under this Declaration and any other provision of this Declaration, the provision granting such right to the Declarant shall control. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. In addition, any or all of the special rights of the Declarant set forth in this Declaration or the By-Laws, including but not limited to the right to withhold consent to any action of the Association or the Members, may be voluntarily relinquished at any time. No such transfer or voluntary relinquishment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the County Recorder. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "A" in any manner whatsoever.
- 7.2. **Construction of Improvements.** The Declarant and its employees, agents, and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Area as it deems appropriate in its sole discretion as long as the Declarant owns any property described in Exhibits "A".
- 7.3. **Models and Sales Offices.** So long as construction and sales of Lots by the Declarant and Builders authorized by Declarant shall continue, the Declarant may maintain and carry on upon the Common Area and any property owned by the Declarant or a Builder, as applicable, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, flags, model units, marketing trails, sales offices, parking, and storage of building materials and equipment. So long as the Declarant is engaged in the marketing and sales of Lots, it shall have the right to reserve parking spaces on the Common Area for the benefit and use of prospective purchasers, Declarant's employees, and others engaged in sales, leasing, maintenance, or management activities. The Declarant and authorized Builders shall have easements for access to and use of such facilities and for performing such activities. The Declarant's or Builder's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners unless leased pursuant to a lease agreement with the Association providing for payment of

reasonable rent.

- 7.4. **Equal Treatment.** So long as the Declarant owns any property described in Exhibit "A", neither the Association nor any Neighborhood Association shall, without the prior written consent of the Declarant, adopt any policy, rule, or procedure that:
- (a) limits the access of the Declarant, its affiliates or their personnel, and/or guests, including visitors, to the Common Area or to any property owned by any of them;
 - (b) limits or prevents the Declarant, its affiliates or their personnel From advertising, marketing, or using the Association or the Common Area or any property owned by any of them in promotional materials;
 - (c) limits or prevents purchasers of new residential housing constructed by the Declarant, any Builder, their successors, assigns, and/or affiliates in the New River Gorge Preserve From becoming members of the Association or enjoying full use of the Common Area, subject to the membership provisions of this Declaration and the By-Laws;
 - (d) discriminates against or singles out any group of Members or prospective Members or the Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Members or the Declarant, but shall not prohibit the establishment of Benefited Assessments];
 - (e) impacts the ability of the Declarant or its affiliates to carry out to completion its development plans-and related construction activities for Bridgeview Estates of Ledges, as such plans are expressed in the Master Plans, as such may be amended and updated from time to time, Policies, rules, or procedures affecting existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete The New River Gorge Preserve shall be expressly included in this provision. Easements that may be established by the Declarant shall include, but shall not be limited to, easements for development, construction, and landscaping activities and utilities; or
 - (f) impacts the ability of the Declarant or its affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.
 - (g) The Association shall not exercise its authority over the Common Area to interfere with the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Properties or the Exhibit "A" property over the streets and other Common Area within the Property.

7.5. Right to Use Common Area for Special Events. As long as the Declarant owns any property described in Exhibit "A", the Declarant shall have the right to use all or any portion of the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. Any such event shall be subject to the following conditions:

- (a) the availability of the facilities at the time a request is submitted to the Association;
- (b) the Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) the Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special event.
- (d) The Declarant shall have the right to assign the rights contained in this Section 15.8 to charitable organizations or foundations selected by the Declarant. The Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

7.6. Use of Common Area by Declarant's Employees. Until the sale of all of the property described in Exhibit "A" or so long as Declarant owns any Class B membership rights, the Declarant reserves the right to allow its employees to use any of the recreational facilities or other Common Area in the normal course of such facilities' operations.

7.7. Amendment. This Article shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any property described in Exhibit "A".

8. THE CLUB

All owners who own a Lot must apply for, and if approved, acquire at least a sports membership in New River Gorge Club (The "Club"). Membership in The Club is subject to the terms and conditions of the New River Gorge Preserve Membership Plan, the Rules and Regulations and the Membership Agreement, as the same may be amended from time to time (collectively, the "Membership Plan Documents").

