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**THE MEADOWS (Rev 8/08)**

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**AUGUST 2008 AMENDMENT TO**

**PUBLIC OFFERING STATEMENT**

**THE MEADOWS**

**A COMMON INTEREST RESIDENTIAL COMMUNITY**

**CASS TAX DISTRICT,**

**MONONGALIA COUNTY, WEST VIRGINIA**

**Ayers and Ayers Holdings, LLC, Developer  
and Declarant**

**Prepared August 2008 by Declarant**

**THE MEADOWS SUBDIVISION  
PUBLIC OFFERING STATEMENT  
AUGUST 2008 AMENDMENT**

**PREFACE:** This document is a general discussion of matters which are in many cases set forth with specificity in the Exhibits, attachments and documents referenced herein. The reader is advised to review all such Exhibits, attachments and documents carefully for a more specific and detailed explanation of the matters addressed in this Public Offering Statement. To the extent that any document including the Declaration of Protective and Restrictive Covenants for The Meadows Subdivision (“Declaration”) should in any manner conflict with or otherwise be inconsistent with the information in this Public Offering Statement, the terms and provisions of the Declaration shall govern in all matters and respects.

**I Introduction.**

1.1 The Meadows (“Subdivision”) is a Planned Community form of Common Interest Community (“CIC”) located in the Cass Tax District of Monongalia County, West Virginia, and the project is being developed by Ayers and Ayers Holdings, LLC., a West Virginian limited liability company, (“Declarant”). The Subdivision will be a residential community which will include not less than Sixty-Eight (68) Lots (“Units”) which will be dedicated for construction of attached or detached single family dwellings such as houses, PatioHomes or Townhomes. Phase 1 of the Subdivision is dedicated for Thirty-Eight (38) Townhomes or PatioHomes which are attached Units. Phase 2 of the Subdivision is dedicated for Thirty (30) single family detached dwellings which are what one customarily thinks of as a typical home with a yard. The functional distinction between Townhomes and PatioHomes is that Declarant may elect to impose different construction, occupancy and use restrictions for the different types of dwellings. Detached dwellings are, to some extent, subject to different construction, use and occupancy restrictions than Townhomes or PatioHomes. Many of the covenants and restrictions affecting Phase I of the Subdivision were amended and modified in the First Amendment to the Declaration (adding Phase II), which supersedes inconsistent provisions of the original Declaration.

1.2 The Declarant has reserved the right to add land to the Subdivision as additional future Phases which may be dedicated for detached dwellings, or attached dwellings including, but not limited to, Townhomes and PatioHomes. Future Phases and Units may not be dedicated or added to the Subdivision at all, and if dedicated, future Units will vary in size depending on topography of the land and the type of dwellings which Declarant intends be constructed on or as the Units. PatioHomes and Townhomes may be attached rather than detached residential Units as in the case of Phase I. In the case of Townhomes or PatioHomes, Declarant may elect for the Unit to be no larger than the physical boundary of the Townhome or Patio Home notwithstanding the fact that the Townhomes in Phase I include Lots. Units in future Phases may be larger or smaller than the Units in Phases 1 and 2 and the covenants may vary between Phase. The covenants and restrictions vary between Phases 1 and 2 and may vary with regard to future Phases.

1.3 The Subdivision is being developed in segments known as Phases and the Declarant intends to, but is not obligated to, dedicate additional Phases periodically as construction and sale of Units progress. It must be noted, however, that Declarant has no duty to dedicate any future

Phase. Each Phase, when and if dedicated, will contain roadways, easements, utilities, Units and possibly common use areas known as Common Elements. The Declarant is responsible for providing utilities to the perimeter of each Unit and completing the roadways and Common Elements. The roadways and Common Elements will eventually be deeded either in fee or by easement to The Meadows Property Owners Association, Inc., a non-profit West Virginia corporation ("Association"), created for the purpose of governing the Subdivision and maintaining the improvements therein and the standards set by the Declarant. All owners of all Units ("Unit Owners") are members of the Association by virtue of the fact that they own an interest in a Unit and are all collectively responsible for the management and operation of the Association and also individually responsible for a proportionate cost of the expenses of the Association.

1.4 During early stages of Development the Declarant will own the majority of Units which exist or may be created and thus Declarant will control the Association. Periodically, as an increasing number of Units are sold by Declarant to third parties, Declarant shall relinquish control of the Association to the Unit Owners. Because control of the Association must be transferred from Declarant to the Unit Owners based on the percentage of Units sold, the precise time of such transfer will depend on both the rate at which Units are conveyed and also the number of Units created in future Phases of the Subdivision. The Declarant's general schedule for completion of the Subdivision and the improvements to the Subdivision is attached as **Exhibit C**. This schedule is estimated and Declarant is not obligated to comply with the estimated schedule.

1.5 Declarant has recorded the Declaration which is attached as Exhibit B, subjecting all land in the Subdivision to restrictive and protective covenants, rules, regulations, guidelines and standards for the purpose of maintaining the quality, character, market value and aesthetic value of the Subdivision and the Units. The Declaration, generally speaking, establishes: (1) the duties of the Declarant; (2) the rights reserved to the Declarant; (3) the minimum improvements which a Unit Purchaser may expect to be completed; (4) the powers, duties and operating structure of the Association; (5) the minimum architectural and landscaping guidelines and standards for all Units and houses; (6) certain preliminary standards of, and limitations of the purposes for which, a Unit Owner may utilize a Unit, Common Element or a Limited Common Element; and (7) the duties and powers of the Association. The Declaration also imposes certain limitations, restrictions and duties on you as a Unit purchaser and the uses you may make of your Unit and other portions of the Subdivision. To the extent that the Declaration limits the use of your land, it also makes you responsible for the use of your Unit by your family, friends, guests, contractors and other parties.

1.7 Declarant formed the Association by filing Articles of Incorporation ("Articles") with the West Virginia Secretary of State and Declarant passed the initial By-Laws of the Association ("By-Laws") prior to the sale of the first Unit. The Articles are the organizational structure of the Association which cause the Association to exist as an independent legal entity under West Virginia law (See Exhibit D). The By-Laws are the daily operating rules and guidelines of the Association which may be modified and amended from time to time to address the operational needs of the Association (See Exhibit E). The Association may also pass Rules and Regulations which address issues not contemplated by the Declarant or which the Declarant elected to leave to the discretion of the Unit Owners at a future date.

1.8 The Declaration is the supreme governing instrument of the Subdivision. In the event of any conflict, the Declaration is the governing instrument which supersedes all provisions of this Public Offering Statement, the Articles of By-Laws, Rules and Regulations, all promotional



materials utilized in the sale of Units and all representations and warranties made by any realtor, real estate Broker or third party. The maps or plats of the Subdivision which are recorded in the Monongalia County Clerk's Office are part of the Declaration but promotional maps, depictions and plats are not and may not be relied upon (See Exhibits to Declaration. The Declarant is not obligated to complete any improvement or amenity depicted on any map or plat, specifically including promotional maps, unless the Declaration or the map or plat specifically state to the contrary. Any improvement labeled "NEED NOT BE BUILT" is an elective option which Declarant may or may not complete. All definitions and defined in the Declaration are applicable to and govern this Public Offering and all instruments made Exhibit hereto.

1.9 This Public Offering Statement sets forth the Declarant's initial vision for the Subdivision and some of the pertinent considerations which will impact your decision to purchase a Unit or home in the Subdivision. This "Public Offering Statement" is a summary and generalization of matters set forth in the Declaration and other Exhibits and **you should read each of said documents carefully!**

#### **GOLF COURSE AND FITNESS CENTER PROVISIONS:**

1.10 Declarant purchased the Meadow Ponds Golf Course ("Golf Course"), an existing commercial business, and certain surrounding properties, many of which were being utilized as rental space. Declarant acquired a total of approximately 173 acres of ground with the intention of developing some of the land as the Subdivision. Declarant is a home builder and developer rather than a golf course operator or management company. Therefore, Declarant's general scheme of development and plan for development contemplates severance of certain portions of the 173 acre tract from the Golf Course and development of the same as the Subdivision, restructuring of certain elements of the Golf Course (such as construction of a new club house including a fitness center ["Fitness Center"]) and eventual sale, transfer or lease of the remaining Golf Course to a third party purchaser or manager.

