

Declaration of Covenants, Conditions and Restrictions for Cloverdale Heights

The Declaration of Covenants, Conditions and Restrictions have been transcribed from originals recorded in the Office of the County Clerk of Jefferson County in the state of West Virginia.

However, the Declaration of Covenants, Conditions and Restrictions had been reprinted and circulated December 10, 1997 and certain inconsistencies were found. In all cases of inconsistency the official recorded document shall prevail.

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First Amendment [8 September 1989; 4 pages plus 20 pages of attachments]:

To accommodate addition of plat for Section II of Cloverdale Heights, the text of Section 10.1(32) describing the property was expanded.

Schedules A-2, -3, -4, -5, -7, were changed to include plat for Section II.

The text of Section 10.1(33) was modified to account for the plat revisions.

Second Amendment [30 October 1989; 2 pages]:

Revised Section 10.1(18) to permit granting of waiver of setback requirements under specified conditions existing on the lot.

Third Amendment [October 1999; 1 page]:

In Section 10.1(21), the (then second) sentence "This limitation shall expire on December 31, 2000." was deleted.

PREAMBLE

Marcus Enterprises, a partnership, ("Declarant") does hereby submit the real property in Kabletown Magisterial District, Jefferson County, West Virginia, described in Schedule A-1, to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101, et seq. ("Act") for the purpose of creating Cloverdale Heights and making the improvements shown in the plat and plans attached as Schedules A-1 through A-8, and does hereby declare that the property described on Schedule A-1 shall be held and conveyed subject to the following terms, covenants, restrictions, and conditions:

NOTE:

This document was prepared by Marcus Enterprises, a partnership, to create Cloverdale Heights. It and three amendments are recorded in the Office of the County Clerk of Jefferson County West Virginia.

[October 18, 1988, Book 615 at Page 520; September 8, 1989, Book 638 at Page 313; October 27, 1989 Book 642 at Page 371; October 15, 1999, Book 931 at Page 284.]

ARTICLE I

Definitions

Section 1.1

Act.

The Uniform Common Interest Ownership Act, West Virginia Code § 36B-1-101, et seq., as it may be amended from time to time.

Section 1.2

Allocated Interests.

The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community.

The Allocated Interests are described in Article IX of this Declaration and shown on Schedule A-2

Section 1.3

Association.

Cloverdale Heights Homeowners Association, Inc., a non-profit corporation organized under West Virginia Code § 31-1-1. et seq.

It is the Association of Unit owners pursuant to § 3-101 of the Act.

Section 1.4

Bylaws.

The Bylaws of the Association, as they may be amended from time to time.

Section 1.5

Common Elements.

Each portion of the Common Interest Community other than a Unit.

Section 1.6

Common Expenses.

The expenses or financial liabilities for the operation of the Common Interest Community.

These include:

- (i) Expenses of administration, maintenance, repair, or replacement of the Common Elements;
- (ii) Expenses declared to be Common Expenses by the Documents or by the Act;
- (iii) Expenses agreed upon as Common Expenses by the Association- and
- (iv) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 1.7

Common Interest Community.

The real property described in Schedule A-1 subject to the Declaration of Covenants, Conditions and Restrictions of Cloverdale Heights.

Section 1.8

Construction.

Any land disturbing activity, including surveying, excavating, or digging, or the building, installing, erecting, maintaining, remodeling, reconstructing, renovating, removing, or destroying of any improvement.

Section 1.9

Declarant.

Marcus Enterprises, a partnership, or its successor as defined in §1-103(12) of the Act.

Section 1.10

Development Rights.

The rights reserved by the Declarant under Article VIII of this Declaration to

- (i) add real estate to the Common Interest Community;
- (ii) create Units, or Common Elements within the Common Interest Community;
- (iii) subdivide Units or convert Units into Common Elements, or
- (iv) withdraw real estate from the Common Interest Community.

Section 1.11

Director.

A member of the Executive Board.

Section 1.12

Documents.

The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Act, the Bylaws, and the Rules as they may be amended from time to time.

Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

Section 1.13

Eligible Insurer.

An insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit.

Such notices shall be deemed to include a request that the eligible insurer be given the notices and other rights described in Article XVI.

Section 1.14

Eligible Mortgagee.

The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit.

Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI.

Section 1.15

Executive Board.

The board of directors of the Association.

Section 1.16

Improvements.

Any construction, structure, fixture or facilities of any kind of either a temporary or permanent nature, constructed above, at or below ground level, including, but not limited to, a house, garage, swimming pool, antenna, TV satellite dish, fence, wall, driveway, or parking lot.

Section 1.17

Limited Common Elements.

A portion of the Common Elements allocated by the Declaration or by operation of § 2-102 (2) or (4) of the Act for the exclusive use of one or more but fewer than all of the units.