Membership in the Club requires the payment of a membership purchase price called a membership deposit and membership dues, fees and other amounts as established by the Club from time to time (the "Club Charges"). Club Charges are subject to change as contemplated by the Membership Plan Documents. Delinquent Club Charges are deemed to constitute Assessments. The Association shall have a lien against each Lot for all unpaid Assessments

in accordance with the lien and foreclosure provisions set forth in Article 5. In the event that the Association does not enforce its rights hereunder with respect to a Special Assessment resulting from delinquent Club Charges, the Association hereby consents and authorizes the Club to enforce the lien and foreclosure provisions of Article 5. Transfer of a club membership shall be in accordance with Membership Plan Documents.

8.1. Club Property. The Club Facilities other than the Common Areas are privately owned and operated by the Club and are not a part of the Common Area (the "Club Property"). The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property, to transfer any or all of its rights to the Club property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges. OWNERSHIP OF A LOT OR ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE AN VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.

8.2. Acknowledgements regarding Club property. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges that:

- (a) Privilege to use the Club Property shall be subject to the terms and conditions of the Membership Plan Documents. Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and Club Charges. These amounts shall be determined by Developer and/or the Club as set forth in the Membership Plan Documents.
- (b) Notwithstanding the fact that the Club Property is open space or a recreation area for the purpose of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever Developer, the Club and their partners, members, officers, directors, employees, agents and affiliates, from: (I) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Owners, and/or (II) any claim that the Owners are entitled to use the Club property by virtue of their ownership of a Lot without acquiring a membership deposit, and Club Charges, and complying with the terms and conditions of the Membership Plan Documents.
- (c) Each Owner and the Association shall jointly and severally indemnify, defend, and hold harmless Developer, The Club, and their partners, members, employees,

agents, directors, shareholders, officers and affiliates and their successors and assigns, against and in respect of, and to reimburse Developer, The Club, and their partners, members, employees, agents, directors, shareholders, officers and affiliates on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that Developer, The Club, and their partners, members, employees, agents, directors, shareholders, officers and affiliates shall incur or suffer, which arise out of, result from, or relate to any claim that because The Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, The Club Property must be owned and/or operated by the Association or the Owners and/or that Owners may use The Club Property without acquiring a membership in The Club pursuant to the Membership Plan Documents and paying the membership contribution or membership deposit, and Club Charges.

- (d) Any entry upon the Club Property without permission of The Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot, their guests and invitees to refrain from, any unauthorized entry upon the Club property;
- (e) The proximity of Lots and Common Area to The Club Property results in certain foreseeable risks and that each Owner's use and enjoyment of his or her Lot and the Common Area may be limited as a result and that neither the Association, Developer nor The Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Owner or occupant of any Lot, their guests or invitees, for damage or injury resulting from such risks;
- (f) The Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of The Club Property, including constructing fences, and that neither the Club Developer, nor the Association, shall have any liability to Owner as a result of such modifications to the Club Property;
- (g) There are no express or implied easements over the Club Property for view purposes, and no guaranty or representation is made by Developer or any other person that any view over and across the Club property will be preserved without impairment, and that neither the Club Developer nor the Association shall have any obligation to prune or thin trees or other landscaping to preserve views over the Club Property;
- (h) That no representations or warranties which are inconsistent with this Article, either verbal or written, have been made or are made by Developer or the Association or by any person acting on behalf of any of the foregoing;

- (i) The Club may own one or more ponds and/or lakes on the Property. Notwithstanding the ownership of such ponds and/or lakes, the Club may use any and all ponds and/or lakes on the Property for the purpose of irrigating and maintaining the Club property with the result that the water level in such ponds and/or lakes may from time to time vary. Each Owner of a Lot acknowledges such right on the part of The Club and agrees not to commence any cause of action or other proceeding involving the club Based on the exercise of such right or otherwise interfere therewith; and
- (j) In the event there is insufficient water to provide the necessary irrigation and maintenance needs of the Club Property and all other areas of the Property, subject to applicable governmental permits and requirements, The Club Property shall have first priority of irrigation and maintenance, followed by the Common Area and any other Property.