1.11 The Golf Course is not, and will not be, part of the Subdivision. Rather, the Golf Course will remain an independent commercial business on land adjoining the Subdivision. The Golf Course and the Subdivision will share certain access roads, utilities, amenities and other improvements as set forth in the Declaration. Declarant has already started construction of the Fitness Center which, when completed, will replace the existing Golf Course Club House and Declarant intends to convert the existing Golf Course Driving Range into one or more Phases of the Subdivision. There is, however, no assurance that the Driving Range will ever become part of the Subdivision.

1.12 Declarant's general scheme of development is for the Subdivision to be a residential community situate around a presently existing public Golf Course. Because the Golf Course, including the Fitness Center, are not part of the Subdivision, there is no assurance that the Golf Course shall continue to be a golf course in the future. Declarant anticipates that continuity of the Golf Course will depend on its financial viability as a for-profit business enterprise. Therefore, Declarant has imposed certain mechanisms which it believes will increase the future profitability of the Golf Course and encourage the future owners and operators thereof to keep the Golf Course in operation.

1.13 Declarant believes that a Golf Course with a Fitness Center is an amenity benefiting the

Subdivision due to the fact that it provides recreational opportunities, open green space and a scenic environment in proximity to the Subdivision and a convenient and accessible exercise accommodation to the residents of the Subdivision. Declarant further believes that residential housing in the immediate vicinity of the Golf Course will increase the use and profitability of the Golf Course, including the Fitness Center. In order to maximize and encourage continuity of the mutual benefits to be derived by and from the Golf Course and the Subdivision Declarant has:

- (a) covenanted and agreed to impose certain restrictions on any transfer by it of the Golf Course that, for a period of ten (10) years from the date of the Declaration, the Golf Course may not be utilized for any primary purpose other than as a golf course with a fitness center;
- (b) covenanted and agreed to impose a limitation and restriction running with the land that if the Golf Course ceases to be utilized as a golf course with a fitness center, no portion of said land within two hundred (200) lineal feet of the Subdivision may be utilized for any commercial or industrial purpose (except for the existing Fitness Center structure and surrounding amenities);
- (c) imposed certain covenants and restrictions on Units and Common Elements in the Subdivision for the benefit of the Golf Course;
- (d) required that the Golf Course offer Fitness Center memberships to the Unit Owners at ninety (90%) per cent of the price for which such memberships are offered to the public and required that each Unit annually purchase a "Unit Membership" entitling all residents of the Unit to utilize the Fitness Center; and
- (e) required that, if the Golf Course elects to offer memberships for sale to the public, such memberships must first be offered to the Unit Owners on the same terms but at ninety (90%) of the price for which same are offered to the public.

There is no assurance that the foregoing requirements will cause continuity of the Golf Course, however, the Declarant believes that the same result in mutual benefit to both the Subdivision and the owner/operators of the Golf Course and thus would increase the likelihood of the continuation of the Golf Course in the future. All Units Owners are asked to utilize the Golf Course and to encourage use of the same by others to increase the profitability of the Golf Course and increase the likelihood of its continuation.

1.14 All Unit Owners are advised that each year the Unit must purchase, via the Association, a membership in the Fitness Center. The 2008 cost of a Unit Fitness Center Membership is \$400 per Unit per year, however, the cost of such memberships may increase in the future. Notwithstanding such increases, the cost of memberships shall nonetheless always be ninety (90%) of the cost for which the same memberships are offered to non-Unit Owner members of the public. As noted below, each year the Fitness Center membership costs shall be paid by the Association and the Association shall assess the costs of same to all Units as part of the Association's annual assessment.

#### **1.15 WARNINGS**

THROUGHOUT THIS PUBLIC OFFERING STATEMENT THERE ARE SPECIFIC WARNINGS CONCERNING THE DECLARANT, THE OWNER AND DECLARANT, AND THE SUBDIVISION OR INDIVIDUAL UNITS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY PURCHASE CONTRACT OR AGREEMENT.

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## **II GENERAL INFORMATION**

2.0 The Subdivision shall initially contain not less than Thirty-Eight (38), nor eventually contain more than Five Hundred (500) Units. At the execution hereof, the Subdivision is in the early stages of development and only one (1) Phase, containing Thirty-Eight (38) Units is being dedicated. It must be noted that Declarant also has the right to restructure, remove and withdraw Units to the extent permitted by law, as a result not all of the Units in Phase I may remain in the Subdivision or the boundaries of the Units in Phase I may be modified. Although it is the Declarant's intention to fully develop all of its property, and possibly other land identified in the Declaration. Declarant is under no duty to do so. As a result, Declarant may never build, dedicate and sell more than the Thirty-Eight (38) Units in Phase I. Even if additional future Phases are dedicated, no portion of Declarant's land is part of the Subdivision or subjected to the Declaration except the land specifically dedicated by a Declaration or on amendment thereto. Future Phases may only be added to the Subdivision by an amendment to the Declaration. Declarant has reserved the right to acquire additional real estate contiguous to the Subdivision and to incorporate some or all of such additional real estate into the Subdivision by dedication of additional future Phases. The Declarant has no obligation to dedicate such additional real estate if acquired. The protective and restrictive covenants in the Declaration apply only to those Units and Common Elements which have, from time to time, been dedicated as Phases in the Subdivision. The restrictions and covenants may vary with regard to future Units and Phases except to the extent that Declarant covenants that all future Phases and Units must be limited to residential use.

2.1 The name of the Declarant is:

Ayers and Ayers Holdings, LLC  
P. O. Box 1310  
Morgantown, WV 26508  
(304) 229-9277

2.2 The initial address of the Association is:

The Meadows Property Owners Association, Inc.  
P. O. Box 1310  
Morgantown, WV 26508  
(304) 229-9277

The address and telephone number of the Association will change in the future are control of the Association transfers from the Declarant to the members of the Association.

Answers to questions and information about this subdivision may be obtained by telephoning the Declarant and/or the Association at the numbers listed above.

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### **III**      **RISKS OF BUYING LAND**

- 3.0      Declarant is selling Units which are either building lots that do not contain a dwelling or lots containing a dwelling. The initial purchase price of each Unit reflects the cost of land to the Declarant, the cost of the improvements furnished by Declarant and expenses incurred by the Declarant in developing the Subdivision. The sales price also is based on the improvements which Declarant is, or is not, making to the Subdivision and market conditions. To the extent that the Declarant has elected to make certain improvements and to provide certain amenities, the cost of same was a factor in determining the price that Declarant charged for your Unit when it was originally sold. To the extent that Declarant did not elect to provide certain improvements such as fire hydrants, subsurface storm drains, sidewalks and other similar amenities, you did not have to pay for those improvements when you purchased your Unit. You should therefore exercise care to assure that you do not rely on any representation as to future improvements which do not presently exist unless, and then only to the extent, set forth in the Declaration and Public Offering Statement.
- 3.1      Future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.
- 3.2      The value of your Unit may be affected by date of completion of, and completed quality of, the roads, utilities and all proposed improvements.
- 3.3      If you attempt to resell your Unit during development of the Subdivision and at a time when Declarant is actively marketing and selling Units, Declarant will be competing with you.
- 3.4      Development of this Subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse or beneficial and the degree of impact will depend on the location, size, planning and extent of the Subdivision. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your Unit and your ability to sell it.
- 3.5      To the extent that surface water retention and detention systems are constructed by Declarant as Common Elements, the same will be regulated by Governmental Entities and the Association and you are charged with compliance of such regulations. Declarant has reserved the right to unilaterally assign, transfer and set-over to the Association all permits, bonds and other governmental requirements regarding the water retention and detention systems due to the fact that the Association will eventually own all of such systems.
- 3.6      In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a significant expenditure of money, it is recommended that you seek professional advice before you obligate yourself to purchase a Unit. A number of the considerations appurtenant to the purchase of land are addressed below.

