



EXHIBIT NO. 2

DECLARATION

(See Attached)

241446
1355-190

**HARVEST RIDGE
DECLARATION**

THIS DECLARATION is made and entered into this the 12th day of November, 2007, by Enrout Properties, LLC, a West Virginia limited liability company ("Declarant").

WHEREAS, Declarant owns and holds title to certain real property located and situate in Clinton District, Monongalia County, West Virginia, which Declarant intends to develop into a planned community; and

WHEREAS, Declarant intends to subject such property to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration, each and all of which shall apply to, be binding upon, and inure to the benefit of Declarant, Unit Owners, the Association, their successors and assigns, and any and all other parties having an interest in such property.

NOW, THEREFORE, WITNESSETH: Declarant hereby declares that the Property is and shall be held, transferred, sold, granted, conveyed, leased and occupied subject to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration.

Article I

THE ACT

1.01. Applicability of the Act: Declarant hereby subjects and submits the Property, as a planned community, to the terms and provisions of the Act.

Article II

DEFINITIONS

In this Declaration, and other related documents and instruments, unless specifically provided otherwise, or the context otherwise requires, the terms and words of art below shall mean as follows:

2.01. Act: The Uniform Common Interest Ownership Act, Chapter 36B of the West Virginia Code, as the same may be amended from time to time.

2.02. Architectural Review Committee (ARC): The committee which shall ensure quality development of the Property and maintain an attractive general character or scheme of development by approving or disapproving virtually all proposed improvements to the Units.

2.03. Articles: The articles of incorporation of the Association and any and all amendments and modifications thereof and supplements thereto.

- 2.04. **Association:** Harvest Ridge Property Owners' Association, Inc., a non-profit corporation, organized under the laws of the State of West Virginia, and any wholly-owned subsidiary thereof, its successors and assigns.
- 2.05. **Board:** The board of directors of the Association.
- 2.06. **Bylaws:** The bylaws of the Association and any and all amendments and modifications thereof and supplements thereto.
- 2.07. **Clerk's Office:** The Office of the Clerk of the County Commission of Monongalia County, West Virginia.
- 2.08. **Common Elements:** All streets, roads, easements, rights of way (including easements and rights of way over the Units, as shown on the Plat), areas designated for common use by Unit Owners, rights, privileges, benefits, and interests appurtenant thereto, and improvements and permanent fixtures now or hereafter located and situated on the property that are a benefit to the Units. The Units are excluded from Common Elements. Easements reserved over the Units are Common Elements. References to the Common Elements on the Plat are solely for general information purposes and shall not define, limit, or prescribe, in any manner, the Common Elements.
- 2.09. **Common Expenses:** Expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.
- 2.10. **Common Expense Liabilities:** The liability for Common Expenses allocated each year.
- 2.11. **Community:** The Planned Common Interest Community consisting of residential living units known as Harvest Ridge.
- 2.12. **Declarant:** Enrout Properties, LLC, a West Virginia limited liability company, its successors and assigns, but excluding as successors and assigns, (a) all Purchasers of any Unit, and their successors and assigns, and (b) all persons having a lien or security interest in the Property, whether such lien or security interest is voluntary or involuntary, and their successors and assigns, but not excluding any such Person who succeeds to the interest of Enrout Properties, LLC in and to the Property as a result of the foreclosure of such lien or security interest.
- 2.13. **Declaration:** This instrument, and any amendments or modifications hereof or supplements hereto, properly recorded in the Clerk's Office.
- 2.14. **Development Rights:** The rights reserved in Section 6.01.

- 2.15. **Limited Common Elements**: A portion of the Common Elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units.
- 2.16. **Limited Common Expenses**: Expenditures made by, or financial liabilities of, the Association relating to Limited Common Elements.
- 2.17. **Limited Common Expense Liabilities**: The liability for Limited Common Expenses associated to the Unit Owners benefitted by the related Limited Common Elements.
- 2.18. **Member**: Any and every Person holding membership in the Association in accordance with Section 4.01.
- 2.19. **Person**: An individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, limited liability company, limited liability partnership, government, governmental subdivision or agency, or other legal entity.
- 2.20. **Plat**: That plat of survey of the Property prepared by Patrick E. Gallagher, P.E. No. 9297, P.S. No. 1352 of CTL Engineering, Inc. of West Virginia, dated October 9, 2007, of record in the Clerk's office in Map Cabinet 5, File 8A, and incorporated herein by this reference, together with any amendments, modifications, or revisions thereof and supplements thereto.
- 2.21. **Property**: That certain real property referenced and described in Section 3.01, together with all streets, roads, easements, rights of way, rights, privileges, benefits, and interests appurtenant thereto, and improvements and permanent fixtures now or hereafter located and situated thereon.
- 2.22. **Purchaser**: A Person, other than Declarant or a dealer (as that term is defined in the Act), who by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than (1) a leasehold interest or (2) as security for an obligation.
- 2.23. **Restrictions and Protective Covenants**: Those certain conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration and imposed upon the Property.
- 2.24. **Special Declarant Rights**: Rights reserved for the benefit of Declarant to (1) complete improvements indicated on the Plat; (2) exercise any Development Right; (3) maintain sales offices, management offices, signs advertising the Property or Units, and models; (4) use easements and rights of way through the Common Elements for the purpose of making improvements within the Property, within real property which may be added to the Property of the Community, within real property that may be withdrawn from the Community, or within real property that may not be part of the Community; (5) make the Property subject to a master association; (6) merge or consolidate the Property with another common interest

community of the same form of ownership or merge the Association with a master association; or (7) appoint or remove any officer, director, or committee member of the Association or any master association during any period of Declarant control.

- 2.25. **Unit:** A physical portion of the Property designated for separate ownership or occupancy. In addition, a Unit shall include, as an appurtenance thereto, a non-exclusive right of way and easement over and across the Common Elements for the purposes of ingress, egress and regress and for the installation of utilities in the locations shown on the Plats.
- 2.26. **Unit Owner:** Any and every record owner, whether Declarant or another Person, whether one or more Persons, of any undivided interest in any Unit, but excluding those Persons having (1) a leasehold interest in a Unit or (2) an interest in a Unit solely as security for an obligation.

Article III

THE PROPERTY

- 3.01. **Legal Description:** The real property which is and shall be held, transferred, sold, granted, conveyed, leased, and occupied subject to the provisions of this Declaration is located and situate in Clinton District, Monongalia County, West Virginia, and shall be known and designated as Harvest Ridge. A portion of the real property that constitutes Phase I of the Community is shown on the initial Plat. Phase I of the Community includes all areas located within the bold, dark lines shown upon the Plat. Phase I of the Community contains fifty-one (51) Units and appurtenant amenities. Unit nos. 124, 126, 128, 130, 132, and 134 are not part of Phase I of the Community. As the Plat is amended or expanded, additional portions of the real property will be dedicated as subsequent phases of the Community. The Plat is hereby made an integral part of this Declaration for all pertinent purposes, including, without limitation, a legal description of such real property. Such real property is further described as follows:

All that certain tract or parcel of real estate, lying and being in Clinton District, Monongalia County, West Virginia, and more particularly described as follows:

PARCEL NO. ONE:

BEGINNING at a 3/4 inch roof bolt set, common corner of the Grantors and lands of Douglas M. and Birdie L. VanDevander and in the line of land now or formerly of Samuel and Mary Shuttleworth, thence running with the line of VanDevander and property of Julie A. Strother, N. 02° 30' 09" W. 1,247.96 feet, passing through three 3/4 inch roof bolts set on the line at distances of 293.75 feet, 599.69 feet and 923.41 feet, to a fence post corner, being a common corner to the Grantors, Strother and Paul and Emily A. Lundberg; thence with the line of Lundberg and Lillian B. and Robert W. Loughry, N. 48° 54' 12" E. 2,927.61 feet,