Section 1.18

Majority or Majority of Unit Owners.

The owners of more than 50% of the votes in the Association.

Section 1.19

Manager.

A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.20

Notice and Comment.

The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon.

The procedures for Notice and Comment are set forth in [Section 24.2] § 22.1 of this Declaration.

Section 1.21

Notice and Hearing.

The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in [Section 24.2] § 22.2 of this Declaration.

Section 1.22

Person.

An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.23

Plat.

The plat filed with this Declaration as Schedule A-2, as it may be amended from time to time.

Section 1.24

Property.

The land and all improvements, easements, rights, and appurtenances which have been submitted to the provisions of the Act by this Declaration.

Section 1.25

Rules.

Rules for the use of Units and Common Elements and for the conduct of persons within the Common interest Community, adopted by the Executive Board pursuant to this Declaration.

Section 1.26

Security Interest.

An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation.

The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.27

Special Declarant Rights.

Rights reserved for the benefit of a declarant to

- (i) complete improvements indicated on plats and plans filed with the Declaration;
- (ii) exercise any Development right;
- (iii) maintain sales offices, management offices, signs advertising the Common Interest Community, and models, including model homes and home sites;
- (iv) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; or
- (v) appoint or remove an officer of the Association or a master association or any Executive Board member during any period of Declarant control.

Section 1.28

Trustee.

The entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws.

If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

Section 1.29

Unit.

A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Section 4.2 of this Declaration.

Section 1.30

Unit Owner.

The declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE II

Name and Type of Common Interest Community and Association

Section 2.1

Common Interest Community.

The name of the Common Interest Community is Cloverdale Heights. Cloverdale Heights is a planned community.

Section 2.2 -

Association.

The name of the Association is Cloverdale Heights Homeowners Association, Inc.

ARTICLE III

Description of Land

The entire Common Interest Community is situated in the Kabletown Magisterial District, Jefferson County, West Virginia.

A description of the real estate included in Cloverdale Heights is contained in Schedule A-1.

ARTICLE IV

Maximum Number of Units; Boundaries

Section 4.1

Maximum Number of Units.

The Common Interest Community upon creation contains fifty seven (57) Units. As each subdivision is added it contains the number of Units shown in the most current Schedule A-2.

The Declarant reserves the right to create up to a total of one hundred forty (140) Units.

Section 4.2

Boundaries.

Boundaries of each Unit created by the Declaration are shown on Schedule A-2 as numbered lots.

The identifying number of each unit is shown on Schedule A-2.

ARTICLE V

Common Elements and Limited Common Elements

Section 5.1

The portions of Common Elements on Schedule A-3 are Limited Common Elements and are assigned to the Units as stated therein.

Section 5.2

The real estate which is or must become Common Elements is described in Schedule A-4.

ARTICLE VI

Maintenance, Repair and Replacement

Section 6.1

Common Elements.

The Association shall maintain, repair and replace all of the portions of the Common Elements which are not required by this Declaration or the Act to be maintained, repaired or replaced by the Unit Owners.

Section 6.2

Units.

Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof required by the Declarant to be maintained, repaired or replaced by the Association.

Section 6.3

Limited Common Elements.

Any common expense associated with the maintenance, repair, or replacement of the Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element is assigned, as shown on Schedule A-3.

If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Section 6.4

Access.

Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, meters, wires and equipment, provided that requests for entry are made in advance and that any such entry at a time reasonably convenient to the affected Unit Owner.

In case of an emergency, no such request or notice is required and such right or entry shall be immediate, and with such force as is apparently necessary to gain entrance, whether or not the Unit Owner is present at the time.

Section 6.5

Repairs Resulting from Negligence.

Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by his or her failure to properly maintain, repair or make replacement to his or her Unit.

The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following notice and hearing.

In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Unit Owner for any damages caused to the Unit in gaining entrance to the Unit or in otherwise responding to the emergency.

The Unit Owner shall be responsible for making all repairs to the Unit which result from the emergency and shall hold the Association harmless from any damages resulting therefrom.

ARTICLE VII

Subsequently Allocated Limited Common Elements

Those portions of the Common Elements shown on Schedule A-5 may be subsequently allocated as Limited Common Elements in accordance with Subsection 8.1 (b) and Article XII of this Declaration, or may be assigned by rule of the Executive Board, or may be limited by rule to visitors only.

ARTICLE VIII

Development Rights and Other Special Declarant Rights

Section 8.1

Reservation of Development Rights.

The Declarant reserves the following Development Rights:

(a) The right by amendment to add real estate to the Common Interest Community.

The real estate to which this development right applies is set forth in Schedule A-6.