8.3. Rights of access and parking. The Club and members of The Club (regardless of whether such persons are Members), their guests and invitees and the employees, agents, contractors, and designees of The Club shall at all times have a right and a Non-exclusive easement of access and use over all roadways located within Property reasonably necessary to travel to and from the entrance of the Properties from and to the Club Property, respectively, and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary for the use operation, maintenance, repair, and replacement of The Club Property. Without limiting the generality of the foregoing, members of The Club and permitted members of the public shall have the right to use the pedestrian paths located throughout the Property and to park their vehicles on the roadways located within the Property at reasonable times before, during, and after functions held at the Club Property.

8.4. Assumption of risk and Indemnification. Each Owner by its purchase of a lot expressly assumes the risks associated with The Club Property (regardless of whether the Owner is using The Club Property) and agrees that neither Developer, The Club, the Association, nor any of their affiliates or agents nor any other entity designing, construction, owning or managing The Club Property or planning or construction the Owner's Lot shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Common Area to the Club Property, including, without limitations, any claim arising, in whole or in part, from the negligence of Developer, or any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot. Each owned hereby agrees to indemnify and hold harmless Developer and any other entity owning or managing the Club property against any and all claims by Owner's guests and invitees.

8.5. **Landscape Easement.** By recordation of this Declaration Developer does hereby reserve for itself and The Club and the members of the Club, a perpetual alienable and transferable easement over, across and upon each and every Lot which abuts or is contiguous to the club property for the purpose of operation and maintenance of the Club Property, including, but not limited, to the use of usual and common equipment for irrigation, maintenance and landscaping hereof, which easement shall specifically constitute a part of the Club property. By way of example and not limitation, such easement shall permit entry into the Lot for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash debris and trees.

9. GENERAL PROVISIONS

9.1. **Reserved Easements for Development.** The Declarant reserves unto itself, its successors and assigns, a perpetual and transferable easement and right on, over, and under the Lots and Common Area to erect, maintain, and operate electric, community antenna television, and telephone wires, cables, conduits, and to build, maintain, operate drainage ways, gas lines, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, or over those portions of the Lots or the Common Area as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of a Lot as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved by the ARB, or (b) such portion of the Lot as may be designated as the site for a building on a site plan for erection of building which has been filed with the ARB and which as approved in writing by the ARB. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make excavations and gradings of the soil as may be necessary, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance.

9.2. **Reserved Easements for Operation.** There is hereby reserved to the Declarant and/or the Association such easements as are necessary to perform their respective duties and obligations as are provided in this Declaration.

9.3. **Enforcement.** The Declarant, Association or any Owner shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In lieu of or in addition to proceeding at law or in equity, the Declarant or the Association may cause to be recorded against the Owner of a Lot a written notice of the violation of or failure to comply with any provision of this Declaration.

- 9.4. **Security.** The Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, however, unless otherwise specifically indicated in this Declaration, the Association shall not be obligated to maintain or support such activities.
- (a) Neither the Association, its officers, the Board, the Association's management company, nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, its officers, the Board, the Association's management company, nor the Declarant, shall be held liable for any loss or damage for failure to provide adequate security or for the ineffectiveness of any security measures undertaken.
 - (b) All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge that neither the Association, its officers, the Board, the Association's management company, the Declarant, nor the Architectural Review Committee (as described in Section 4) represent or warrant that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security system designated by or installed according to guidelines established by the Declarant or the Architectural Review Committee may not be compromised or circumvented; nor that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.
 - (c) All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its officers, the Board and committees, the Association's management company, or the Declarant, have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.
- 9.5. **Transfers to Association.** Declarant may transfer to the Association, and the Association will accept, any or all of the ownership, benefits and /or obligations to which Declarant is entitled or subject by reason of this Declaration, and the Association shall thereafter be entitled to all of the benefits and be bound by the obligations appurtenant to any interest so transferred. After Declarant makes such a transfer it will have no liability or obligation with respect thereto arising out of events thereafter occurring.

9.6. **Severability.** Invalidation of any one of these covenants or restrictions by judgement or court order shall not affect any other provisions which shall remain in full force and effect.