passing through five 3/4 inch roof bolts set on the line at distances of 293.70 feet, 1,117.61 feet, 1,641.83 feet, 1,949.14 feet, and 2,767.86 feet, to a fence post corner, being a common corner to the Grantors, Loughry, Jeffry S. Morrison and Jo Ellen Spacht, and Andrew S. and Virginia P. Hess; thence with the line of Hess and Thomas J. Taylor, S. 28° 19' 14" E. 1,361.38 feet, passing through four 3/4 inch roof bolts set on the line at distances of 178.88 feet, 354.76 feet, 754.71 feet and 1,254.02 feet, to a one-half (1/2) inch iron pin found, common corner to the Grantors and Taylor; thence S. 14° 17' 12" W. 507.40 feet, passing through a 3/4 inch roof bolt set on the line at a distance of 328.33 feet, to a 3/4 inch roof bolt set, standing in the center of an access road and being the common corner of the Grantors and lands of John Babich, Jr.; thence with two lines of Babich, S. 59° 46' 50" W. 468.72 feet to a 3/4 inch roof bolt set; thence S. 77° 35' 50" E. 132.0 feet to a 3/4 inch roof bolt set, common corner to the Grantors and Babich; thence with the line of John Babich, Jr. and John and Loru Babich, S. 04° 01' 50" W. 1,129.45 feet, passing through three 3/4 inch roof bolts set on the line at distances of 146.38 feet, 410.15 feet and 832.13 feet, to a 3/4 inch roof bolt set, being the common corner of the Grantors and Babich; thence with two lines of Babich, N. 86° 19' 52" E. 801.92 feet, passing through two 3/4 inch roof bolts set on the line at distances of 339.49 feet and 801.92 feet to a 3/4 inch roof bolt set; thence N. 80° 30' 51" E. 59.66 feet to a 3/4 inch roof bolt set, common corner to the Grantors and lands of Billy Jo and Gladys Howell and in the line of Babich; thence with two lines of Howell, S. 10° 49' 22" W. 204.60 feet to a 3/4 inch roof bolt set; thence S. 39° 14' 22" W. 437.0 feet, passing through a 3/4 inch roof bolt set on the line at a distance of 176.35 feet, to a 3/4 inch roof bolt set, common corner to the Grantors and Howell; thence with the line of Howell and the line of Jason T. Howell, S. 05° 10' 38" E. 681.70 feet, passing through a one-half (1/2) inch iron pin found on the line at a distance of 49.54 feet, and two 3/4 inch roof bolts set on the line at distances of 223.38 feet and 552.76 feet, to a one-half (1/2) inch iron pin found, common corner to the Grantors, Howell and lands of David, Reuban and Andrew Frazenbaker; thence with the line of Frazenbaker, S. 84° 59' 41" W. 1,162.85 feet, passing through three 3/4 inch roof bolts set on the line at distances of 251.69 feet, 620.82 feet, and 942.97 feet, to a 3/4 inch roof bolt set, being a common corner to the Grantors, Frazenbaker and Shuttleworth; thence with two lines of Shuttleworth, N. 07° 44' 30" W. 1,233.80 feet, passing through three 3/4 inch roof bolts set on the line at distances of 543.58 feet, 888.28 feet and 1,155.17 feet, to a fence post corner; thence S. 88° 07' 0" E. 1,342.31 feet, passing through four 3/4 inch roof bolts set on the line at distances of 167.02 feet, 595.28 feet, 882.45 feet and 1,142.11 feet to the place of beginning, containing 160.89 acres, more or less.

PARCEL NO. TWO:

BEGINNING at a point N. 29° 12' E. 106.57 feet from the northeastern corner of the brick home of William E. Bucy and Lula H. Bucy (now or formerly) and N. 35° 58' E. 128.59 feet from the northwestern corner of said brick building and running from said point, S. 26° 00' E. 160 feet to an iron pin; thence S. 64° 00' W. 300 feet to an iron pin; and thence N. 26° 00' W. 160.00 feet to an iron pin; thence N. 64° 00' E. 300 feet to an iron pin, containing 1.10

acres, more or less, as shown on a plat thereof of record in said Clerk's Office in Deed Book 591 at page 211.

Being the same real estate conveyed to Enrout Properties, LLC, a West Virginia limited liability company, by Adrian Enterprises LLC, a West Virginia limited liability company, by deed dated January 17, 2007, of record in Deed Book 1333, at Page 333.

Further being the same real estate conveyed to Enrout Properties, LLC, a West Virginia limited liability company, by Adrian Enterprises LLC, a West Virginia limited liability company, by quitclaim corrective deed dated January 30, 2007, of record in Deed Book 1334, at Page 42.

- 3.02. Withdrawal: Declarant reserves the right to withdraw from the Community any portion of the Property that is not shown on a Plat as a dedicated phase of the Community. Property withdrawn from the Community may be used for any purpose.

Article IV

THE ASSOCIATION

- 4.01. Membership: Each and every Unit Owner shall be a Member of the Association, and shall be subject to the provisions of the Act, this Declaration, the Articles, the Bylaws, and the rules and regulations adopted or promulgated by the Association.
- 4.02. Powers of the Association: Subject to the provisions of the Act and this Declaration, the Association may:
- (1) Adopt and amend the Bylaws, rules, and regulations;
 - (2) Adopt and amend budgets for revenues, expenditures, and reserves, and levy, assess, and collect annual and special assessments for Common Expenses;
 - (3) Hire and discharge managing agents and other employees, agents, and independent contractors;
 - (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name or on behalf of itself or two more Unit Owners on matters affecting the Property;
 - (5) Make contracts, incur liabilities, and borrow money;
 - (6) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;

- (7) Cause additional improvements to be made to or as part of the Common Elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real property or personal property; provided, that Common Elements may be conveyed or encumbered only in strict compliance with Section 4.09;
- (9) Grant and convey easements, rights-of-way, leases, licenses, and concessions on, over, under, across, or through the Common Elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Unit Owners;
- (11) Cause property and liability insurance to be maintained or kept in effect;
- (12) Impose interest, costs, and legal fees for the late payment of assessments, charges, dues, fees, or fines;
- (13) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates, and statements of unpaid assessments, charges, dues, fees, or fines;
- (14) Provide for the indemnification of its officers, directors, and committee members;
- (15) Assign its right to future income, including the right to receive Common Expense assessments, but only to the extent provided for in this Declaration;
- (16) Employ and retain such professionals and other experts whose services and knowledge may be required to effectively perform and execute these powers;
- (17) Exercise any other powers conferred by this Declaration, the Articles, or the Bylaws;
- (18) Exercise all other powers that may be exercised in the State of West Virginia by legal entities of the same type as the Association;
- (19) Exercise any other powers necessary and proper for the governance and operation of the Association.

4.03. Board of Directors:

- (1) Except as otherwise provided in the Act, the Articles, the Bylaws, or subsection (2), the Board may act in all instances on behalf of the Association.

- (2) The Board may not act on behalf of the Association to amend this Declaration, to terminate the common interest community created and established by this Declaration, or to elect directors of the Board or determine the qualifications, powers and duties, or terms of office of directors, but the Board may fill vacancies on the Board in accordance with and pursuant to the Bylaws.
- (3) Within thirty (30) days after adoption of any proposed budget, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.
- (4) Subject to the provisions of subsection (5), there shall be an initial period of Declarant control of the Association, during which Declarant or Persons designated by it, may appoint and remove any and all officers, directors, and committee members. Such period of Declarant control shall terminate no later than the earlier of: (i) sixty (60) days after conveyance of seventy-five (75%) of the Units of the entire Community (projected to consist of 317 Units, but may contain as many as 375 Units) that may be conveyed to Unit Owners other than Declarant; (ii) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers, directors, and committee members before termination of such period, but in that event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association, board, or any committee, as described in a recorded instrument executed by Declarant, be approved by Declarant before the same become effective.
- (5) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units of the entire Community which may be conveyed to Unit Owners other than Declarant, at least two (2) directors and not less than twenty-five percent (25%) of the directors of the Board shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units of the entire Community which may be conveyed to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors of the Board shall be elected by Unit Owners other than Declarant.
- (6) Subject to the provisions of subsection (4), the Board shall elect all officers and appoint all committee members. Officers, directors, and committee members shall take office upon election or appointment.

- (7) Notwithstanding any other provision of this Declaration, the Articles, or the Bylaws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all Unit Owners present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any director of the Board, any officer, or any member of any committee with or without cause, other than a director, officer, or committee member appointed by Declarant.
- 4.04. Bylaws: The Bylaws, and any and all amendments or modifications thereof or supplements thereto, shall provide:
- (1) The number of directors of the Board and the titles of the officers of the Association;
 - (2) Election by the Board of a president, treasurer, secretary, and other officers of the Association;
 - (3) The qualifications, powers and duties, terms of office, and manner of electing, appointing, and removing directors, officers, and committee members and filling vacancies;
 - (4) Which, if any, of its powers or duties the Board or officers may delegate to other Persons or to a managing agent;
 - (5) Which of its officers may prepare, execute, certify, and record amendments to this Declaration on behalf of the Association; and
 - (6) A method for amending, modifying, or supplementing the Bylaws.
- 4.05. Upkeep: Except to the extent otherwise provided by the Act or this Declaration, the Association shall be responsible for the maintenance, repair, replacement, and upkeep of the Common Elements.
- 4.06. Association Meetings: A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by (1) the president of the Association, (2) a majority of the Board, or (3) Unit Owners having at least twenty percent (20%) of the votes of the Association in accordance with and pursuant to the Bylaws. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary shall cause notice to be hand-delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by a Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including, without limitation, the general nature of any proposed amendment or modification of or supplement to this Declaration, the Articles, or the Bylaws, any budget changes, and any proposal to remove any director, officer, or committee member.