(b) The right by amendment to create Units, Common Elements, or Limited Common Elements within the Common Interest Community.

(c) The right by amendment to subdivide and combine Units or convert Units into Common Elements.

(d) The right by amendment to withdraw real estate from the Common Interest Community.

(e) The real estate to which the Development Rights specified in Paragraphs (b) and (c) above is set forth in Schedule A-1.

The real estate to which the Development Rights specified in Paragraph (d) apply is shown in Schedule A-8.

Section 8.2

Limitations on Development Rights.

The Development Rights reserved in Section 8.1 must be exercised within 15 years after the recording of the initial Declaration.

Section 8.3

Phasing of Development Rights.

Any of the Development Rights set forth in Section 8.1 above may be exercised with respect to different parcels of real estate within the Common Interest Community at different times.

However, no assurances are made by the Declarant as to the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed.

The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

Section 8.4

Special Declarant Rights.

The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

(a) To complete improvements indicated on Plats and Plans filed with the Declaration,

- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and models;
- (d) To use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate which may be added to the Common Interest Community.
- (e) To appoint or remove an officer of the Association or an Executive Board member during a period of Declarant control subject to the provisions of Section 8.1 of this Declaration.
- (f) The real estate to which the special declarant rights specified in Sections (a) through (e) above is shown on Schedule A-1.

Section 8.5

Models, including model homes and home sites, Sales Offices and Management Offices.

As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit or sales office or management office.

Section 8.6 –

Declarant's Easement.

Subject to the provisions of this Declaration, a Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights.

Section 8.7

Unit Owners' Easement.

Unit Owners have an easement in the Common Elements for purposes of access to their Units and to use the Common Elements and all real estate that must become Common Elements for all other purposes.

Section 8.8

Signs and Marketing.

The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 8.9

Declarant's Personal Property.

The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association.

The Declarant reserves the right to remove from the property any and all goods and [i]Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 8. 10

Declarant Control of the Association.

(a) Subject to Subsection 8.10(b): There shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of

(i) sixty (60) days after conveyance of 75 percent of the Units that may be created to Unit Owners other than a Declarant,

(ii) two years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) two years after any right to add new Units was last exercised.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than 60 days after conveyance of 25 percent of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than 25 percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Not later than 60 days after conveyance of 50 percent of the Units that may be created to Unit Owners other than a Declarant, not less than 33-1/3 percent of the members of the Executive Board must be elected by Unit Owners other than Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Unit Owners.

The Executive Board shall elect the officers.

The Executive Board members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under § 3-108 of the Act, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 8.11

Limitations on Special Declarant Rights.

Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: so long as the Declarant

(i) is obligated under any warranty or obligation,

(ii) holds a Development Right to create additional Units or Common Elements,

(iii) owns any Unit; or

(iv) owns any Security Interest in any Units; or

(v) for fifteen years after recording this Declaration, whichever is earliest. Earlier termination of certain rights may occur by statute.

Section 8.12

Interference with Special Declarant Rights.

Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 8.13

Rights of Lenders to the Declarant.

Additional limitations on the right of the Declarant to exercise Development Rights may be found in Section 16.5 of the Declaration.

ARTICLE IX

Allocated Interests

Section 9.1

Allocation of Interests.

The table showing Unit numbers and their Allocated Interests is attached as Schedule A-7.

These interests have been allocated in accordance with the formulas set out in this Article IX.

The formulas are to be used in reallocating interests if Units are added to the Common Interest Community.

Section 9.2

Formulas for the Allocation of Interests.

The Interests allocated to each Unit have been calculated on the following formulas:

(a) Liability for the Common Expenses.

A percentage of liability for Common Expenses allocated to each Unit is based on the number of Units listed on the most current Schedule A-2.

Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article XII or Article VI of this Declaration.

The total amount of Common Expenses shall be divided by the number of Units listed in the most current Schedule A-2 to arrive at a proportional share of Common Expenses to be allocated to each Unit.

Each Unit shall be allocated one share of Common Expenses so calculated.

As Units are added to the Common Interest Community, the allocation of expenses shall be adjusted to reflect the total number of Units shown on the current Schedule A-2.

(b) Votes.

Each Unit in the Common Interest Community shall have one equal vote.

Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the documents, means the specified percentage, portion, or fraction of all the votes as allocated according to the number of Units listed in the most current Schedule A-2.

As Units are added to the Common Interest Community, each Unit shall continue to have one equal vote.

Section 9.3

Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights.

The effective date for assigning Allocated Interests to Units created pursuant to Section 8.1 of this Declaration shall be the date on which the amendment creating the Units is recorded on the Land Records of Jefferson County, West Virginia.

ARTICLE X

Restrictions on use, Alienation and Occupancy

[as it was stated]

Section 10.1

Use and Occupancy Restrictions.