9.7. **Term.** This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

10. AMENDMENT

- (a) By Declarant, So long as Declarant owns any of ("the Property") described in Exhibit "A" or owns any Class "B" membership rights, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing. In addition, as long as Declarant owns any portion of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment does not materially adversely affect the rights of any Owner.
- (b) **By Owners.** Except as provided herein, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the Members vote, and the consent of the Declarant, as long as Declarant owns any of the property described in Exhibit "A".
- (c) Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- (d) **Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon recordation in the Office of the Clerk of the County Commission unless a later effective date is specified therein. Any procedural

challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

- (e) If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.
- (f) Notwithstanding any provision of this Declaration to the contrary, no amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege as long as the Declarant owns any property described in Exhibits "A" .

10.1. **Fire Insurance.** Fire, Casualty and other insurance with respect to each Lot, and the improvements thereon shall be the sole responsibility of the Owner of the Lot.

10.2. **Paragraph Headings.** The section or paragraph headings contained herein are for convenience of reference only and shall not be construed to affect the meaning or interpretation of any provision of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed on its behalf by its Manager, who is authorized to do so, on this 4th day of August, 2006.

NEW RIVER LEDGES ASSOCIATES, L.L.C.

BY: *Gary Driggs*
Its Manager

ADMITTED TO RECORD
2006 AUG - 4 A 10:45
BOOK NO. PAGE NO.
KELVINE HOLIBAY
CLERK
FAYETTE COUNTY

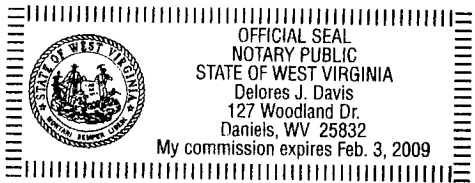
STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, SS:

The foregoing instrument was acknowledged before me on this the ____ day of August, 2006, by GARY DRIGGS, Manager of New River Ledges Associates, LLC., a West Limited Liability Company.