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### **IV**      **METHOD OF LAND SALE, CONTRACTS, DEEDS, DUE DILIGENCE**

- 4.0 If you desire to purchase a Unit from the Declarant you must sign a written purchase contract and pay an earnest money deposit. No agreement is an enforceable contract unless it: (i) is written; (ii) is signed by all buyers and sellers; (iii) contains a specific description of the land to be conveyed and all terms of sale; and (iv) is accompanied by an earnest money deposit paid as consideration by the buyers. No negotiation or correspondence between you and the realtors or the Declarant shall constitute a contract unless there is one written agreement fulfilling the above requirements. No sales pitch, promise or assurance made to you by any party is enforceable against the Declarant unless reduced to writing in the contract and then only if not contrary to the Declaration and this Public Offering Statement. No promise that any service will be provided or any improvement made is enforceable if inconsistent with the Declaration and this Public Offering Statement. **To the extent that Declarant offered and entered into any Pre-Sale Agreement, the same are not contracts for the sale of land. Rather, Pre-Sale Agreements require the Declarant to give a specified potential purchaser the first option to buy a Unit, when completed, within a specified time period, and on such terms and conditions as Declarant may elect in its sales contract. Declarant provides a Uniform Purchase Agreement which will vary slightly for each type of Unit in each type of Phase and a copy of the initial Uniform Purchase Agreement is attached as Exhibit K. A copy of a sample Deed for a Unit is attached as Exhibit J. The Agreement and Deed may vary over time and updated versions are available on request.**
- 4.1 Declarant intends to use cash-only purchases for the sale of all Units. A minimum deposit is required at the time of the signing of the sales contract in order for the sales contract to be binding. The remainder of the purchase price will be due at closing which will be no more than sixty (60) days from the signing of the contract. With this method of purchase, you will receive at closing a general warranty deed free and clear of all liens and encumbrances except those matters disclosed in the Public Offering Statement and subject to those restrictions, reservations, easements and covenants of record that apply to the property.
- 4.2 The Declarant does not offer any standard policy of financing of Unit purchases. Any contract offered to Declarant may include such provisions. Declarant reserves the right to decline such offers for any non-discriminatory reason permitted by law.
- 4.3 A restriction or an encumbrance on your Unit, or on the Subdivision, could adversely affect your title to the Unit. You should retain the services of a lawyer with real estate experience to provide you with a title certification prior to purchasing your Unit.
- 4.4 A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a Unit may give you possession but it doesn't give you legal title. You won't have legal title until you receive a valid deed. A general warranty deed will be used to convey title to Units.
- 4.5 The recording of the sales contract gives actual notice to any other prospective purchaser of a Unit that there is legal claim against that Unit. It is not the local custom to record sales contracts, however you may elect to do so. The general warranty deed which transfers title to the property will be delivered to you at closing and should be recorded in the Office of the Clerk of the Monongalia County Commission, Morgantown, West Virginia.
- 4.6 Before you purchase a Unit you should conduct certain due diligence to determine that the Unit is, in fact, what you expect. Therefore, you should make your contract contingent upon your ability to

complete appropriate due diligence investigations. As part of your due diligence investigations you should hire licensed and qualified professionals to, among other considerations: (i) examine and certify the title to the Unit; (ii) survey the Unit; (iii) determine whether the substrata and geological formations of the Unit permit your intended use of the Unit; and (vi) determine whether, the Unit is in all manners sufficient for your needs. You may also want to consider obtaining: (i) an appraisal to determine the market value of the Unit; (ii) a structural or engineering inspection of the Unit; (iii) testing to determine the presence of, and if present the volume of, radon gas present on and in the Unit; (iv) an opinion as to the presence of any wood destroying or wood infesting insects and whether there is any damage to the Unit as the result of same; and (v) such other examinations and investigations as are customary and prudent including investigations of those matters are addressed below.

- 4.7 Under West Virginia law, the recording of your deed will protect you from any claims by subsequent purchasers, from former owners, and from any claims of creditors of former owners which may arise subsequent to the date of recording. It is your responsibility to record your deed upon its delivery to you by us.

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UNLESS YOUR DEED IS RECORDED YOU MAY LOSE YOUR UNIT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR OF SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

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- 4.8 The Declarant believes that the land in the Subdivision has historically been utilized primarily for agricultural and residential purposes except to the extent that some land was utilized for a golf course and driving range and Declarant has no knowledge of any underground storage tanks, burial sites or strip mining. Most land in Monongalia County has been mined to some degree and you may want to determine whether your Unit has been undermined. The Declarant has no knowledge of any mine subsidence in the Subdivision.
- 4.9 The land being developed is, at the execution hereof, encumbered by the security instruments which are identified on **Exhibit F**. Additional matters outside the scope of a sixty (60) year title examination may exist and additional matters may occur after the execution hereof. Each Unit will remain subject to the applicable liens until the closing of the sale for that Unit at which time Declarant shall pay a portion of its proceeds to the secured lender(s) in exchange for a release of the Deed of Trust to the extent that it constitutes a lien against the Unit. The Common Areas, including the easements and the rights-of-way serving the Subdivision, have not been released in full from these liens; however, each partial release will release the undivided interest in the Common Element, easements and rights-of-way apportioned to the Unit. State law requires that lien holders provide a release within thirty (30) days after the lien holder's receipt of a portion of the Seller's proceeds of sale.
- 4.10 You should obtain an attorney's opinion of title and/or a title insurance policy which will describe the rights of ownership that you are acquiring in the Unit. We recommend that you have an attorney or other appropriate professional interpret the opinion or policy for you. You should also have your attorney interpret the Declaration and other documents included in this Public Offering Statement.
- 4.11 The oil and gas rights to the Units in this Subdivision will not belong to the purchasers of those

Units. The exercise of these rights by their respective owners could affect the use, enjoyment and value of your Unit. To the extent that Declarant may own any of such rights, Declarant shall not utilize the surface of any Unit or Common Element for the purpose of extracting same.

- 4.12 Declarant is offering the Subdivision and Units for sale subject to those limitations and exceptions which: (a) existed when Declarant acquired the land; (b) Declarant imposed as part of the development process; (c) which Declarant has and may from time to time establish to maintain the character and quality of Units in the Subdivision; and (d) include the above referenced security instruments, and any subsequent financing by Declarant. West Virginia law provides that you take your Unit subject to such limitations and exceptions regardless of whether the same were disclosed to you by Declarant prior to your closing.
- 4.13 As noted above, you should retain the services of an attorney to examine the title to your Unit. Notwithstanding the foregoing, the liens and encumbrances which are known to affect the Subdivision at the execution hereof are identified on **Exhibit F**.

## **V PURCHASER DEPOSITS AND RIGHTS OF CONTRACT CANCELLATION**

- 5.0 Any deposit made in connection with the purchase of a Unit will be held in an escrow account. The escrow agent will be either a realtor or Declarant's attorneys or such successors as Declarant may from time to time engage. **Money deposited pursuant to Pre-Sale Agreements is not earnest money and will not be held in an escrow account.**

- 5.1 The earnest money will be returned to you if: (a) Declarant does not accept your offer of purchase; (b) Declarant refuses to sell the Unit to you; or (c) if you elect to cancel your purchase contract pursuant to those rights detailed hereunder in Section 5.2.

- 5.2 WITHIN 15 DAYS AFTER RECEIPT OF A PUBLIC OFFERING STATEMENT, A PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT FROM THE DECLARANT;

IF DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT TO A PURCHASER BEFORE CONVEYING A UNIT THAT PURCHASER MAY RECOVER FROM THE DECLARANT TEN PERCENT (10%) OF THE SALES PRICE OF THE UNIT PLUS TEN PERCENT (10%) OF THE SHARE PROPORTIONATE TO HIS COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE UNIT and,

IF A PURCHASER RECEIVES THE PUBLIC OFFERING STATEMENT MORE THAN 15 DAYS BEFORE SIGNING A CONTRACT OF SALE, HE CANNOT CANCEL THE CONTRACT.