4.07. Quorums: The requirements for the presence of a quorum at (1) any meeting of the Association; (2) any meeting of the Board; and (3) any meeting of a committee, shall be in accordance with those requirements set forth and specified in the Bylaws.

4.08. Voting:

- (1) The allocation of votes within the Association shall be premised on the principle of "one vote for one Unit," notwithstanding that a single Unit may be owned by several Unit Owners.
- (2) In the event a Unit is owned by more than one Unit Owner: If only one of several Unit Owners of a Unit is present at a meeting of the Association, that Unit Owner shall be entitled to cast the vote allocated to that Unit. If more than one of the Unit Owners are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners. There shall be a majority agreement if any one of the Unit Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners. In the absence of a majority agreement, each Unit Owner shall be entitled to cast a fractional vote attributable to the Unit, such fractional vote being based upon each such Unit Owner's fractional ownership of the Unit.
- (3) The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. In the event a Unit is owned by more than one Unit Owner, each Unit Owner may vote or register protest to the casting of votes by the other Unit Owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Members. A proxy shall be void if it is not dated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date of execution, unless it specifies a shorter term.
- (4) No vote allocated to a Unit owned by the Association shall be cast.
- (5) Only Members in good standing, as defined in the Bylaws, shall be entitled to vote.

4.09. Conveyance or Encumbrance of Common Elements:

- (1) Portions of the Common Elements may be conveyed or subjected to a security interest by the Association only if Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by Declarant, agree to such action.
- (2) An agreement to convey Common Elements, or to subject the same to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof,

in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement shall be void unless recorded before that date. The agreement and all ratifications thereof shall only be effective upon recordation in the Clerk's Office.

- (3) The Association, on behalf of the Unit Owners, may contract to convey or encumber an interest in the Common Elements pursuant to subsection (1), but the contract shall not be enforceable against the Association until approved pursuant to subsections (1) and (2). Thereafter, the Association shall have the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute, acknowledge, and deliver deeds or other instruments.
- (4) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of Common Elements shall be void.
- (5) A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access or support.

4.10. Insurance:

- (1) Commencing not later than the time of the first conveyance of a Unit to a Person other than Declarant, the Association shall maintain, to the extent reasonably available:
 - (i) Blanket, all risk insurance on the Common Elements, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
 - (ii) Liability insurance, including medical payments insurance, in an amount determined by the Board covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.
- (2) If the insurance described in subsection (1) is not reasonably available, the Association shall promptly cause notice of such fact to be given to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.
- (3) Insurance policies carried pursuant to subsection (1) shall provide that:

- (i) Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;
 - (ii) The insurer waives its right to subrogation under the policy against any Unit Owner or member of such Unit Owner's household;
 - (iii) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association shall void the policy or be a condition to recovery under the policy; and
 - (iv) If, at any time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- (4) Any loss covered by the property policy under subsection (1)(i) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Unit Owners, and lienholders as their interests may appear. Subject to the provisions of subsection (7), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners, and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community created and established by this Declaration is terminated.
- (5) An insurance policy issued to the Association shall not prevent a Unit Owner from obtaining insurance for such Unit Owner's own benefit.
- (6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each holder of a security interest to whom a certificate or memoranda of insurance has been issued at their respective last known addresses.
- (7) Any portion of the Property for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the common interest community created and established by this Declaration is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the

Unit Owners, including every Unit Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If the entire common interest community created and established by this Declaration is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the common interest community created and established by this Declaration, and (ii) the remainder of the proceeds shall be distributed to the Unit Owners or lienholders, as their interests may appear in proportion to the Common Expense Liabilities of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests shall be automatically reallocated upon the vote as if the Unit had been condemned under the Act, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting such reallocation.

- 4.11. Surplus Funds: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and prepayment of reserves shall be credited to Unit Owners to reduce their future Common Expense Liabilities, or, at the election of the Association used to establish a reasonable reserve for future expenses.
- 4.12. Association Records: The Association shall keep financial records sufficiently detailed to (1) enable the Association to comply with its duties and obligations under this Declaration and (2) permit the Association to provide, upon request and the receipt of a one hundred dollar (\$100.00) fee peculiar to each Unit, a certificate setting forth that information which a Unit Owner is required to furnish a Purchaser pursuant to the Act in general, and West Virginia Code § 36B-4-109 in particular, or amendments or modifications thereof as successor statutes thereto.

Article V

ASSESSMENTS & LIENS

- 5.01. Initial Assessment Deposit: The initial Purchaser of any Unit in the Community shall, on the date of closing, pay to the Association the sum of Two Hundred Dollars (\$200.00). This initial assessment shall be held in reserve by the Association for purposes of future repair and replacement of the Common Elements. This initial assessment shall be held in reserve until such time as the Association deems it appropriate to apply all or a portion of the reserves toward repair or replacement of Common Elements. Further, upon the purchase of a Unit by an initial Purchaser, the Purchaser shall pay to the Association a road impact fee of Five Hundred Dollars (\$500.00) per Unit. This road impact fee shall be held in reserve by the Association for purposes of paying for the installation of the top coat of pavement and to make other repairs and maintenance to roadways. The road impact fee may not be used to pay for snow removal. The road impact fees shall be held in reserve until such time as the Association deems it appropriate to apply all or a portion of the reserves toward installation

of top coat or to make other required repairs and maintenance to the roadways. At closing, the initial Purchaser of any Unit in the Community shall, on the date of closing, reimburse to the Declarant the sewage tap fee for the Unit that has been prepaid by the Declarant to the Morgantown Utility Board. For Phase I of the Community, the tap fee is \$350.00 per Unit. The tap fee for future phases of the Community will be the amount charged Declarant by the Morgantown Utility Board for each Unit, which future amount may or may not equal \$350.00 per Unit. These assessments shall be in addition to, and not included in, the agreed upon purchase price for the Unit.

5.02. Assessment for Common Expenses:

- (1) Common Expense assessments shall be made at least annually, based on a budget adopted at least annually by the Association.
- (2) Except for assessments under subsections (3), (4), and (5), and subject to the provisions of Section 5.04, all Common Expenses shall be assessed against all the Units in accordance with the allocations set forth in Section 10.01. Any past due Common Expense assessment or installment thereof shall accrue interest at the rate of twelve percent (12.00%) per annum.
- (3) To the extent reasonably determinable, any Common Expense or portion thereof benefitting fewer than all of the Units shall be assessed exclusively against the Units benefitted (a Limited Common Expense).
- (4) Assessments to pay a judgment against the Association shall be made only against the Units in existence at the time the judgment was entered, and in proportion to their Common Expense Liabilities.
- (5) If any Common Expense is caused by the misconduct of any Unit Owner, or such Unit Owner's invitees, lessees, or licensees, the Association may assess such expense exclusively against such Unit Owner's Unit.
- (6) Subject to the provisions of Section 5.04, if Common Expense Liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense Liabilities.

5.03. Lien For Assessments:

- (1) Notwithstanding that all assessments, charges, dues, fines, and fees shall be personal obligations of Unit Owners against whom the same are imposed or who own a Unit at the time the same become due, the Association shall have a lien on a Unit for any assessments or charges levied against such Unit or dues, fines, or fees imposed against its Unit Owner from the time the same become due. Fees, charges, late

charges, fines, and interest charged pursuant to Sections 4.02(10), 4.02(12), 4.02(13), 7.27, 8.02, 9.02, and 10.03, shall be enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment shall be a lien against the Unit from the time the first installment thereof becomes due.

- (2) The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments, charges, dues, fines, or fees against the Unit Owner's Unit or the Unit Owner. The statement shall be in recordable form. The statement shall be furnished within ten (10) business days after receipt of the request and shall be binding on the Association, the Board, and every Unit Owner.
- (3) For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the Unit Owner of his liability for payment of the assessments, charges, fines, or fees. The Association shall record a notice of the lien in the Clerk's Office. The notice shall contain:
 - (i) A legally sufficient description of the property;
 - (ii) The name(s) of the Unit Owner(s);
 - (iii) The amount of unpaid assessments, charges, dues, fines, and fees due, together with the date when each become due; and
 - (iv) The date of recordation.