Subject to the Special Declarant Rights reserved under Article VIII, the following Use and Occupancy Restrictions apply to all Units and, where applicable, to the Common Elements:

No lot shall be split, divided, or subdivided by sale, resale, gift, devise, transfer or otherwise.

No house trailer or mobile home or any similar item shall be stored in the open on any lot.

No building of a temporary nature, nor trailer, nor mobile home, nor tent, except a child's tent, shall be erected or placed on the property, except that this shall not be construed to prohibit the placing of a trailer or any other temporary structure upon the premises as an incidence to the construction of dwelling houses upon said premises.

No temporary building, trailer, basement, tent, shack, garage, barn, outbuilding or other building erected in the course of construction shall be used temporarily or permanently as a residence on any lot.

No more than one dwelling may be erected on any one lot.

Garages, carports or car shelters shall be attached to and remain a part of the main dwelling structure.

When any dwelling structure shall be constructed on any lot, the owner thereof shall cause that portion of such lot owned by him and not improved by said dwelling structure, other building, appurtenance or driveway to be properly graded, seeded and suitably planted with grass, trees, or shrubbery.

Each owner shall keep all lots owned by him, and all improvements therein or thereon, in good order and repair, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner with such frequency as is consistent with good property management.

No manufacturing or commercial establishment of any kind shall be erected on said property and no building erected thereon shall be used for commercial purposes, nor shall said property in any way be used for other than strictly residential, but nothing herein contained shall be construed to prevent a bona fide lease of any dwelling house erected upon said lot, for residential purposes.

No signs, billboards, or advertising devices of any kind except those used in any subsequent sale of the property, shall be placed or otherwise installed on any lot or building within the subdivision, except that the Declarant may use signs to promote the sale of improved or unimproved lots within the subdivision.

Domesticated house pets shall be allowed within the subdivision, provided such pets are contained within a fenced in area, or secured by a leash, chain or rope.

No animals shall be allowed to roam freely within the subdivision.

No livestock, including but not limited to, cattle, hogs, horses, ponies, chickens, goats, or fowl of any kind shall be permitted on the premises.

No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any lot, except building materials during the course of construction of any dwelling.

All trash or other refuse must be kept or stored in covered metal or plastic containers.

If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the lot so as to provide access to persons making such pickup.

At all other times such containers shall be stored in such a manner so they cannot be seen from adjacent and surrounding property.

No noxious or offensive activity shall be permitted on any lot, nor anything done thereon which may become a nuisance to the neighborhood.

No open fires, other than cooking grills, shall be permitted on any part of the property.

Outdoor fireplaces, if built, and all chimneys shall be provided with fire screens.

No outhouses shall be permitted on any part of the property.

All toilet facilities shall be contained within the dwelling house and be emptied into an individual septic tank and drainage field sewage disposal system or a public sewage system.

All toilet and waste facilities shall be built and maintained in accordance with the requirements of the West Virginia State Department of Health.

No unregistered automobiles, truck[s], motorcycles, motorbikes, or other vehicles, whether motorized or self propelled, shall be parked or placed anywhere within the subdivision; nor shall the same be driven or ridden upon any streets, roadways, alleys or sidewalks within the subdivision, nor upon any lot, open area or trail within the subdivision.

No on-street parking shall be permitted of any vehicles, nor shall unlicensed or unused vehicles or commercial vehicles be parked or abandoned on any lot.

No motorbikes, trail bikes, motor scooters or the like, nor any snowmobile shall be driven or ridden anywhere within the subdivision. No unregistered motorized vehicle shall be operated anywhere within the subdivision.

No fence shall be permitted within the subdivision except fences constructed of board, stone, hedge, wooden picket, or split rail and provided said fences be placed along the back property line, along the side property lines to points not to exceed the rear building line, and across the lot from said points to the rear corners of the building (dwelling).

Privacy fences may be erected around the perimeters of swimming pools and tennis courts.

The design of all private fencing must be approved by the Declarant, its successors or assigns or their authorized agent prior to construction.

Extreme outside lines of dwellings including attached garage, porch or carport shall not be less than forty (40) feet from the lot right of way frontage (front lot line) nor less than twelve (12) feet from the side or rear lot line.

Except that the Declarant reserves unto itself, its successors and/or assigns the right to grant a waiver of the setback requirements stated in this paragraph to the owner of any lot on which the location of the water well and septic reserve area make the construction of a residence on the lot impractical otherwise.

Such waiver shall be in writing and shall state the setback requirements which shall apply to the lot for which the waiver is granted.

To be effective, any such waiver shall be recorded in the aforesaid Clerk's office in the name of the Declarant, its successors and/or assigns, as grantor and the owner of such lot as grantee.