CANCELLATION SHALL BE MADE BY HAND-DELIVERING A NOTICE THEREOF TO THE DECLARANT OR BY MAILING NOTICE THEREOF BY PREPAID U. S. MAIL TO THE DECLARANT OR ITS AGENT FOR SERVICE OF PROCESS.

- 5.3 By entering into a Purchase Contract with Declarant, you acknowledge receipt of a complete Public Offering Statement. Therefore, you should verify that you received a complete Public Offering

Statement, and read the same before you execute a Contract.

- 5.4 All sales will be cash to the Declarant. You are responsible for obtaining any financing you may require. Your contract may not permit you the right to terminate your purchase obligations due to failure of financing unless you specifically include such a provision.
- 5.5 If you default in the performance of your obligations under the sales contract, Declarant has the right to retain all earnest money and other deposits that you have paid pursuant to the terms of the contract as damages for your default, require specific performance of the sales contract, or demand payments of a deficit after resale.

## **VI SUBDIVISION RESTRICTIONS ON THE USE OF YOUR LAND**

- 6.0 All Units are subject to certain restrictive covenants which are established by Declarant for the purpose of protecting and maintaining the character, value, aesthetics and appearance of the Subdivision and other lands. The restrictive covenants for the Subdivision are contained in the "DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS", and amendments thereto, (hereinafter the "Declaration"), and in certain cases in documents referenced therein. The Declaration is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, and attached hereto as **Exhibit B**. The brief discussion of the Declaration below serves only as a highlight of some of the more significant restrictions and you should review the entire Declaration with your attorney prior to contracting to purchase a Unit from Declarant. It must be noted that there are no restraints on alienation of any of the Units or on the amount for which a Unit may be sold or on the amount that may be received by a Unit Owner on sale, condemnation or casualty loss to the Unit or to the Subdivision on termination of the common interest community status. Provided, however, that Declarant has reserved a Right of First Refusal to any dirt or earth removed from the Unit during construction. This Right of First Refusal is for the purpose of development of the Subdivision and potential development of other lands owned by Declarant which may be dedicated as future Phases of the Subdivision.
- 6.1 The Declaration is primarily comprised of four sections namely: (1) Declarant's intentions, rights, reservations and obligations; (2) Building Control Guidelines and limitations with regard to improvements which may be made to and maintenance required of, each Unit; (3) use restrictions and limitations with regard to each Unit; (4) the Association and its powers, duties and operating procedures.
- 6.2 The Declarant's intention is to complete a Subdivision of between Sixty-Eight (68) and Five Hundred (500) Units. Declarant has not conclusively determined the total number of Units which may be created, the size of the Units to be created, or the time period in which the Subdivision will be completed. Declarant has determined that it will complete construction of certain amenities and improvements which are itemized **and set forth in the Declaration and on the Plats**. BE ADVISED THAT ANY ADVERTISEMENT OR REPRESENTATION MADE BY ANY PARTY THAT DECLARANT WILL COMPLETE OR INSTALL ANY IMPROVEMENT IS VOID TO THE EXTENT THAT SAME IS IN ANY MANNER IN CONFLICT WITH THE DECLARATION, THIS PUBLIC OFFERING STATEMENT AND ALSO **THE DECLARATION AND PLATS**. No item marked "NEED NOT BE BUILT" is mandatory and may or may not be constructed or created.



- 6.3 The Building Control Standards (“BCS”) are covenants set forth in the Declaration and imposed by the Declarant which limit the improvements which may be made to Units by entities other than Declarant and establish the criteria and process for such improvements. Building Control Guidelines (“BCG”) are rules and regulations promulgated from time to time by the Association for each and every improvement that any party other than the Declarant may make to any Unit. BCG and BCS are managed, enforced and administered by the Building Control Committee (“BCC”). The Building Control Committee is actually two separate Committees of the Association created to manage and administer different aspects of Unit improvement and Unit Maintenance. The two (2) BCC’s are the Association Building Control Committee (“ABCC”) and the Declarant Building Control Committee (“DBCC”). The DBCC is approved by Declarant to protect the Declarant’s investment in the Subdivision for the purposes of maintaining the value of all of Declarant’s unsold Units. The DBCC is charged with all appraisals pertaining to the initial construction of a dwelling on each Unit, and all appurtenant improvements, up to the time that the Unit is “finished” and suitable for occupancy. The ABCC is appointed by the Association and is charged with all approvals, enforcement and oversight with regard to any construction, upkeep or maintenance occurring after the Unit is initially completed and suitable for occupancy. Approval authority with regard to each Unit is at all times vested in either ABCC or DBCC depending on the subjective status of the Unit. All approval authority with regard to Units is initially vested in the DBCC but will automatically transfer to the ABCC on a Unit per Unit basis as the initial improvements to each Unit are completed and each Unit is made habitable in compliance with the Declaration. Declarant will, not later than when Declarant no longer owns any Unit in the Subdivision, assign all BCC rights and authority to the Association at which time the DBCC and ABCC will automatically merge with the ABCC surviving and thereafter the ABCC shall be a committee appointed by the Association. The term “BCC” is utilized throughout this Public Offering, and in the Declaration and other Governing Documents to refer to both the ABCC and DBCC, depending on the context of the use and the status of the pertinent Unit. The BCS and BCG are not applicable to the Declarant but are applicable to all purchasers from the Declarant. All improvements must conform to the general character of the development and more specifically the Phase in which the improvements are to be completed. Because the character of each Phase may vary, improvements may be inconsistent between or within Phases but only to the extent permitted by the Declaration and the BCC. In considering requests for approval of an improvement the BCC is charged with paying particular attention to style and design (including approval of building materials and colors used), sidewalks, driveways, landscaping, fences, lighting, and all other similar concerns. No improvement may be made to any Unit until complete plans and specifications for the improvement are approved, in writing, by the BCC. The Unit owner has the burden of providing, at its cost, such plans and specifications as the BCC may deem reasonable or prudent with regard to approval of the proposed improvement and there is no guarantee that any improvement will be approved even if a similar improvement already exists in the Subdivision. The BCC does not control improvements to the interior of any completed dwelling except to the extent such improvements are not visible from the exterior of the Unit or have a material impact on the structural integrity of other Units. The BCC may from time to time designate an engineering firm to review all plans submitted and to otherwise participate in the approval process. All costs of such review will be allocated to the Unit Owner.
- 6.4 The use restrictions are for the purpose of maintaining the quality, character and appearance of the Subdivision and also to prevent any one Unit Owner’s use and occupancy of his or her Unit from materially and negatively impacting any other Unit Owners. You should review each and every use

restriction carefully.