The cost of recordation shall be assessed against any Unit Owner found to be delinquent.

- (4) Upon payment and full satisfaction of the assessment, charge, due, fine, or fee, the Association shall execute a written release of the lien. Such release shall be recorded at the expense of the Unit Owner in the Clerk's Office.
- 5.04. Limitation of Assessments: As Declarant has incurred substantial expense in developing the Community and as Declarant will be responsible for initial maintenance of the Community, Units owned by Declarant shall not be subject to any assessment whatsoever by the Association, provided Units owned by Declarant that are improved by homes and ready for occupancy shall be subject to assessment.

Article VI

DECLARANT'S RESERVED RIGHTS

- 6.01. **Development Rights and Special Declarant Rights:** Notwithstanding any other provision of this Declaration to the contrary, Declarant expressly reserves the right to exercise any and all Development Rights and Special Declarant Rights, including, without limitation, (1) the right to add real estate to the common interest community created and established by this Declaration, (2) the right to use and grant use of those easements and rights of way excepted and reserved in Section 6.04 and Section 7.27, (3) the right to use and grant use of any and all Common Elements in connection with the development of the property referenced in subsection (1) of this section, (4) the right to use and make use of the utilities servicing and benefitting the common interest community created and established by this Declaration in connection with the development of the property referenced in subsection (1) of this section, and increase the size and capacity thereof, and in connection with the development of the Property that is not part of the Community (5) the right to additionally burden easements and rights-of-way with traffic and use, (6) the right to create Units or Common Elements within the common interest community created and established by this Declaration, (7) the right to subdivide Units, convert Units into Common Elements, dedicate property as Common Elements, and convey Common Elements to the Association, (8) the right to withdraw real estate from the common interest community created and established by this Declaration, (9) the right to convert Common Elements, or any portion thereof, into Units or add the same to Units, and (10) the right to create one (1) or more separate and independent subdivisions or common interest communities out of the Community or property added to the Community, and grant access and utility access to the same through the easements and rights-of-way within the common interest community created and established by this Declaration. Any and all Development Rights and Special Declarant Rights are and shall be perpetual in duration.
- 6.02. **Multi-Family Dwellings:** Notwithstanding any other provision of this Declaration, Declarant expressly reserves the right to construct, erect, or build, and may at any time construct, erect, or build multi-family dwellings or townhomes in any phase of the Community provided such use is shown on the Plat of the phase. This right shall apply to each and every Unit owned by Declarant, whether now existing or hereafter created, whether initially owned by Declarant or conveyed to a Purchaser and required by Declarant.
- 6.03. **Streets and Roads:** Declarant expressly reserves the right to (1) extend all easements and rights-of-way for streets and roads within the common interest community created and established by this Declaration into areas outside the common interest community created and established by this Declaration and (2) dedicate the same to public use or grant the same to any municipality or other political subdivision of the State of West Virginia.
- 6.04. **Easements:** Declarant expressly reserves the right to permit or license others, particularly public and quasi-public utility corporations, their employees and contractors, to make use of those easements and rights of way set forth and described in Section 7.26. Declarant further expressly reserves the right to use and grant use of any and all easements and rights-of-way shown and illustrated on the Plat, excepted and reserved this Declaration, or created in this Declaration.

Article VII**RESTRICTIONS**

- 7.01. **Applicability**: The Restrictions set forth and contained in this Declaration shall be applicable to the Property and each and every Unit or lot thereof or therefrom, whether now existing or hereafter created. The Restrictions, and the burdens and benefits associated therewith, shall be and are intended to be appurtenant to and covenants running with the Property. The Restrictions shall apply to, be binding upon, and inure to the benefit of Declarant, Unit Owners, the Association, their successors and assigns, and any and all other parties having an interest in the Property.
- 7.02. **Permitted Uses**: Subject to the provisions of Sections 6.01 and 6.02, Units shall be used solely and exclusively for residential purposes by either single families or no more than three (3) unrelated persons.
- 7.03. **Number of Dwellings**: Subject to the provisions of Section 6.02, no more than one (1) residential dwelling shall be constructed, erected, or built on any Unit.
- 7.04. **Additional Structures**: All detached buildings and/or garages shall be constructed to match the resident dwellings and must further be reviewed and approved by the Architectural Review Committee. Additional structures must be located in the rear yard of a Unit and may not violate the building setback restrictions.
- 7.05. **Square Footage Requirements**: All dwellings, excluding individual units within multi-family dwellings or townhomes, shall contain at least one thousand five hundred (1,500) square feet of fully furnished living area, including finished basements, but excluding porches, patios, decks, and garages.
- 7.06. **Subdivision**: Each Unit shall be considered a single unit or lot and, subject to the provisions of Section 6.01, shall not be subdivided in any manner into tracts, parcels, or lots different from that description contained in the deed by which Declarant conveys its interest in such Unit or that shown on the Plat.
- 7.07. **Two Units Used as One**: Notwithstanding any other provision of this Declaration, upon the written consent of the Architectural Review Committee, a maximum of two (2) Units may be used as a single construction or building unit. In the event such consent is given and two (2) Units are used as a single construction or building unit, all allocated interests with respect to the Common Elements and Common Expenses shall be allocated on a single Unit basis; therefore, the Common Elements and Common Expenses allocated to the Units so combined shall be an appurtenance to such Units on an individual Unit basis. For instance, the use of Unit X and Unit Y as a single construction or building unit would result in the Unit Owner of Units X and Y being entitled to the benefits of and burdened by the obligations of only one

Unit. Upon consolidation of two (2) Units as one (1), the new Unit may not be further subdivided.

- 7.08. ARC Approval: No building, structure, or improvements of any kind, including, but not limited to, foundations and walls, shall be commenced, constructed, erected, built, placed, altered, or maintained on any Unit without the prior written approval of the ARC as provided for in Article VIII; provided, however, that the ARC shall have no jurisdiction over any buildings, structures, or improvements commenced, constructed, erected, built, placed, altered, or maintained by Declarant on or with respect to any Unit(s) owned by Declarant and the written approval of the ARC shall not be requisite with respect to Declarant commencing, constructing, erecting, building, placing, altering, or maintaining any buildings, structures, or improvements on or with respect to any Unit(s) owned by Declarant.
- 7.09. Set Back: No building, structure, or improvement of any kind shall be constructed, erected, or built, or in any manner located nearer than thirty-five feet (35') from the front of the Unit, nearer than twenty feet (20') from the rear of the Unit, or nearer than ten feet (10') to any side boundary line of a Unit. The Plat identifies the setback lines for each Unit. In the event of a dispute or conflict about the location of the front, back, or side of a Unit or the applicable setback lines, the setback lines shown on the Plat shall be the controlling location of all setback lines.
- 7.10. Completion of Construction: After commencement of construction of any dwelling, a Unit Owner shall diligently prosecute the work thereon, to the end that such dwelling shall not remain in a partially completed condition any longer than reasonably necessary for completion thereof, and in no event any longer than twelve (12) months after commencement of construction of a dwelling provided for under Section 7.02 and (2) eighteen (18) months after the commencement of construction of a dwelling provided for under Section 6.02. No dwelling shall be used or occupied for residential purposes until the same is substantially completed.
- 7.11. Maintenance During Construction: During construction of any building, structure, or improvement, it shall be the responsibility of each Unit Owner to insure that construction sites and Units are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, and the like are kept in a neat and orderly manner.
- 7.12. Excavation: No excavations shall be made on any Unit except in connection with construction of a building, structure, or improvement, and upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be graded and leveled.
- 7.13. Erosion: All Units, whenever construction or building occurs thereon, shall be affirmatively and aggressively stabilized and otherwise protected and maintained against erosion. Declarant shall not be responsible for any soil movement. It will be the responsibility of all unit owners to inspect any/all soil conditions prior to the purchase of a Unit at the expense

of the Unit Owner. All excavation and final landscaping shall be completed in the construction time periods for inspection.