In no event shall the minimum setback requirements be less than twenty five (25) feet from the front lot line nor less than twelve (12) feet from the side and rear lot lines for any lot for which a waiver is granted. [As amended: Second Amendment]

Dwellings must be completed before being occupied and all dwellings must be finished on the exterior so as not to detract from the value of other property owners.

Dwellings shall not be left with exposed cinder blocks or any type of temporary siding or sheathing. (In no instance shall any exterior be left unfinished more than 180 days from beginning of construction.)

If poured concrete walls are used then they must be painted the matching color of the exterior siding, if brick or stone is used as the dwelling face then the brick or stone must extend to grade level, Any exposed masonry must be covered with brick or stone to grade level.

Outbuildings erected on each lot are to be limited to those uses related to single-family dwellings and no structure shall be of unfaced concrete block or unfinished materials.

Grantor or his agent shall review all such structures to determine that it shall not detract from the appearance of any home.

No dwelling or other improvement shall be erected until the plans and specifications, including exterior color design, have been submitted to and approved in writing by the Developer, its successors or assigns or their authorized agent.

Approval of plans and specifications shall not be arbitrarily or unreasonably withheld.

Further, any building commenced on said property shall be completed within one year of said commencement date. [As amended: Third Amendment]

Dwellings must have the following minimum areas of livable space. (excluding space contained in basements, breezeways, carports, garages and porches.)

(a) Single story houses: 1,400 square feet

(b) Split foyer houses: 1,400 square feet, 75% of which must be on the first floor, unless a garage is attached to the house, in which case 65% of which must be on the first floor (exclusive of garage).

(c) Two-story and one and one-half story houses: 1,800 square feet, one-half of which must be on the first floor.

Driveways to house sites on all lots shall be constructed by the Unit Owner Grantee at his cost with a culvert (metal drain) across the front of said driveway.

Specifications for each culvert must be approved by the Declarant, Developer or its successors and assigns, or their authorized agent.

Declarant reserves unto itself, its successors and/or assigns, a perpetual utility and/or drainage easement 10 feet in uniform width along the front, sides and rear of each lot for the purpose of constructing, installing, operating and maintaining underground utility lines, pipes and related facilities for the purpose of providing utility service within the common interest community and for the purpose of maintaining proper drainage throughout the Common Interest Community, except that said easement shall be 20-feet in width along the sides of Lots 56 and 57 which front on Jessie Lane.

All public utility services shall be buried below ground on all subdivision lots.

No television, radio, or other type antenna or satellite dish shall be erected on any portion of a lot except behind the rear line of a residence and not more than 25 feet from the rear building line of the residence.

No private or public hunting shall be permitted anywhere within the developed or undeveloped lands of the subdivision.

No lot shall have access to any road other than those of Cloverdale Heights Development.

No dwelling shall be constructed using a steel frame.

If a dwelling is to be constructed using modular components, then said dwelling must have **[not less than]** a 4/12 roof pitch and the exterior must have a total brick or stone face on all four sides to grade level.

NOTE: in the DCCR re-print "not less than" was omitted between "have" and "a"

No churches or houses of worship will be permitted within the Cloverdale Heights Development.

The Unit Owner, for himself and his heirs, successors or assigns, acknowledge that the property conveyed to him by deed and being a parcel of the subdivision shall be subject to an annual charge or assessment in such amount as provided by the Documents.

Declarant reserves unto itself, its successors and/or assigns those certain storm drainage easements as are shown on the final plat showing "Section I, Lots 1 - 57, Cloverdale Heights", made by Appalachian Surveys, and dated May 1988, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 8, at page 18, et seq. which plat supersedes an earlier plat recorded in the aforesaid Clerk's Office in Plat Book 7, at page 108, et seq. and as are further shown on the final plat showing "Lots 58 through 137, Section II, Cloverdale Heights, Kabletown District, Jefferson County, West Virginia, made by Appalachian Surveys, Inc. and dated January 6, 1989, and recorded in the aforesaid Clerk's Office in Plat Book 8, at page 46, et seq. for the purpose of maintaining drainage of storm water throughout the Common Interest Community. [As amended: First Amendment]

Declarant reserves unto itself, its successors and/or assigns, a perpetual sign and utility easement over and upon Lots 1 and 9 as shown on the final plat showing "Section I, Lots 1 - 57, Cloverdale Heights:", made by Appalachian Surveys, Inc., dated May 1988 and recorded in the aforesaid Clerk's Office in Plat Book 8, at page 18, et seq. which plat supersedes an earlier plat recorded in the aforesaid Clerk's Office in Plat Book 7, at page 108, et seq. for the purpose of erecting, constructing, and maintaining entrance signs, gates and lights. [As amended: First Amendment]

Section 10.2

Restrictions on Alienation.