- 6.5 ***The Declarant has expressly reserved the right to approve any and all builders who construct dwellings in the Subdivision. All Units are conveyed by Declarant subject to this right of approval which applies only to the initial construction of any dwelling. Declarant's approval right is predicated on Declarant's desire to maintain character and quality of construction and to assure compliance with the Declaration. In the event that Declarant, for any legitimate business purpose should deny approval of any Builder, the Unit Owner shall have the option to proceed to utilize the services of such Builder after posting a Bond with Declarant in the amount of five (5%) per cent of the construction value of the improvements to the Unit to assure compliance with the Declaration, BCG and Rules and Regulations of the Association.***
- 6.6 The Association's duties are generally to: (a) maintain and manage all portions of the Subdivision other than Units; (b) to enforce and administer the restrictive and protective covenants in a manner consistent with the overall well being of the Subdivision and the interests of the majority of all Unit Owners; and (c) to manage all financial aspects and administrative functions of the Subdivision. The Association will charge all of its costs to the Unit Owners and the Association has the ability to enforce the Declaration and collect monies due it by Unit Owners by civil action or a lien against a Unit.
- 6.7 Because future Phases may be dedicated for construction of detached dwellings or attached dwellings such as PatioHomes or Townhomes, the covenants, restrictions, limitations and guidelines pertaining to each Phase shall vary and differ from those applicable to Units in Phases 1 and 2. Those variations may pertain to: (a) dwelling area requirements; (b) Unit size requirements; (c) set-back requirements; (d) exterior appearance, design and style of Units; (e) easement reservations; (f) variations in requirements for driveways, elevations and exterior appearance; and (g) other modifications which are appropriate to permit construction and development of the Phase and the type of Units Declarant desires to approve therein. With regard to Patio Home or Townhome Units, the Declarant may elect to sell only the Patio Home or Townhome as a Unit and dedicate the land surrounding the same as a Limited Common Element, the expense of maintenance and upkeep of which shall be allocated to those specific Units. Declarant may also elect to make the roofs, exteriors and certain other structural members of PatioHomes or Townhomes Limited Common Elements to be maintained by the Association at the cost of the those specific Unit Owners. An amendment to the Declaration adding PatioHomes or Townhomes will specify all of the foregoing and such other matters as may be appropriate. The terms "Patio-Home" and "Townhome" are defined in the Declaration.
- 6.8 The BCG also significantly affects the residue of each Unit and limits the trees and foliage which may be cut or removed from any Unit. The requirements vary from Phase to Phase but are generally intended to preserve the character of the Subdivision. You should pay careful attention to these provisions of the Declaration, BCG and Rules and Regulations of the Association.
- 6.9 Declarant owns the 173 acre, more or less, Golf Course property and is developing some of the Golf Course property as the Subdivision. Declarant has not conclusively determined whether all portions of the property which are not the actual site of the Golf Course will be developed as part of the Subdivision, or part of another subdivision, or utilized for unrelated purposes. Declarant has reserved from the Subdivision certain rights benefiting the owner(s)/operator(s) of the Golf Course; imposed certain covenants and restrictions for the benefit of the Golf Course; and created

and imposed certain rights-of-way and easements affecting the Subdivision for the benefit of the Golf Course and its owners(s)/operators. All of these matters are set forth in the Declaration. The terms and conditions and provisions of the Declaration restrict the uses which you may make of your Unit and impose requirements on you, your Unit and the Association with regard to various matters including, but not limited to: (1) the construction standards for your Unit imposing additional safe guards for Units which may lie in the path of a golf ball; (2) the improvements you may make to, and personal property you may place on, portions of certain Units which are visible from or contiguous to, the Golf Course; (3) control of surface water from your Unit sufficient that the same shall not negatively affect the Golf Course; (4) limitations on noise from and activity on your unit which may negatively impact the Golf Course or enjoyment thereof by its guests and patrons. Although most of the requirements in the Declaration may be modified or amended by the Unit Owners acting collectively, none of the provisions benefiting the Golf Course may be amended without the consent of the owner of the Golf Course.

There are two (2) more significant provisions in the Declaration relating to the Golf Course: (a) is a requirement imposed on all purchasers of Units as a covenant running with the land that, all individuals and entities purchasing a Unit acknowledge and accept the risk of owning and living on Units adjacent to a Golf Course and knowingly waive and release the owner(s)/operator(s) and patrons of the Golf Course from any and all liability for injury to person or property resulting from any golf ball which travels from the Golf Course into the Subdivision, which said waiver, release and assumption of risk extend to not only you as a Unit Owner but also to your family, tenants, guest, invitees, successors and/or assigns; and (b) a requirement that all Units in the Subdivision shall, acting by and through the Association, must collectively and annually purchase Fitness Center memberships from the Golf Course as set forth in the Declaration. You will be required to purchase an annual Fitness Center membership each year through the Association and the cost of the membership may vary from year to year or increase over time but will be limited to no more than ninety (90%) of the cost for which an equivalent membership is offered to non-Unit Owner members of the public, and will be payable annually by the Association from its annual budget. You will be assessed this cost as part of your annual assessment.

## **VII RIGHTS OF OTHERS TO UTILIZE YOUR LAND:**

- 7.0 Various easements, rights-of-way and other rights are either excepted and reserved in the Declaration or may have been created prior to the Subdivision and may have an impact on your building plans or the use of your Unit. As noted above, certain easements, rights, covenants and rights-of-way are reserved to the Golf Course and additional easements and rights are reserved in the Declaration to the Declarant, the Association, governmental authorities and public utility providers in, on, over, and under each Unit for various purposes. Each Unit is encumbered by the Declarant's and Association's rights to enter the Unit for any purpose authorized by the Declaration including the right to undertake the erection, installation, construction and maintenance of wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone, community television cables and other utilities and similar facilities. The Association and the Declarant also have the right to install various drainways and drainage systems. In the event that any such right is exercised, the Association and the Declarant have no liability for damage to or removal of any foliage or improvement from a right-of-way or easement area. Association and Declarant do, however, have an obligation to assure that any disturbed area is reasonably restored to grade and covered with grass seed. To the extent that any additional easements affect specific Units in the Development many of same are set forth in the

Declaration or shown on the Map or Plat of the Development mentioned hereinabove.

- 7.1 The Association has the specific right to restrict construction of improvements and planting of foliage for the purpose of maintaining the appearance of the Units. Such rights may not prevent construction of dwelling and improvement of a Unit but may restrict the size, type, location, variety, height, appearance and style of dwelling improvements and foliage.
- 7.2 All improvements must conform to the general residential character of the development, paying particular attention to the design of your home (including approval of plans, location, size, building materials and paint colors used), sidewalks and driveways. Because it is possible that your interpretation of the Declaration and BCG may differ from the Declarant's intentions and the BCC's policy for enforcing the BCG, it is strongly recommended that you obtain a preliminary approval of your house plans prior to purchasing a Unit. **If your intended dwelling is not what the BCC and Declarant consider "traditional residential" style, color and appearance, you may not be able to obtain approval to construct the same.** Declarant offers examples of house plans which are pre-approved and are demonstrative of the type of dwelling which is of "traditional residential" style, color and appearance. **You are advised to obtain approval for any dwelling to be constructed prior to purchasing the Unit on which it is to be constructed.**
- 7.3 The Golf Course is benefited by certain covenants and restrictions requiring units abutting the Golf Course ("Golf Course Units") and other Units near the Golf Course, as set forth in the Declaration, to be utilized, improved and maintained to a higher standard than non-Golf Course Units. The owner/operator of the Golf Course is also vested with the right, after reasonable notice and right to cure, to enter into and onto Golf Course Units to perform necessary maintenance at the cost of the Unit Owner. The Association may exercise this right with regard to any Unit. The Golf Course and the non-Golf Course residue of Declarant's Retained Real Estate are also benefited by certain rights-of-way or easements to travel through the Subdivision and to utilize the roads, easements, drainways and utility systems therein.
- 7.4 In certain Phases, such as Phase 1, the Association is vested with authority to perform all lawn maintenance. This requirement is imposed in Phase I because Phase I is comprised of relatively smaller Units which are Townhomes or PatioHomes and it is the Declarant's desire that such lawn maintenance be performed on all Units at the same time and to the same standard. In any Phase where this requirement is imposed, the cost of such maintenance will be billed to the Units in that Phase as a Limited Common Expense. The Association has the right, but not the duty, to perform lawn maintenance and lawn care in Phase 2. Unless the Association should elect to do so, all Unit Owners in Phase II must maintain their own Units.
- 7.5 Certain specific Units in Phase II are subject to unique easements reserved to Declarant and/or Association and/or thirds parties including utility providers. Specifically, Units 6, 7, 14, 15, 90 and 97 are subject to a drainage easement and Units 91 and 92 are subject to a utility easement, all as shown on the Plat. Such easements are unique only to the extent that they are in addition to the easements imposed on all Units on a Phase by Phase basis.