- 7.14. Concrete, Asphalt, Stone Pavers Driveways: All driveways shall be constructed of, and poured with, concrete, asphalt, or approved stone or brick pavers, and completed no later than twelve (12) months after the commencement of construction of any dwelling.
- 7.15. Ditching; Conduit: If necessary for compliance with Declarant's stormwater drainage plan for the Community, prior to the construction and paving of any driveway or walkway, each Unit Owner shall bury a six inch (6") (or larger if required by Declarant's stormwater plan) Schedule 40 P.V.C. conduit under that portion of the driveway or walkway which encroaches upon those easements and rights of way set forth in Section 7.27 in order to provide appropriate storm water drainage for the Unit, other Units and the Community. Ditches located in such easement areas shall not be disturbed or altered by a Unit Owner unless consented to by the Association or ARC. Prior to the construction and pouring of any driveway or walkway, each Unit Owner shall bury a four inch (4") Schedule 40 P.V.C. conduit, capped at each end, under that portion of the driveway or walkway which encroaches upon those easements and rights-of-way set forth and described in Section 7.27.
- 7.16. Trade or Business Limitations: No Unit shall be used for anything other than residential purposes except that a home based business may be established upon the following restrictions:
- a. The owner of the Unit must be the owner and operator of the home based business. The home based business must be a secondary use which is clearly incidental and subordinate to the residential use of the dwelling.
 - b. The home occupation shall be:
 - i. compatible with residential uses and character of the dwelling.
 - ii. compatible with residential uses and character of the neighborhood.
 - iii. shall occupy less than twenty five percent (25%) of the finished living space, as defined in Section 7.05 herein.
 - c. The home occupation shall not:
 - i. require internal or external alterations or construction features not customary to a residential dwelling.
 - ii. result in substantial increases in traffic, congestion, or parking burdens on the neighborhood.
 - iii. produce detectable fumes, odors, dust, heat, noise, vibration, glare electro-magnetic fields, electrical interference, or other affects.

iv. require fixed installation of equipment or machinery.

d. No storage or display of goods, materials, or products connected with a home occupation shall be allowed outside the dwelling.

e. Employment of persons not residing in the dwelling unit shall be restricted to one employee residing outside the dwelling unit, working no more than four hours per day. Any other employees shall be persons residing in the dwelling.

f. Retail sales shall not occur in the Unit.

g. There shall be no signs advertising any home-based business.

h. If stock-in-trade is to be displayed on premises, said stock-in-trade is to be displayed in a fashion so as not to be seen from the outside of the dwelling.

i. Given the above referenced restrictions, any and all home based businesses must be approved in writing by a majority vote of the Architectural Review Committee. The ARC may grant variances on any and all of the above restrictions, given a majority vote; provided said variances do not adversely affect the character and integrity of the dwelling or the subdivision. In no event shall signs be allowed.

7.17. Utilities: All utility services and connections to all buildings, structures, and improvements shall be made underground.

7.18. Insurance:

(1) Each Unit, and the improvements thereon, shall be insured against the risk of loss due to fire, casualty, or any other disaster in an amount equal to at least ninety percent (90%) of the purchase price of the Unit and cost of improvements.

(2) In the event of fire, casualty, or any other disaster that destroys or damages a Unit or the improvements thereon, such Unit's Unit Owner shall, at the minimum, apply all insurance proceeds to the extent necessary to return the Unit to grade. In the event such Unit Owner chooses to reconstruct or repair the Unit or the improvements thereon, such reconstruction or repair shall fall within the scope of Section 7.08 and Section 6.05.

7.19. Vehicles: No unlicensed vehicles, junk vehicles, vehicles exceeding two (2) tons gross vehicular weight, trailers, campers or recreational vehicles shall be parked or stored on any Unit unless parked or stored in an enclosed garage. Declarant or the Association shall have the right to remove any vehicles in violation of this provision from the Property, at the owner's expense. No repairs shall be made to any vehicle on any Unit except those of a

minor nature performed within an enclosed garage. No vehicles shall be parked within the easement or right-of-way of any street or road, except on an occasional basis.

- 7.20. Trash Receptacles: All trash, garbage, rubbish, and other waste shall be kept in containers maintained in a neat, clean, and sanitary condition. Such containers shall be kept and maintained in such a manner so as not to be visible to public view; however, trash and other refuse that is disposed of by being picked up and carried away on a regular and recurring basis, may be placed within public view in an appropriate container on any day that pick-up is to be made, at such place so as to provide access to those persons making such pick-up.
- 7.21. Other Prohibited Uses: The following uses of the Property, and each and every Unit or lot thereof or therefrom, are not permitted and shall be prohibited:
- (1) Any use which involves setting, placing, erecting, or parking a mobile home, house trailer, "double-wide," or the like, whether for the purpose of use as a dwelling or not.
 - (2) Any use which involves the setting, placing, erecting, or maintaining of an above-ground pool.
 - (3) Any use which involves the raising, breeding, keeping, or maintaining of any animals or poultry, except that this subsection shall not prohibit the keeping and maintaining of dogs, cats, and other similar domestic animals, provided that such domestic animals are not kept or maintained for commercial or breeding purposes. Such domestic animals shall not be kept or maintained outside of any dwelling.
 - (4) Any use which involves a noxious odor or excessive noise level, or in any manner creates or causes a nuisance.
 - (5) Any use which involves the placing, erecting, or maintaining of any signs, billboards, or advertisements of any kind, except those pertaining to or concerning the sale or rental of a Unit. Such sale or rental signs shall not exceed four (4) square feet in size. No such sale or rental signs shall be placed, erected, or maintained at or near the entrance of the Property. This section shall not apply in any way to Declarant or be construed or interpreted to prohibit Declarant from placing, erecting, or maintaining signs, billboards, or advertisements of any kind or size.
 - (6) Any use involving an antenna, tower, or satellite dish, except satellite dishes not exceeding eighteen inches (18") in diameter.
 - (7) Any use involving clothes lines, clothes poles, and the like, unless the same are placed or screened so as not to be visible from any surrounding Unit or property.

- (8) Any use involving tents, shacks, trailers, boats, sheds, or the like for residential purposes, whether of a permanent or temporary tenure. Except, the ARC may grant a variance for the temporary use of a tent designated for a special event. However, in no circumstance shall such a variance be granted for a period of time exceeding 48 hours.
- (9) Any use which involves dumping trash, garbage, rubbish, junk, waste, or any other material.
- (10) Any use which involves the use of above ground fuel or above ground storage tanks.
- (11) The use of wood-burning fireplaces that are constructed as a permanent, non-removable part of the improvements to the home on a Unit shall be permitted, however, all wood used for such purpose shall be kept and maintained in such a manner so as not to be visible to public view. Wood burning, coal burning, or pellet burning stoves or similar heating units that are detached from the home are prohibited.
- 7.22. Sewage: All plumbing fixtures, dishwashers, or toilets shall be connected to the sewerage system. Storm water shall not be connected to the sewerage system.
- 7.23. Exterior: The exterior walls of all buildings shall be of brick, stone, stucco, natural wood or other material similar in aesthetic appearance. No building shall have concrete or cinder blocks or concrete masonry exposed in any manner, provided exposed, stamped, and painted concrete foundations shall be permitted. All roofs shall be asphalt or slate shingles, or composite material of similar characteristics and aesthetic appearance.
- 7.24. Roof Pitch: Flat or nearly flat roofs are prohibited. Roofs must have a minimum pitch of one foot rise per four feet of run.
- 7.25. Fences: Except for fences surrounding below ground swimming pools, the design of which must be approved by ARC, fences surrounding sediment ponds or possible hazardous areas as determined by the Declarant, no other fences shall be permitted.
- 7.26. Easements:
- (1) Each Unit shall be subject to and burdened by those easements and rights-of-way shown and delineated on the Plat.
- (2) All easements and rights-of-way burdening a Unit shall be continuously maintained by each Unit Owner in accordance with the provisions of Section 9.01. No building, structure, or improvement of any kind shall be constructed, erected, or built, or in any manner located, in, on, over, or above such easements and rights-of-way and the same shall at all times be open and accessible to Declarant, the Association, and public and quasi-public utility corporations, their employees and contractors, all of

whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such easements and rights-of-way to carry out the purposes for which the same have been created, excepted, and reserved.

- (3) Each and every easement and right of way shown and illustrated on the Plat is hereby excepted and reserved for the benefit of Declarant and its successors and assigns and each and every easement and right of way labeled or designated as a "utility" easement or right of way on the Plat shall be for the purposes of installing, constructing, laying, extending, maintaining, operating, inspecting, repairing, removing, and replacing lines, conduits, pipes, wires, drain ways, mains, manholes, and any and all connections, attachments, additions, appurtenances, and instrumentalities thereto, necessary, appropriate, useful, convenient, or incidental to carrying, transmitting, and transporting utilities and utility services.
- (4) Every Unit Owner, his invitees, lessees, and licensees, shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to the Property and each and every Unit or lot thereof or therefrom, subject to the following:
 - (i) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;
 - (ii) All provisions of this Declaration, the Articles, the Bylaws, and the Plat; and
 - (iii) Rules and regulations adopted or promulgated by the Association.