A Unit may not be conveyed pursuant to a timesharing plan.

A Unit may not be leased or rented for a term of less than 30 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 10.3

Declarant's Rights.

Notwithstanding the foregoing, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office.

The Declarant may also maintain management offices and signs and displays advertising the Common Interest Community.

ARTICLE XI

Easement and Rights of Way

Section 11.1

Existing Easements and Rights of Way.

All easements or rights of way to which the Common Interest Community is presently subject are shown on Schedule A-2, or are set forth in Sections 8.6, 8.7, 10.1, 11.2 and 11.3 of this Declaration.

In addition, the Common Interest Community may be subject to other easements or rights of way granted by the Declarant pursuant to its powers under Article VIII of this Declaration.

Section 11.2

Access Right of Way.

Declarant reserves unto itself, its successors and/or assigns and invitees a perpetual and non-exclusive easement or right of way for ingress, egress and access of all kinds over and across all of the Common Elements and Limited Common Elements of the Common Interest Community to and from all points within the Common Interest Community for all purposes.

Section 11.3

Utility Easement.

Declarant reserves unto itself, its successors and/or assigns a perpetual easement or right of way over all of the Common Elements and Limited Common Elements within the Common Interest Community for the purpose of constructing, operating and maintaining

underground utility lines, pipes, wires, ducts, conduits and other related facilities for the purpose of furnishing utility service within the Common Interest Community.

ARTICLE XII

Allocation and Reallocation of Limited Common Elements

Common Elements are allocated equally among all Units.

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to the provisions of this Article XII.

All allocations will be made by amendments to the Declaration specifying to which Unit or Units the Limited Common Element is allocated.

All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon.

The person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Act, shall record it.

The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Common Interest Community.

The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE XIII

Relocation of Boundaries Between Adjoining Units

Section 13.1

Application and Amendment.

Subject to other provisions of law, including land use and health regulations, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation.

If the owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations.

Unless the Executive Board determines, within 30 days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent.

The amendment must be executed by those Unit Owners affected and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon.

On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 13.2

Recording Amendments.

The Association shall prepare and record Plats or Plans necessary to show the altered boundaries between adjoining Units, and the Units' dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if the Executive Board deems it necessary to employ a consultant.

ARTICLE XIV

Amendments to Declaration

Section 14.1

General.

Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article XII of this Declaration and § 1-107 of the Act, or by certain Unit Owners under Article XII and Section 13.1 of this Declaration and § 2-117 of the Act, and except as limited by Section 14.4 and Article XVII of this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

This procedure for amendment must follow the procedures of § 2-117 of the Act.

Section 14.2

Limitation of Challenges.

An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 14.3

Recordation of Amendments.

Each amendment to the Declaration must be recorded in each recording district in which a portion of the Common Interest Community is located and the amendment is effective only upon recording.

An amendment, except an amendment pursuant to Article XIII of this Declaration, must be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 14.4

When Unanimous Consent Required.

Except to the extent expressly permitted or required by other provisions of the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated interests of a Unit or the uses to which a Unit is restricted, in the absence of unanimous consent of the Unit Owners.

Section 14.5

Execution of Amendments.

An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.6

Special Declarant Rights.

Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 14.7

Consent of Holders of Security Interests.

Amendments are subject to the consent requirements of Article XVI

Section 14.8

Amendment to Create Units.

To exercise any Development Right reserved under Section 8.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration.

The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Subsections (a), (b) and (d) of § 2-109 of the Act or new certifications of Schedule A-2 previously recorded if the Schedule otherwise conforms to the requirements of those Subsections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units.

The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Subsection 2-108(a) of the Act.

ARTICLE XV

Termination

Termination of the Common Interest Community may be accomplished only in accordance with § 2-118 of the Act.

ARTICLE XVI

Mortgagee Protection

Section 16.1

Introduction.

This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests.

This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2

Percentage of Eligible Mortgagees.

Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3

Notice of Actions.

The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, as applicable, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4 of the Declaration; and
- (e) Any judgment rendered against the Association.

Section 16.4

Consent Required

(a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4(a) may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration).

The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. Material includes, but is not limited to, any provision effecting:

- (i) Assessments, assessment liens or subordination of assessment liens;
- (ii) Voting rights;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in such Units must approve such action;
- (vi) Rights to use Common Elements and Limited Common Elements;
- (vii) Definitions of boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action;
- (viii) Convertibility of Units into Common Elements or Common Elements into Units;
- (ix) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest community;
- (x) Insurance or fidelity bonds;
- (xi) Leasing of Units;
- (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her unit;
- (xiii) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (xiv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
- (xv) The benefits of mortgage holders, insurers or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, without the approval of at least 51 % of the Eligible Mortgagees:

(i) Convey or encumber the Common Elements or any portion thereof, as to which an 80% Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);

(ii) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(iii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;

(iv) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

(v) The merger of this Common Interest Community with any other common interest community;

(vi) The granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one year);

(vii) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(viii) Any action taken not to repair or replace the Property.