## **VIII DECLARANT'S DEVELOPMENT RIGHTS**

- 8.0 The Declarant has reserved numerous rights which may impact your ownership and use of your Unit. The Declarant has reserved various rights which are specifically defined in the Declaration

and include, but are not limited to, the right to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right, as defined in the Declaration; (iii) maintain sales offices, management offices, and signs advertising the Common Interest Community and models; (iv) use easements through the Common Areas for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision; (v) merge or consolidate the Subdivision with another Common Interest Community of the same form of ownership; (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant control; and (vii) to enlarge the Subdivision by adding additional real estate. Other Declarant's rights of potential impact are: (i) the right to utilize the roadways, easements and utility systems in the Subdivision for the benefit of other properties and the right to grant such uses to others; (ii) the right to develop other contiguous properties other than as part of the Subdivision; (iii) the right to determine the size, shape and selling prices of future Units; (iv) the right to approve your builder and to control the BCC for a period of time; (v) the right to change the intended improvement plan for the Common Elements; and (vi) the right to appoint all members of the DBCC so long as Declarant owns at least one (1) Unit. It must also be noted that Declarant has no duty with regard to any future Phase of the Subdivision which has not been dedicated or, any Phase, or Unit which may be withdrawn, or any improvement which is labeled "Need Not Be Built".

- 8.1 Any and all Units created will ultimately be restricted exclusively to residential use. However, the Declarant has reserved the right to store materials and construction equipment and maintain a sales office, construction office and models in and on Units and Common Elements throughout the development process.
- 8.2 Declarant may add improvements which are not shown on the plans and Declarant may withdraw improvements shown on the plans. As a result:
- (1) No assurances, other than those found in the Public Offering Statement and Declaration, are made as to the locations of any building or other improvement that may be made within any part of the Subdivision pursuant to the development rights reserved by the Declarant.
  - (2) No assurances, other than those found in the Public Offering Statement and Declaration are made as to the type or size of any limited common element created pursuant to any development right reserved by the Declarant.
  - (3) No assurances are made as to the proportion of Common Elements or Limited Common Elements to Units created pursuant to the development rights of the Declarant.
  - (4) Any assurance made pursuant to this section relating to the development rights of the Declarant will not apply if that particular development right is not exercised by the Declarant.
- 8.3 You should review the Declaration in detail as to those rights which the Declarant has reserved, those duties which the Declarant does and does not have to perform, and the time periods in which Declarant may do so.

## **IX IMPROVEMENTS TO BE COMPLETED BY DECLARANT**

- 9.0 There are several plats or maps depicting the Subdivision and the land which may be added to the Subdivision. The Phase 1 Plat is entitled Phase 1 Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 1008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A. The Phase 2 Plat is entitled Phase 2 Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated July 31, 2008, and is being recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 46A. There is also an overview or comprehensive drawing which shows the proximity between Phases 1 and 2 in the context of the Declarant's lands and certain surrounding properties, entitled Phases 1 & 2 of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated July 29, 2008, and recorded as an Exhibit to the Declaration (collectively "Plats" and each individual a "Plat"). Copies of all recorded maps or plats of the Subdivision are attached as **Exhibits to the Declaration**. The Subdivision may be developed in Phases with the Plat of each Phase recorded prior to the sale of the first Unit therein. Except for Declarant's development purposes and the easements reserved for the benefit of other land, all dedicated Phases will be limited to use for residential purposes.
- 9.1 This jurisdiction has no regulatory review as a prerequisite to the recording of plats, except for street name approval by Monongalia Emergency Centralized Communications Agency ("MECCA") which is the governmental agency vested with authority to approve all road names and assigns all street addresses. MECCA has approved the Plats of Phases 1 and 2 and assigned mailing addresses and street names for the Units and Common Elements in Phases 1 and 2. Certain review and approval criteria may be implemented prior to completion of the Subdivision.
- 9.2 THE RECORDING OF THIS PLAT DOES NOT MEAN THAT THE SUBDIVISION HAS BEEN APPROVED BY ANY REGULATORY AGENCY. Provided, however, that the names of the Streets in the Subdivision have been approved by the Monongalia County Emergency Medical providers as required by law and certain permits have been granted with regard to storm water and surface water.
- 9.3 The Declarant must complete any improvements shown on the Maps or Plats unless the Declarant expressly reserved the right to void such improvement either by: (a) expressly labeling the same as "Need Not Be Built" on the Maps or Plats; or (b) expressly stating such right in the Declaration, this Public Offering Statement, the deeds of conveyance, purchase contracts or otherwise in writing.
- 9.4 The Declarant intends to provide the following improvements:
- A. Underground distribution systems for the transportation of public: (i) natural gas, (ii) electricity, (iii) water, (iv) telephone service, (v) sewer; and (v) cable television service. Provisions of such amenities are contingent on availability of same from public utility providers.
  - B. Central storm water collection, transportation and disposal system to address water which leaves the Units.

C. Paved roadways. Paved Roadways means:

*roads paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted thickness of approximately two (2") inches of road base (type II aggregate asphalt) with a total average thickness of one (1") inch wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways' standards and Declarant need not complete the roadways until six (6) months after the sale of Declarant's final Unit in the Subdivision.* Prior to the paving of any segment of roadway, Declarant shall maintain high quality gravel roads. High quality gravel roads are stone, gravel or slag roadways compacted and graded to facilitate vehicular travel. It is the Declarant's intent to establish the gravel roadways over time as part of the base for future paving. Because the Association is liable for maintenance and upkeep of all roadways, when initially paved, Declarant intends to provide gravel roads during early stages of development. The Association is liable for maintenance and upkeep of: (i) gravel roads but the Declarant has a duty to pave; (ii) base coat type II roads but the Declarant has a duty to pave with type I asphalt; and (iii) all roads with a type I wearing course in perpetuity.

The roads will be completed in stages and as each stage is completed, responsibility for maintaining the "stage of road" is vested in the Association. Specifically, the Declarant has the duty to complete the roads and when completed they are the responsibility of the Association. Because only a limited number of dwellings have been constructed and significant development is anticipated to follow, Declarant will initially complete the roads with a gravel surface. Declarant will later cause type II base coat aggregate paving and then finally application of type I wearing course or top coat asphalt paving. Declarant desires to avoid paving until after significant construction which would be reasonably anticipated to damage the roads. Therefore, for the benefit of the Association which must pay for second and future pavings after the roads are fully completed, Declarant will finish the roads in stages with the Association responsible for upkeep of each stage of completion after the stage is finished.

D. Street signs and traffic regulations.

E. A landscaped entryway with lighting and subdivision signage.

9.5 The Declarant does not intend to provide the following improvements:

A. Utility meters, Unit utility taps, on-Unit distribution lines servicing each Unit, or on Unit storm water collection and disposal systems. The Unit purchaser is obligated to obtain and pay for the same. Control of surface or storm water within any Unit is the obligation of the Unit Owner. To the extent that Declarant does provide Utility meters or Utility taps, the cost of same will be reimbursed to Declarant by the Unit Purchaser at the time the Unit is conveyed by Declarant.

B. Sidewalks, fire hydrants or uniform or comprehensive road curbing. To the extent that Declarant may elect to provide one or more fire hydrants there is no assurance that the

public water provider will at any given time have sufficient volume or capacity for the same to function at peak levels. Water supplies are controlled by the public utility provider.

- C. Street Lights (other than at the entryway). Declarant may elect to, but has no obligation to, construct lighting at various locations throughout the Common Elements.
- D. Mailboxes. The Association has established certain standards for Mailboxes and Mailbox mounting, each Unit Owner must comply with said standards at the Unit Owner's cost. Each mailbox mounting shall, as set forth in the Declaration and otherwise from time to time by the BCC, include standard or pre-approved dusk to dawn lighting.
- E. Any improvements to a Unit which has already been sold (Declarant however reserves the right to do so in the manner it may deem reasonable).
- F. Any other improvement that is not part of Declarant's development scheme regardless of whether the same may have been promised or represented by any realtor, real estate broker or individual or entity other than the Declarant. If this Public Offering Statement (and Exhibits) do not specifically state that an improvement will be completed or any improvement is identified as "Need Not Be Built" there is no assurance that Declarant will do so.