7.27. **Speed Limits:** Speed limits for streets and roads within the Property shall be adopted or promulgated by the Association. Such speed limits shall be posted within the Property and shall be enforceable against Unit Owners and Unit occupants by way of fines. The Association shall have the authority and power to assess fines for violation of such speed limits. Such fines shall be charged to and assessed against the Unit of such violating Unit Owner or Unit occupant and shall be enforceable as an assessment under Section 5.03.

Article VIII

ARCHITECTURAL REVIEW COMMITTEE

8.01. **Committee Members:** The ARC shall be composed of three (3) members who shall be appointed by the Board. A committee member shall serve on the ARC until (1) he resigns from the ARC; (2) subject to Section 4.03(7), he is removed by the Board; or (3) he is removed by Declarant pursuant to Section 4.03(4). Any vacancies on the ARC may be filled through appointment by the Board.

- 8.02. **Function of ARC:** Subject to the provisions of Section 7.08 and Section 8.03, no building, structure, or improvement of any kind shall be commenced, constructed, erected, built, placed, altered, or maintained on any Unit until plans and specifications, in such form and detail as the ARC may deem necessary, shall have been submitted to and approved in writing by the ARC. ARC shall have the power and authority to retain and employ professional advisors as may be necessary in the exercise of its powers. ARC shall have the power and authority to restrict construction times, the delivery of construction materials, and may impose weight limits on vehicles delivering construction materials. ARC may also levy reasonable fines against Unit Owners for violations of such restrictions.
- 8.03. **Declarant Exception:** In keeping with the provisions of Section 7.08, the provisions of this article shall not apply to any improvements which Declarant elects to construct, erect, or build on any Unit.
- 8.04. **Improvement Absent Approval:** In the event any building, structure, or improvement is commenced, constructed, erected, built, placed, altered, or maintained on any Unit without prior approval of the ARC, then the Unit Owner shall, upon demand by the Association, cause such Unit, building, structure, or improvement to be restored to comply with the plans and specifications originally approved by the ARC and shall bear all costs and expenses of such restoration, including, but not limited to, the costs and reasonable attorney's fees of the ARC.
- 8.05. **Plans and Specifications:** The plans and specifications to be submitted pursuant to Section 8.02 shall include the following:
- (1) Plot layout showing the location of the buildings, structures, and improvements;
 - (2) Exterior elevations;
 - (3) Square footage of any dwelling;
 - (4) Exterior materials, colors, textures, and shapes;
 - (5) Structural design;
 - (6) Landscaping plan, including walkways, fences, walls, elevation changes, watering systems, vegetation, and ground cover;
 - (7) Parking area and driveway plans;
 - (8) Screening, including size, location, method, and purpose;
 - (9) Utility connections;

- (10) Exterior illumination, including location and method;
- (11) The name of the general contractor, along with such information including financial information necessary to evaluate the reliability of the contractor; and
- (12) The time period to complete construction.

8.06. Approval:

- (1) The ARC shall, in writing, approve or disapprove, by a majority vote, all plans and specifications submitted within forty-five (45) days of the submission thereof.
- (2) Approval shall be based, among other things, on (i) adequacy of site dimensions; (ii) structural design; (iii) conformity and harmony of external design and of location with neighboring buildings, structures, and improvements; (iv) relation of finished grades and elevations to neighboring Units; (v) conformity to both the general and specific intent of the provisions of the Declaration; (vi) conformity with the general character of scheme of the Property; and (vii) the experience and skill of the proposed general contractor. Purely aesthetic considerations shall be a valid factor with respect to approval of plans and specifications and may be the sole and determinative factor for disapproval. ARC reserves the right to condition approval upon the purchaser or the general contractor posting a performance bond insuring that construction will be completed in compliance with the submitted plans and specifications.
- (3) In the event plans and specifications are not sufficiently complete or are otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.
- (4) The ARC shall not arbitrarily or unreasonably withhold its approval.
- (5) All decisions of the ARC may be appealed to the Board for review. Any decision of the ARC not appealed within thirty (30) days following such decision shall be final, conclusive, and binding upon the submitting Unit Owner. All decisions of the Board shall be final, conclusive, and binding upon the submitting Unit Owner.

8.07. Mailboxes: The U.S. Postal Service is requiring cluster type or community type mailboxes for the Community. The Declarant will identify the location(s) for the mailboxes and the area(s) will be dedicated as common areas for the Community. If, in the future, individual mailboxes are permitted by the U.S. Postal Service, the ARC shall select a uniform decorative mailbox to be used with respect to all Units within the common interest commonly erected and established by this Declaration. The ARC shall have the power and authority to remove any and all mailboxes that do not comply with the uniform decorative mailbox chosen.

8.08. Variances:

- (1) The ARC may authorize and grant reasonable variance from the provisions of a Restriction where (i) such variance shall not be contrary to the interests of the Association, Unit Owners, or the common interest community created and established by this Declaration, (ii) such variance shall not result in any non-conformity with both the general and specific intent of the provisions of the Declaration, (iii) such variance shall not result in any non-conformity with the general character and scheme of the common interest community created and established by this Declaration, and (iv) the terms or application of such Restriction results in unnecessary hardship.
- (2) In the event the ARC authorizes and grants a Unit Owner variance from the provisions of Sections 7.10 or 7.23(1), such variance shall in no way impair, invalidate, or waive those easements and rights-of-way set forth and described in Section 7.23(1). In the event any improvement is constructed, erected, built, or maintained over, above, or on such easements and rights-of-ways, the Unit Owner shall bear the risk and cost of removing such improvement in the event Declarant or the Association must enter the same for any purpose. Neither Declarant nor the Association shall have any duty to repair or replace such improvement or otherwise compensate such Unit Owner for any damage incurred by any part of such improvement.
- (3) At the time a Unit Owner seeks variance from the provisions of Sections 7.10 or 7.23(1), such Unit Owner shall, in addition to satisfying the other requirements of this article with respect to the commencement, construction, erection, building, placement, alteration, or maintenance of any improvement on any Unit, execute a waiver releasing any and all claims, rights, and causes of action which the Unit Owner may have for any and all damages that might arise with respect to improvements constructed, erected, built, or maintained over, above, or on such easements and rights-of-ways. Such waiver shall release both Declarant and the Association from all liability and responsibility relative to such claims, rights, and causes of action.

Article IX

MAINTENANCE

- 9.01. Maintenance Duties and Responsibilities: Unit Owners and Unit occupants shall have the duty and responsibility, at their sole cost and expense, to keep their Units and the improvements thereon and the grounds in connection therewith in a well maintained, safe, clean, and attractive condition at all times. Such maintenance shall include, but not be limited to, the following:

- (1) Removing promptly all litter, trash, refuse, and wastes;
- (2) If the Unit is improved, lawns shall be kept below five (5) inches in height;
- (3) If the Unit is unimproved, weeds and the like shall be kept below twelve (12) inches in height;
- (4) Pruning trees and shrubbery;
- (5) Keeping exterior lighting in operable condition;
- (6) Keeping lawns and landscaped areas alive, free of weeds, and attractive;
- (7) Keeping parking areas, driveways, and walkways in good repair;
- (8) Watering and fertilizing lawns;
- (9) Complying with all governmental, health, police, and fire requirements, statutes, regulations, and ordinances;
- (10) During construction of any building, structure, or improvement, keeping construction sites and Units free of unsightly accumulations of rubbish and scrap materials, and keeping construction materials and the like in a neat and orderly manner; and
- (11) Keeping any ditches located in an easement area open and unobstructed so that the drainage of storm water is not interfered with.