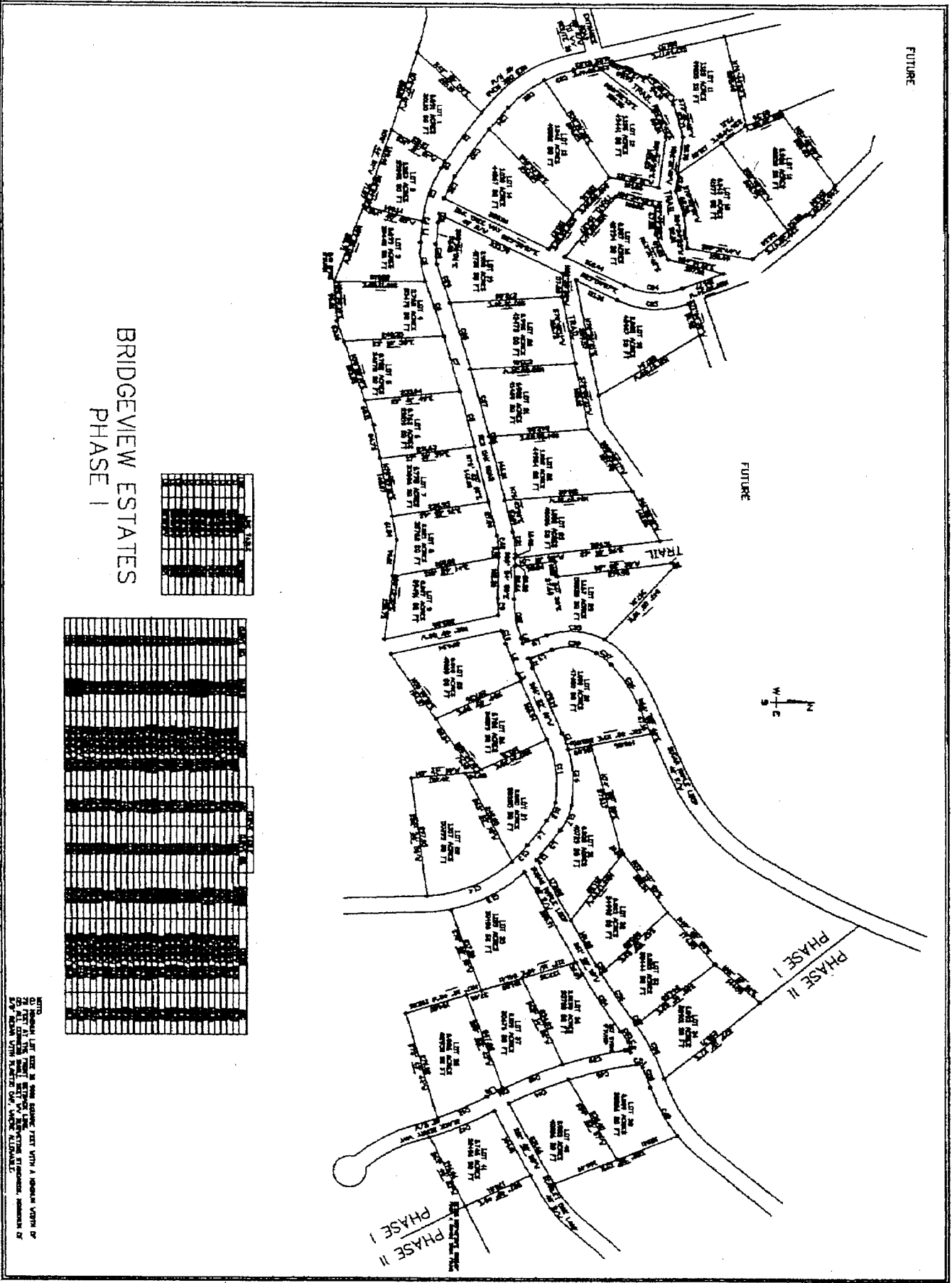
Delores Davis

Notary Public

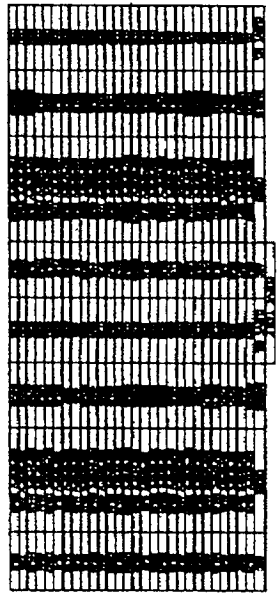
My commission expires: 2.3.2009



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BRIDGEVIEW ESTATES
PHASE I



NOTES:
1. ALL LOTS ARE TO BE CONVEYED WITH A MINIMUM AREA OF 10,000 SQ. FT.
2. ALL LOTS ARE TO BE CONVEYED WITH A MINIMUM AREA OF 10,000 SQ. FT.
3. ALL LOTS ARE TO BE CONVEYED WITH A MINIMUM AREA OF 10,000 SQ. FT.