(a) The Association may not change the period for collection of regularly budgeted Common Expense assessments to less frequently than annually without the consent of all Eligible Mortgagees.

(b) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Documents shall constitute an implied approval of the addition or amendment.

Section 16.5

Development Rights.

No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.6

Inspection of Books.

The Association shall permit any Eligible Mortgagee or Eligible Insurer to inspect the books and records of the Association during normal business hours.

Section 16.7

Financial Statements.

The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if

(a) the common Interest Community contains fifty or more Units, in which case the cost of the audit shall be a Common Expense; or

(b) any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 16.8

Enforcement.

The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9

Attendance at Meetings.

Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

Section 16.10

Appointment of Trustee.

In the event of damage or destruction under Article XXI or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 1.28 of this Declaration. Such Trustee may be required to be a corporate trustee licensed by the State of West Virginia. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

ARTICLE XVII

Assessment and Collection of Common Expenses

Section 17.1

Apportionment of Common Expenses.

Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Schedule A-2 to this Declaration.

Section 17.2

Common Expenses Attributable to Fewer than all Units.

(a) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned.

If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

(e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

(f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 17.4

Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due.

Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section.

If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a lien and encumbrance recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit.

A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection to the extent of the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Section 17.5 of this Article which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection.

This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of a lien for other assessments made by the Association.

A lien under this Section is not subject to the provisions of WV Code § 38-9-3.

(c) Recording of the Declaration constitutes record notice and perfection of the Lien. Further recording of a claim of lien for assessment under this Section is not required.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due, provided, that if an owner of a Unit subject to a lien under this Sections files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under WV Code § 38-4-1, et seq.

(h) The Association's lien must be foreclosed as a mortgage or deed of trust on real estate is foreclosed, or as a lien is foreclosed under WV Code Sec. 38-5-1, et seq.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action.

The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expenses assessments based on a periodic budget adopted by the Association pursuant to Section 17.5 of this Declaration.

(j) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.4 (b) of this Declaration.

Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(k) In the case of foreclosure under WV Code § 38-5-1, et seq. the Association shall give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.

(l) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.5

Budget Adoption and Ratification.

Within 30 days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary.

Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present.

If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.6

Ratification of Non-budgeted Common Expense Assessments.

If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15%) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.5.

Section 17.7

Certificate of Payment of Common Expense Assessments.

The Association upon written request shall furnish to a Unit Owner a statement in [sic] recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within [10] days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.8

Acceleration of Common Expense Assessments.

In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9

Commencement of Common Expense Assessments.

Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Common expense assessments shall be due not less frequently than annually and according to such rules as may be adopted by the Association.

A full years assessment may be required to be paid at closing by a Unit Owner purchasing a Unit from the Declarant.

Section 17.10

No Waiver of Liability for Common Expenses.

No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11

Personal Liability of Unit Owners.

The Unit Owner of a Unit at the time a Common Expense Assessment or portion thereof is due and payable is personally liable for the assessment.

Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

ARTICLE XVIII

Right to Assign Future Income

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one (51 %) percent of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee[s] consent [as] described in Article XVI.

ARTICLE XIX

Persons and Units Subject to Documents

Section 19.1

Compliance with Documents.

All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents.

The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded on the Land Records of Jefferson County, West Virginia, are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

Section 19.2

Adoption of the Rules.

The Executive Board may adopt Rules regarding the use and occupancy of Units affecting the Common Elements and Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE XX

Insurance

Section 20.1

Coverage.

To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2

Property Insurance.

(a) Property insurance covering:

(i) All Common Elements and property reserved to become Common Elements, but excluding land, excavations, foundations, and other items normally excluded from property policies; and

(ii) All personal property owned by the Association.

(b) Amounts.

The Common Elements and reserved Common Elements equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date.

Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project Facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000.00 or one percent (1 %) of the policy face amount. The policy deductible shall be paid by the Association as a Common Expense.

(c) Risks Insured Against.

The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

(d) Other provisions.

Insurance policies required by this Section shall provide that:

(i) Each Unit owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in Association.

(ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) If, at the 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 policy of the Association provides primary insurance.

(v) Loss must be adjusted with the Association.

(vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

(vii) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(viii) The name of the insured shall be substantially as follows:

"Cloverdale Heights Homeowners Association for the use and benefit of the individual Owners."

Section 20.3

Liability Insurance.