9.02. Maintenance Enforcement: If in the opinion of (1) Declarant prior to termination of Declarant control or (2) the Association at any time, any Unit Owner or Unit occupant shall have failed with respect to any of the duties and responsibilities enumerated in Section 9.01, then Declarant and/or the Association may give such Unit Owner or Unit occupant written notice of such failure and such Unit Owner or Unit occupant must within ten (10) days after receiving such notice, perform the care and maintenance required. In the event such Unit Owner or Unit occupant fails to fulfill and satisfy such duty or responsibility within such period, then Declarant and/or the Association, through its authorized agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any Person. Such right shall not be exercised by the Association in the absence of the unanimous consent of the Board. The Unit Owners or Unit occupants whose Unit was the subject of such performed care and maintenance shall be jointly and severally liable for the cost of such care and maintenance and shall promptly reimburse Declarant and/or the Association for such cost. In the event such cost shall not have been reimbursed within thirty (30) days after a statement for such cost shall have been given to such Unit Owner or Unit occupant, then such cost shall

be charged to and assessed against the Unit of such Unit Owner or Unit occupant and shall be enforceable as an assessment under Section 5.03.

Article X

MISCELLANEOUS

10.01. Allocated Interests:

- (1) Each Unit shall be allocated an undivided fractional interest in the Common Expenses of the Association. For purposes of calculating common expense liability, the number of Units in Phase I of the CIC is 51. The actual final number of Units in the CIC has not yet been determined. The maximum number of Units that may be created within the CIC is 375. Therefore, the following formula shall be used to determine the respective allocated interest of each Unit within the common interest community created and established by this Declaration. An allocated interest for each Unit shall be equal to a fraction where the numerator shall be one (1) and the denominator shall be the number of Units sold by Declarant to a person, not to exceed 375.
- (2) Declarant, pursuant to Section 6.01, has reserved the right to add Units to and withdraw Units from the Property. Therefore, in the event Declarant elects to exercise such rights and add Units to or withdraw Units from the Property, the allocated interest with respect to each Unit may vary. In such an event, the formula set forth in subsection (1) shall be used to reallocate interest among the Units following the execution of such rights and the amendment, modification, or revision of the Plat.

10.02. Warranties of Quality:

- (1) Declarant makes no express or implied warranties of quality. It is understood and agreed that by purchasing a Unit, any and all Purchasers accept and acknowledge that all express and implied warranties of quality are excluded. Units are being offered for sale by Declarant upon an "AS IS" basis.
- (2) All Purchasers, prior to becoming a Unit Owner, shall execute a separate instrument which, as between Declarant and Purchaser, shall, among other things, (i) waive and release Purchaser's statutory right to commence a judicial proceeding against Declarant for breach of express and implied warranties of quality within six (6) years after such a cause of action accrues; (ii) release Declarant from such six (6) year limitation period; and (iii) impose upon and make Purchaser subject to a reduced period of limitation of two (2) years from the accrual of such a cause of action.

10.03. **Enforcement:** The provisions of this Declaration, the Articles, the Bylaws, and the rules and regulations adopted or promulgated by the Association shall be enforceable by and entitle each and every Person upon whom this Declaration shall be binding, including the Association, in addition to all other remedies, to the right to proceed at law or in equity to compel compliance with or prevent the violation or breach of any of the provisions of this Declaration, the Articles, the Bylaws, or the rules and regulations adopted or promulgated by the Association. In the event the exercise of such rights results in any actions or proceedings, the expense of such actions or proceedings shall be borne by the then Unit Owner of the Unit with respect to which such violation exists; provided, that such action or proceeding results in a finding that such Unit Owner, or such Unit Owner's invitee, lessee, or licensee was in violation of this Declaration, the Articles, the Bylaws, or the rules and regulations adopted or promulgated by the Association. Such expense shall include, but not be limited to, reasonable attorney fees, expert fees, court costs, and the like. Such expense shall be charged to and assessed against the Unit of such Unit Owner and shall be enforceable as an assessment under Section 5.03.

10.04. **Amendment:**

- (1) In the event Declarant exercises any Development Right, Special Declarant Right, or any other right reserved to the benefit of Declarant in this Declaration, Declarant shall have the right to unilaterally amend, modify, or supplement this Declaration and amend, modify, or revise the Plat in connection with and with respect to the exercise of the same, including, without limitation, the right to unilaterally amend or modify this Declaration so as to redefine the defined terms "Property" and/or "Plat" in the event Declarant adds or withdraws real property to the common interest community created and established by this Declaration.
- (2) Except as otherwise provided in the Act and subsection (1), this Declaration may be amended, modified, or supplemented only by vote or agreement of Unit Owners owning Units to which not less than seventy percent (70%) of the votes in the Association are allocated.
- (3) Every amendment or modification of or supplement to this Declaration shall only be effective upon recordation in the Clerk's Office.
- (4) Except to the extent expressly permitted or required by the provisions of the Act, but except as otherwise provided in subsection (1), no amendment, modification, or supplement may create or increase Special Declarant Rights, increase the maximum number of Units, change the boundaries of any Unit, change the allocated interests of a Unit, or change the uses to which any Unit is restricted, in the absence of unanimous consent of (i) all Unit Owners and (ii) all Persons who hold security interests encumbering the Units. Any instrument memorializing or setting fourth

such an amendment or modification shall be executed and acknowledged by (i) all Unit Owners and (ii) all such secured parties.

- (5) Except as provided in subsection (1) and subsection (4), amendments, modifications, or supplements required to be recorded by this Article shall be prepared, executed, acknowledged, and properly recorded on behalf of the Association by its president.

- 10.05. Predominance of Declaration: In the event of a conflict between the provisions of this Declaration and the Articles or the Bylaws, this Declaration shall prevail and dominate except to the extent this Declaration is inconsistent with the Act.
- 10.06. Binding Effect: This Declaration shall be binding upon and inure to the benefit of Declarant, the Association, and each and every Unit Owner, and their respective heirs, devisees, executors, administrators, legatees, legal representatives, successors, assigns, and creditors, and any and all other Persons having, at any time, an interest in the Property.
- 10.07. Separate Titles and Taxation: After conveyance by Declarant, each Unit, together with its interest in the Common Elements, shall constitute for all purposes a separate parcel of real property which shall be separately taxed and assessed.
- 10.08. Rule Against Perpetuities: In the event any provision of this Declaration, the Articles, the Bylaws, or the rules and regulations adopted or promulgated by the Association shall be found or declared unlawful, unenforceable, void, or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years following the death of the last survivor of the now-living descendants of the President of the United States, George W. Bush, and Governor of the State of West Virginia, Robert Wise.
- 10.09. Headings: The headings, titles, and captions contained in this Declaration are inserted only as a matter of convenience and for reference purposes only and shall not in any way define, limit, extend, or prescribe the scope or intent of any provision of this Declaration.
- 10.10. Severability: If any provision, article, section, sentence, clause, phrase, or word of this Declaration, the Articles, or the Bylaws, or the application thereof, in any circumstance, is held invalid, unenforceable, or unconstitutional, the validity, enforceability, and constitutionality of the remainder of this Declaration, the Articles, and the Bylaws, and the application of such provision, article, section, sentence, clause, phrase, or word, in any other circumstance, shall not be affected thereby, and the remainder of this Declaration, the Articles, and the Bylaws shall remain in full force and effect and be construed and interpreted as if such invalid, unenforceable, or unconstitutional part was never included: The provisions of this Declaration, the Articles, and the Bylaws are declared to be severable.

- 10.11. Applicable Law: The laws of the State of West Virginia shall govern the validity of this Declaration, the construction of its terms, and the interpretation of the rights, powers, duties, and obligations of the parties upon whom this Declaration shall be binding.
- 10.12. Singular and Plural: Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.
- 10.13. Failure to Enforce Not a Waiver of Rights: Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location within the Property or of any other provision of this Declaration. The failure of Declarant, Unit Owners, the Association, their successors and assigns, and any and all other Persons having an interest in the Property to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter nor of the right to enforce any other provision.
- 10.14. Maximum Number of Units: The maximum number of Units that may be created is 375. The maximum number of Units that may be created per acre is five (5) for detached, single family Units. Multifamily, townhomes and condominium Units may exceed five (5) Units per acre.
- 10.15. Legal Description of Units: For the purposes of this Declaration, as well as those other circumstances where a legally sufficient description of a Unit is necessary or required, the legal description of each Unit shall be designated by the identifying number of such Unit as set forth and shown on the Plat.
- 10.16. Notice: Unless otherwise provided, any notice required or permitted to be given under the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations adopted or promulgated by the Association shall be in writing, signed by the party giving such notice, and delivered in person or by certified United States mail, postage prepaid, return receipt requested, addressed as follows:
- (1) If to the Association, to the last known address of the then acting secretary of the Association.
 - (2) If to the Board, to the last known address of the then acting president of the Association.
 - (3) If to any Unit Owner, to the mailing address of such Unit Owner's respective Unit or to any other mailing address designated in writing.