B2

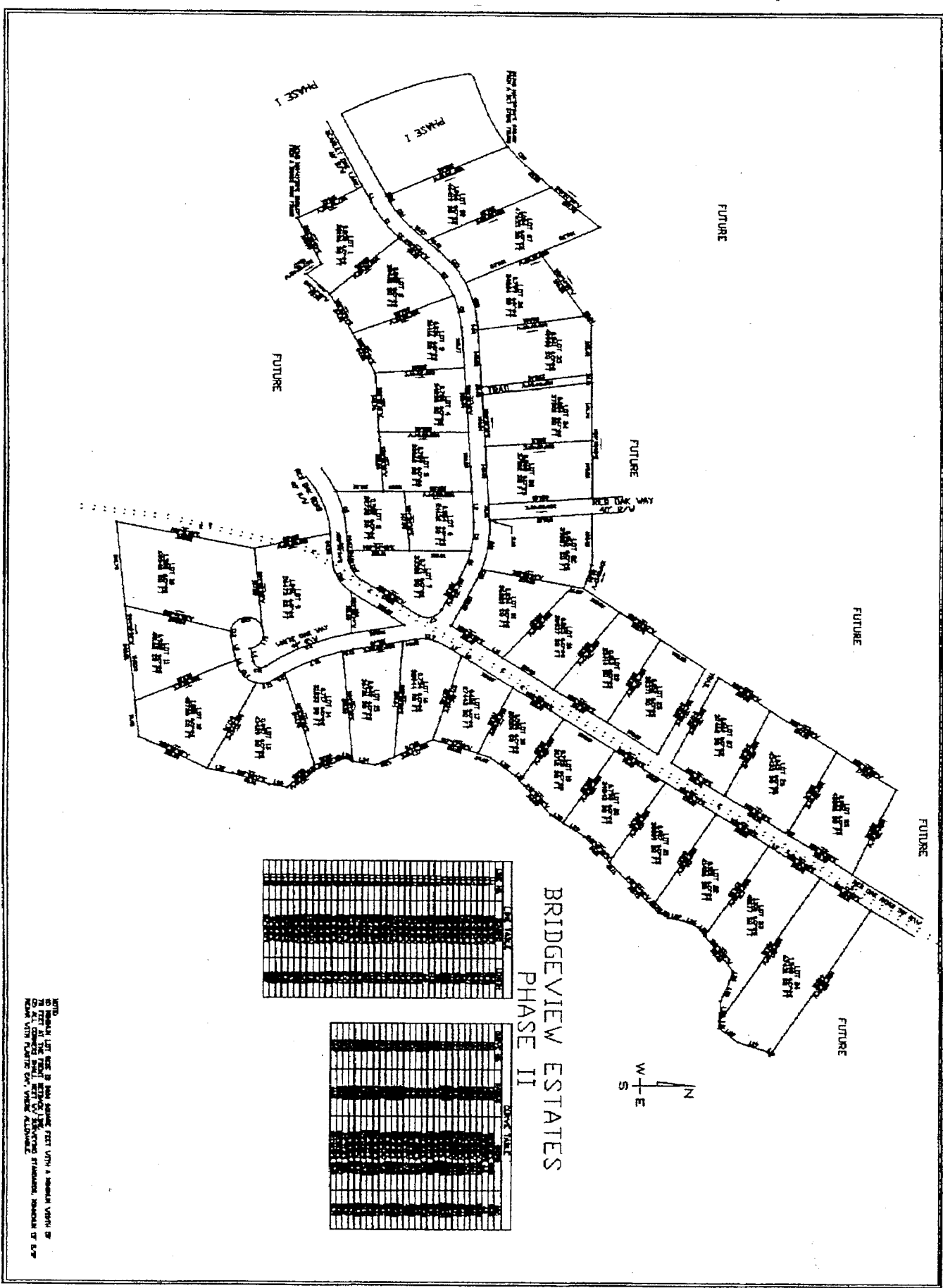
BRIDGEVIEW ESTATES - PHASE I
LOT LAYOUT
SHEET 1 OF 1

DATE	DESCRIPTION

LAWSON ENGINEERING & TECHNICAL SERVICES
ENVIRONMENTAL CIVIL STRUCTURAL



EXHIBIT



NOTED: BOUNDARY LINES TO BE SHOWN ACCORDING TO THE SURVEY DATA. THE SURVEY DATA IS TO BE USED TO DETERMINE THE EXACT BOUNDARY LINES. THE SURVEY DATA IS TO BE USED TO DETERMINE THE EXACT BOUNDARY LINES. THE SURVEY DATA IS TO BE USED TO DETERMINE THE EXACT BOUNDARY LINES.

BRIDGEVIEW ESTATES
PHASE II

B3

BRIDGEVIEW ESTATES - PHASE II
LOT LAYOUT
SHEET 1 OF 1

DATE: 08/22/2006	DRAWN BY: J. LAMBERT	APPROVED BY:
SCALE: AS SHOWN	DATE: 08/22/2006	SCALE: 1" = 40'