- 9.6 At the time of this writing Declarant intends to complete multiple Phases which will not contain a total of more than five hundred (500) Units. Only Phase I has been dedicated and is in existence. Phase I contains Thirty-Eight (38) total Units and dwellings have been, or currently are being constructed on, all Units in Phase I. The improvements made by Declarant to subsequent Phases may not be consistent with improvements to Phase I or any other Phase in existence when Purchaser receives this document.

## **X LAND PURCHASE AND USE ISSUES**

- 10.0 **Zoning** The Subdivision is located outside of municipal limits of the City of Morgantown there are no zoning ordinances in effect which regulate the use of the Units in the Subdivision. Therefore the Declaration imposes use and occupancy restriction similar to zoning. No approvals of any zoning authorities are necessary for you to use your Unit, however, you must obtain all necessary use and occupancy approvals from the Association. In the event that comprehensive planning or zoning is subsequently enacted, you will be required to comply with same.
- 10.1 **Surveying** Each Unit has been properly marked with permanent markers so that you can identify the boundaries of your Unit. You may wish, or your attorney or title insurance company may require you, to obtain a survey of your individual Unit at the time of the sale. Any such survey must be obtained at your expense. The estimated cost of a boundary survey of a Unit is generally between \$400.00 and \$600.00. If the boundary markers are moved, removed, damaged, vandalized or destroyed, your deed will convey your Unit as shown on the Map or Plat rather than your Unit as marked on the land. It is common for boundary markers to be adjusted, moved, removed or destroyed by third parties without the knowledge of the Declarant. Therefore, Declarant advises you to obtain a survey prior to purchase and that you may not rely on any representation or



warranty by a broker, realtor or other party as to the precise boundaries of your Unit. The BCC may require that you obtain, at your cost, an “as built” foundation survey of your Unit during construction to establish that the improvements do not violate the covenants or BCG.

- 10.2 **Permits** Prior to building a structure, making any improvement, or implementing any landscaping on your Unit, you must obtain a building permit from the BCC of the Association. Building permits will be based on plans submitted by you. You will have to pay all costs of preparing the plans and you may have to pay a fee for BCC review of your plans. BCC will establish a standard review fee for plans and the standard fee may vary from time to time based on the actual cost and expense and time requirements of the Association. Costs may also be subjective depending on the nature, character, complexity and sufficiency of the plans submitted.
- 10.3 **Flood Plain District** Certain Units in the Subdivision may be located within a Flood Plain District as designated by the National Flood Insurance Program. The owner of any Unit located within a flood plain must comply with the requirements of the Monongalia County Flood Plain Management Ordinance and Federal Emergency Management Administration prior to any construction on, or development of, an affected Unit.
- 10.4 **Environment** No environmental impact study has been prepared for the development. No determination has been made as to the possible adverse effects that the subdivision may have upon the environment and surrounding area.
- 10.5 **Title** Land title issues are addressed above. You should hire an attorney to address these issues for you.
- 10.6 **Radon Gas** Any completed Unit may contain radon gas. The EPA action level for radon gas concentrations is 4.0 pica curies per liter of enclosed air space. If you purchase a dwelling, you should consider having the same tested for radon gas levels.
- 10.7 **Pest/Termite** If you purchase a Unit which does not contain a dwelling you should have the soil treated prior to or during construction. If you purchase a Unit which contains a dwelling you should have the dwelling tested for the presence of wood eating and wood destroying insects such as termites and carpenter bees.
- 10.8 **Soil Disturbance** The Environmental Protection Agency has enacted certain rules and regulations which pertain to the disturbance of land and require aggressive control of surface water and sediment resulting from construction and excavation. In some cases, a permit may be required. These rules and regulations are implemented in West Virginia by the West Virginia Department of Natural Resources.

## **XI CHARACTERISTICS OF THE COMMUNITY:**

- 11.0 The Subdivision is located in Cass District of Monongalia County, West Virginia. It is not within municipal limits of any city or town. The land being developed was, when purchased by Declarant either raw and unimproved, residential or a golf course or driving range. It is the Declarant's belief that the land has never been utilized except for the foregoing uses and for, agricultural, hunting, and timbering purposes. Properties contiguous to the Subdivision are, at the execution hereof, utilized

for single family residential purposes, agricultural purposes or are undeveloped. There are no gas wells located in the Subdivision. Declarant does not own all mineral interests and mineral production rights with regard to the Subdivision. Declarant will not, however, utilize the surface of any Unit for the purpose of exploration or realization of oil, gas or other minerals.

11.1 **Access to the Subdivision** Phase I of the Subdivision is afforded beneficial access via a non-exclusive right-of-way through the Golf Course which connects to West Virginia County Route 7, a public road maintained by the State of West Virginia. You will not be assessed by the Association for the maintenance cost of the public roads but you will be assessed the cost of maintaining that portion of the right-of-way within the Subdivision and all Common Element roads which are rights-of-way within the Subdivision. If subsequent Phases of the Subdivision are developed, or if Declarant so elects, a right-of-way may be dedicated as a Common Element, connecting such Phases with a public road maintained by the State of West Virginia.

11.2 **Access within the Subdivision** Access within the Subdivision is provided by private roads to be constructed by the Declarant. Declarant intends to dedicate the private roads either in fee or easement as Common Elements and convey same in fee or as easements to the Association. Declarant is responsible for construction of these roads and there is no construction cost to the purchaser. You will have to pay a proportionate share of all road maintenance and improvement costs for roads you are entitled to utilize. If, during construction, your builder's vehicles or other delivery vehicles fail to utilize the construction entrance and cause damage to the main entrance or paved roads, you may be charged for the cost of repairing the same.

11.3 **Nearby Communities** The following table identifies the distance (in miles) from the Subdivision to nearby communities.

Nearby Community	Approximate Population per 2005 Census	Distance Over Paved Roads	Distance Over Unpaved Roads	Total Distance
Morgantown, WV	28,292	5	0	5
Fairmont, WV	19,049	24.14	0	29
Grafton, WV	5,524	25.98	0	30
Clarksburg, WV	16,439	48	0	48
Pittsburgh, PA	316,718	52	0	52
New Martinsville, WV	5,791	62	0	62
Wheeling, WV	29,639	78	0	78

## **XII UTILITIES**

12.0 The Subdivision is serviced by public utility providers which are regulated by the West Virginia Public Service Commission. Each utility service is addressed below with specificity. With regard to each public utility provided, the Declarant has caused a distribution line to be extended to each Unit. The Unit Owner will be responsible for causing, and paying the costs of: (a) installing a meter; (b) connecting the Unit to the distribution line; and (c) extending a service line to the dwelling and improvements constructed on the Unit. The cost of the foregoing will vary from time to time and may be obtained from the public utility providers.

12.1 **Water** The subdivision is served by a central public water system and water service is available from:

Morgantown Utility Board  
703 Greenbag Road  
Morgantown, WV 26508  
Telephone: (304) 292-3088

12.2 **Sewage** The subdivision is served by a central public sewage system and sewage service is available from:

Morgantown Utility Board  
703 Greenbag Road  
Morgantown, WV 26508  
Telephone: (304) 292-3088

Due to the topography of certain Units, the location and design of the improvements and dwelling you may construct, the location of the lines and services provided by Morgantown Utility Board, and other relevant factors, individual Units and improvements may require on-site lift stations, grinder pumps or other mechanisms for transporting sewage to a line at a higher elevation. You will be required to pay the cost of such systems and should determine whether those costs are applicable to your Unit prior to the time you purchase same. Even if those costs are not applicable to your Unit prior to your purchase of the same, those costs may be necessary as a result of the improvements you elect to construct or the location you chose for those improvements.