It shall be the duty of each and every Unit Owner to notify the Association, in writing, of any change of address. Upon written request to the Association, the holder of any lien or security interest

encumbering any Unit shall be given a copy of all notices required or permitted to be given under the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations adopted or promulgated by the Association to the Unit Owner whose Unit is subject to such lien or security interest; provided, that such written request sets forth the address of such lienholder or secured party. In the event the address of any party entitled to notice is unknown to any party required or permitted to give such notice, notice shall be given and served by publication as a Class I legal advertisement as provided for in Article 3, Chapter 59 of the West Virginia Code, as amended from time to time. Unless expressly provided otherwise, for the purpose of giving or serving notice, the term "days" shall mean calendar days, including Sundays and all holidays.

IN WITNESS WHEREOF, Enrout Properties, LLC, a West Virginia limited liability company, has caused this Declaration to be duly executed to be effective as of the date first above written, by authority duly given.

Enrout Properties, LLC,
a West Virginia limited liability company
By: [Signature]
Glenn T. Adrian, Member

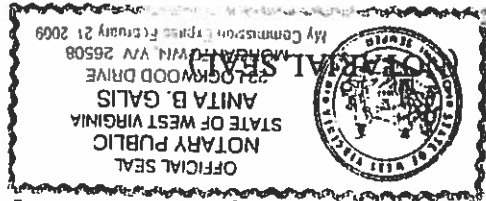
STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

I, Anita B. Galis, a notary public of said county, do certify Glenn T. Adrian, Member of Enrout Properties, LLC, a West Virginia limited liability company, who signed the writing hereto annexed, bearing date as of the 12th day of November, 2007, has this day in my said county, before me, acknowledged the same to be the act and deed of said company.

Given under my hand this 12 day of November, 2007.

My commission expires: 2-21-09

[Signature]
Notary Public



This instrument was prepared by: Brian D. Gallagher, Esq., Steptoe & Johnson PLLC, United Center, 1085 Van Voorhis Road, Suite 400, P.O. Box 1616, Morgantown, WV 26507-1616

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA
TO WIT:

I, [Signature], Monongalia County Clerk, do hereby certify that the foregoing writing, with certificate thereto annexed, was this day produced to me in my office and duly admitted to record.

Witness my hand

[Signature], Clerk

Monongalia County Clerk
Carve L. Blaney
AGREEMENT
Drawer 4
Date/Time: 11/14/2007 11:50
Inst #: 258755
Recd/Tax: 36.00

1357-1

**FIRST AMENDMENT TO
HARVEST RIDGE DECLARATION**

This First Amendment to Harvest Ridge Declaration ("First Amendment") is made and entered into this 12th day of December, 2007, by and between **Enrout Properties, LLC**, a West Virginia limited liability company, ("Declarant") and **Harvest Ridge Property Owners Association, Inc.**, a West Virginia non-profit corporation, ("Association").

RECITALS

1. By Harvest Ridge Declaration dated November 12, 2007, of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1355, at Page 190 (the "Declaration"), Declarant created and established Harvest Ridge, a planned community (the "Community").
2. By Articles of Incorporation dated November 12, 2007 and filed with the West Virginia Secretary of State on November 19, 2007, Declarant created Harvest Ridge Property Owners Association, Inc., a West Virginia non-profit corporation (the "Association") that has the general purpose of managing and governing the Community.
3. Paragraph numbered 5.01 of the Declaration provides that the initial purchaser of any Unit in the Community shall pay unto the Association at closing: (i) an initial assessment of Two Hundred Dollars (\$200.00) as a general reserve; and (ii) a road impact fee of Five Hundred Dollars (\$500.00) to be held in reserve by the Association for paying for the installation of top coat of pavement and to make other repairs and maintenance to roadways, all as more particularly described in the Declaration.
4. Declarant desires to amend the Declaration to allow purchasers of Units that purchase a Unit for purposes of constructing a home on the Unit then selling the Unit and home to a third party, to defer payment of the initial assessment and the road impact fee until such time as the initial purchaser conveys the Unit to a third party.

5. The Association consents to the terms of this Amendment and joins herein to expressly consent to the terms and conditions of this Amendment.

NOW, THEREFORE, WITNESSETH: That for and in consideration of Ten Dollars (\$10.00), cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declaration and the Association hereby consents to this Amendment:

1. Paragraph numbered 5.01 of the Declaration shall be amended by adding the following paragraph to Section 5.01:

5.01(a): Deferral of Initial Assessment Deposit: In the event the initial purchaser of any Unit in the Community purchases the Unit for purposes of constructing a home on the Unit and then selling the Unit to a third party, such initial purchaser shall be entitled to defer the initial assessment of Two Hundred Dollars (\$200.00) per Unit and the road impact fee of Five Hundred Dollars (\$500.00) per Unit until the date of the conveyance of the Unit to the next purchaser. In the event the Unit is used and occupied for residential purposes prior to the conveyance of the Unit to a third person, the initial purchaser shall pay all assessments required by Section 5.01 of the Declaration within thirty (30) days of the Unit being utilized for residential purposes. In the event the initial purchaser conveys the Unit to a third party prior to constructing a home on the Unit, all assessments contained in Section 5.01 of the Declaration shall be due and payable in full at the time of closing of the sale of the Unit to a third party. If the initial purchaser fails to pay the assessments provided in Section 5.01 of the Declaration within the time periods provided for in this paragraph 5.01(a), the initial purchaser and any subsequent purchaser shall be

liable for the full payment of the assessments provided for in Section 5.01 of the Declaration. In the event of non-payment, the Association shall be entitled to impose a lien upon the Unit, collect the assessments pursuant to the lien, regardless of the owner of the Unit, and pursue any and all remedies available in the Declaration or at law or in equity.

This Amendment does not amend or modify any of the terms of the existing Section 5.01 of the Declaration. It is the intent of this Amendment to supplement Section 5.01 of the Declaration by adding Section 5.01(a) to the Declaration, as contained in this First Amendment. Unless expressly modified herein, all terms and conditions of the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, Enrout Properties, LLC, a West Virginia limited liability company, has caused this First Amendment to be executed by Glenn T. Adrian, its Member, by authority duly given, and Harvest Ridge Property Owners Association, Inc., a West Virginia non-profit corporation, has caused this First Amendment to be executed by Glenn T. Adrian, its President, by authority duly given, each as of the day first above written.

ENROUT PROPERTIES, LLC,
a West Virginia limited liability company

By: Glenn T. Adrian
Glenn T. Adrian, Member

HARVEST RIDGE PROPERTY OWNERS
ASSOCIATION, INC., a West Virginia non-profit
corporation

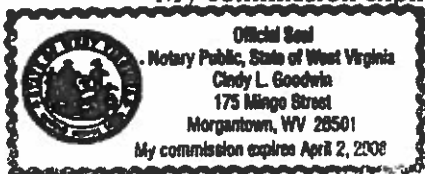
By: Glenn T. Adrian
Glenn T. Adrian, President

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

I, Cindy Goodwin, a notary public of said county, do certify that Glenn T. Adrian, the Member of Enrout Properties, LLC, who signed the writing hereto annexed, bearing date as of the 12th day of December, 2007, has this day in my said county, before me, acknowledged the same to be the act and deed of said limited liability company.

Given under my hand this 12th day of DECEMBER, 2007.

My commission expires: APRIL 2, 2008



(NOTARIAL SEAL)

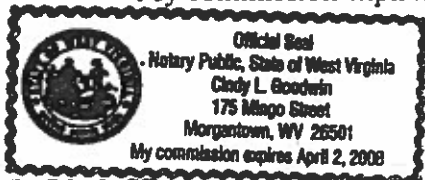
Cindy Goodwin
Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

I, CINDY GOODWIN, a notary public of said county, do certify that Glenn T. Adrian, the President of Harvest Ridge Property Owners Association, Inc., who signed the writing hereto annexed, bearing date as of the 12th day of December, 2007, has this day in my said county, before me, acknowledged the same to be the act and deed of said corporation.

Given under my hand this 12th day of DECEMBER, 2007.

My commission expires: APRIL 2, 2008



(NOTARIAL SEAL)

Cindy Goodwin
Notary Public

This First Amendment to Harvest Ridge Declaration was Prepared by: Brian D. Gallagher, Esq., Steptoe & Johnson PLLC, United Center, Suite 400, 1085 Van Voorhis Road, P. O. Box 1616, Morgantown, West Virginia, 26507-1616.