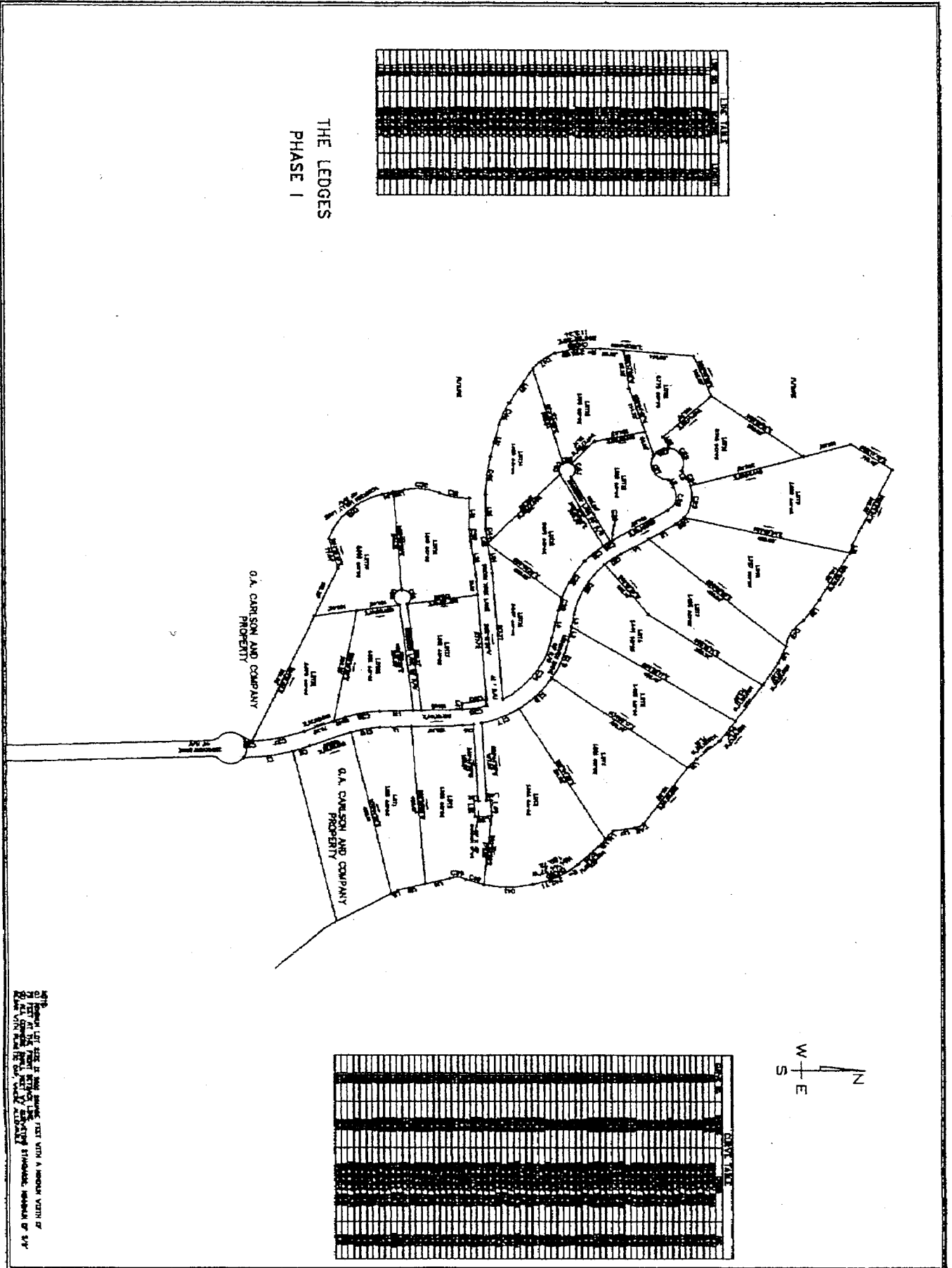
REVISIONS

NO.	DESCRIPTION

LAWSON ENGINEERING & TECHNICAL SERVICES
ENVIRONMENTAL CIVIL STRUCTURAL



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NOT TO SCALE
 THIS PLAN IS FOR THE PURPOSE OF ILLUSTRATION ONLY AND DOES NOT REPRESENT A LEGAL DESCRIPTION OF ANY PROPERTY.
 ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.

DRAWING NO.
L1

THE LEDGES - PHASE I
LOT LAYOUT
SHEET 1 OF 1

DATE: 8/2/06	DESIGNED BY: M. LAMORE	CHECKED BY: M. LAMORE
DRAWN BY: M. LAMORE	SCALE: AS SHOWN	DATE: 8/2/06

REVISION	DATE	BY	DESCRIPTION

LAWSON ENGINEERING & TECHNICAL SERVICES
 ENVIRONMENTAL CIVIL STRUCTURAL



FAYETTE COUNTY, WV
 FILED
 August 04, 2006 00:00:00

KELVIN E. HOLLIDAY
 COUNTY CLERK
 TRANSACTION NO: 2006506777

DEED BOOK
 Book: 00623 Page: 00254
 Line: 00001



EXHIBIT