Liability insurance, including medical payments insurance, in an amount determined by the Executive 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, and the activities of the Association.

(a) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:

(i) Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) If, at the 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 policy of the Association provides primary insurance.

(v) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4

Unit Owner Policies.

An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.5

Other Insurance.

The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners, including but not limited to Worker' Compensation insurance and directors' and officers' liability insurance.

Section 20.6

Premiums.

Insurance premiums shall be a Common Expense.

ARTICLE XXI

Damage To Or Destruction of Property

Section 21.1

Duty to Restore.

A portion of the Common Interest Community for which insurance is required under Section 3-113 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Common Interest Community is terminated,
- (b) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2

Cost.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3

Plans.

The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4

Replacement of Less Than Entire Property.

If the entire Common Interest Community is not replaced or repaired:

(a) 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;

(b) Except as to the extent that other persons will be distributees,

(i) the insurance proceeds attributable to units or Limited Common Elements that are not rebuilt must be distributed to the owners of those units and owners of the units to which those Limited Common Elements were allocated, or to the lien holders, as their interest may appear, and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the Common Element interests of all the Units.

Section 21.5

Insurance Proceeds.

The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the president, shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear.

Subject to the provisions of Subsection 21.1 (a) through Subsection 21.1 (c) of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and lien holders are not 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 is terminated.

Section 21.6

Certificates by the Executive Board.

The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not damaged or destroyed Property is to be repaired or restored;

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7

Certificates by Attorneys or Title Insurance Companies.

If payments are to be made to Unit Owners or mortgagees, the Executive Board, and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's title certificate of title or a title insurance policy based on a search of the Land Records of Jefferson County, West Virginia, from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

ARTICLE XXII

Rights to Notice and Comment;

Notice and Hearing

Section 22.1

Right to Notice and Comment.

Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing.

Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners.

The notice shall be given not less than five (5) days before the proposed action is to be taken.

It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting.

The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2

Right to Notice and Hearing.

Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed:

The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action.

The notice shall include a general statement of the proposed action and the date, time and place of the hearing.

At the hearing, the affected person shall have the right, personally or by representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues.

Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3

Appeals.

Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive board within ten (10) days after being notified of the decision.

The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XXIII

Executive Board

Section 23.1

Minutes of Executive Board Meetings.

The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2

Powers and Duties.

The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Act.

The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws, Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents, other than managing agents, and independent contractors.
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to § 3-112 of the Act;
- (k) Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- (l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of Section 2-102 of the Act, and for services provided to Unit Owners;

- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, Rules and regulations of the Association;
- (n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, resale certificates required by § 4-109 of the Act for a statement of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and Executive Board and maintain Director's and officers' liability insurance;
- (p) Assign the Association's right to future income, including the right to receive Common Expense assessments;
- (q) Exercise any other powers conferred by this Declaration or the Bylaws;
- (r) Exercise other power that may be exercised in this state by legal entities of the same type as the Association;
- (s) Exercise any other power necessary and proper for the governance and operation of the Association; and
- (t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee.

All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board.

However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

ARTICLE XXIV

Open Meetings

Section 24.1

Access.

All meetings of the Executive Board, at which action is to be taken by vote will be open to the Unit Owners, except as hereafter provided.

Section 24.2

Notice.

Notice of every such meeting will be given not less than 24 hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 24.3

Executive Sessions.

Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

(a) No action is taken at the executive session requiring the affirmative vote of Directors;
or

(b) The action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual unit owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board.

ARTICLE XXV

Condemnation

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with § 1-107 of the Act.

ARTICLE XXVI

Miscellaneous

Section 26.1

Captions.

The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof

Section 26.2

Gender.

The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 26.3

Waiver.

No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 26.4

Invalidity.

The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability of effect of the remainder, and such event, all of the other provisions of the Document shall continue in full force and effect.

Section 26.5

Conflict.

The Documents are intended to comply with the requirements of the Act and Chapter 36-B of the West Virginia Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

In Witness Whereof, Marcus Enterprises, a General Partnership, has executed this Declaration this 18th day of October, 1988, by causing Charles C. Marcus, Managing General Partner, pursuant to Article VIII of the Amended and Restated Partnership Agreement of Marcus Enterprises, to sign his name hereto on behalf of said Partnership.

Marcus Enterprises, a General Partnership

By: *Charles C. Marcus*

/s/

Charles C. Marcus
Managing General Partner

The Declaration of Covenants, Conditions and Restrictions are transcribed from originals recorded in the Office of the County Clerk of Jefferson County in the state of West Virginia.

However, the Declaration of Covenants, Conditions and Restrictions had been reprinted and circulated December 10, 1997 and certain inconsistencies were found. In all cases of inconsistency the official recorded document shall prevail.

END