12.3 **Electricity** Primary underground electrical service lines will be installed to each Unit. Allegheny Power Company has agreed to supply electrical service to the subdivision and is responsible for installation of service lines.

Allegheny Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15606-0001  
Telephone: (800) 255-3443

- 12.4 **Telephone** Verizon Telephone Company will supply underground telephone service to the Subdivision.

Verizon Telephone Company  
P.O. Box 17577  
Baltimore, MD 21297  
Telephone: (800) 562-2355  
Website: Verizon.com/storefront

- 12.5 **Television** Adelphia Communications, an FCC regulated service provider will supply underground cable television and other services to the Subdivision.

Comcast  
15 Summer School Road  
Morgantown, WV 26508  
(304) 292-6561

- 12.6 **Natural Gas** natural gas is not being provided in Phase I of the Subdivision but may be provided in future Phases, at Declarant's discretion. If public natural gas service is provided then in order to reduce the cost of installing natural gas distribution lines in the Subdivision, each Unit must contain one major natural gas appliance such as a furnace or heating system, stove or range, hot water heater or clothes dryer.

### **XIII LOCAL SERVICES**

The governmental and other local services available to the Subdivision:

- 13.0 **Fire Protection** Primary fire protection is available on a year-round basis from the Cass District Volunteer Fire Department, telephone number (304) 291-0818. The fire station is located on WV Route 119. Additional fire protection is available from other county fire departments on a year-round basis including the Blacksville Fire Department, Star City Volunteer Fire Department and the Granville Volunteer Fire Department all of which are located in relative proximity to Subdivision, even though the Subdivision is not within the area regularly serviced by those additional departments.
- 13.1 **Police Protection** Police protection is available on a year-round basis from the Monongalia County Sheriff's Department and the West Virginia State Police, both of which agencies have offices in Morgantown.

- 13.2 **Schools** Children residing in the Subdivision may attend the following public schools:

SCHOOL	OPERATING BODY	ENROLLMENT GRADES
Mylan Park Elementary	Monongalia County	K-5
Westwood Middle School	Monongalia County	6-8
University High School	Monongalia County	9-12

There are multiple parochial and private schools in Monongalia County.

- 13.3 **Hospitals** The Monongalia General Hospital and West Virginia University Hospitals are located in Morgantown, West Virginia, approximately 10 miles from the subdivision. Ambulance service also is available.
- 13.4 **Physicians and Dentists** There are a significant number of physicians and dentists located within the Fairmont and Morgantown, West Virginia areas.
- 13.5 **Shopping Facilities** A wide variety of shopping facilities are located in Monongalia and Marion Counties.
- 13.6 **Public Transportation** There is no public transportation available in the subdivision. Chartered and public air service is available from the Morgantown Municipal Airport, located approximately 14 miles from the Subdivision. Commercial air service is available from that airport to various locations including Washington, DC, and Pittsburgh, PA.

#### **XIV SUBDIVISION CHARACTERISTICS AND CLIMATE**

- 14.0 **Terrain Issues** The general terrain of the subdivision, the climate and any nuisances or hazards affecting the enjoyment or use of the area in which the Subdivision is located should be considered by all Unit Purchasers.
- 14.1 **General Topography** The subdivision lies in Monongalia County, West Virginia, located in the Appalachian Plateau Region of West Virginia at the foot of the Allegheny Mountains. This topography is varied and quite steep in places and is covered with varying degrees of vegetation consisting primarily of pines, maples, oaks and other deciduous types of trees and considerable underbrush. Certain Units are the site of significant rock formations which could be impediments to construction but add aesthetic quality and character to the Subdivision.
- 14.2 **Slope Concerns** Some Units in the Subdivision may have slopes greater than twenty (20%) percent. This may affect the type and cost of construction and will require adequate engineering and professional architectural attention prior to any building or site work.
- 14.3 **Drainage and Fill** Some of the Units may have been filled or drained and some Units may require draining or fill. Some Units are the site of significant rock or stone formations. Soil conditions and subsurface geological conditions will vary throughout the subdivision. Prior to purchase, you

should obtain a subsurface geological inspection to determine the impact that stone or rock formations may have upon your landscaping, excavation and construction plans and costs. Significant subsurface conditions may limit the type of home you can build and/or dramatically increase the cost of construction.

- 14.4 **Flood Plain** Certain portions of the Subdivisions are or may be within the flood plain. Should an improvement touch the flood plain, flood insurance would be required and is available through the Natural Flood Insurance Program as established by the National Flood Disaster Protection Act. The cost of Flood Insurance may be obtained from the provider. The cost of flood insurance will vary from time to time and purchasers are advised to obtain an estimate from a flood insurance provider prior to executing a contract to purchase a Unit in the Subdivision.
- 14.5 **Flooding and Soil Erosion** The Declarant has retained an engineering firm to provide a comprehensive drainage system within the watershed of the development. The program includes mulching and seeding of exposed areas, sodding and seeding in areas of heavy grading and construction of diversion channels, drainage swales, outlet channels, underground piping, basins, and other similar methods of water conveyance and distribution. You must comply with the storm water plan in the development of your Unit and no drainage improvement installed by Declarant may be modified or removed without the prior written consent of the Association. You are also required to comply with State and Federal soil control requirements as noted above.
- 14.6 **Drainage Standards** The draining system is designed as follows:
- A. Culverts will pass a 20-year storm.
  - B. Storm sewers will pass a 20-year storm without backing water through inlets.
  - C. Ditches and swales will contain a 20-year storm within its banks and are treated for a two-year storm water velocity.
- 14.7 **Purchaser Drainage Due Diligence Issues** Prospective buyers are hereby notified that the surface water conditions on individual Units within the Subdivision vary during certain seasons of the year and existing surface water conditions may not be apparent at all times. Further, surface water conditions on individual Units will be materially affected by the development and construction of homes on both the Unit to be purchased and other Units in the Subdivision situated at elevations above the Unit to be purchased. Therefore, prospective purchasers are advised to consult an engineer for the purpose of: (a) ascertaining pre-purchase, pre-development and post-development surface water conditions on any given Unit; and (b) advising the purchaser and the purchaser's builder, contractor and landscaper with regard to construction on, and development of, the Unit.
- 14.8 **Limitations on Use of Drainage System** Although Unit Owners are required to discharge surface water into the comprehensive storm water management system, the BCC may reasonably restrict the location and rate of such discharge. On-site storm water retention systems may be required on individual Units. No Unit owner may make any material modification to the storm water system, restrict the flow of the system, redirect the system or fill in any portion of the system without prior written consent of the BCC. The BCC may reasonably require an engineer's certification of the appropriateness and adequacy of such changes and that the same be made at Unit Owner's expense.

Ditches and culverts are present throughout the Subdivision and along various roads. Those ditches and culverts constructed by the Declarant belong to and are maintained by the Association. You may not make any material modification to same without prior approval as set forth in the Declaration and specifically cannot close a ditch or replace a ditch with a culvert without prior consent of the Association. To the extent that such culvert is necessary for driveway access to your Units, there are strict limitations on the type, size, location and length of such culverts.

- 14.10 **Unit Owner Drainage Duties** Each Unit owner is charged with the duty of maintaining and monitoring all storm water systems located on his/her Unit. Each Unit Owner, as a member of the Association, has an affirmative duty to promptly notify the Association of any failure or deterioration or inadequacy of the system.
- 14.11 **Ponds** The Declarant may construct one or more retention or detention ponds for surface water/storm water and/or sediment control. All such ponds are Common Elements owned by the Association and subject to permits and/or approvals by State and Federal agencies. The Association is charged with the cost of maintaining all such permits.
- 14.12 **Nuisances** To the knowledge of the Declarant, there are no nuisances which affect the Subdivision other than the potential hazards of the Golf Course. The real estate abutting the Subdivision located on several boundaries is utilized for agricultural purposes which include maintaining livestock and periodic use of natural and artificial fertilizers which may from time to time be considered a nuisance by some individuals. Those uses of adjoining land, however, were in existence prior to Declarant's acquisition of the land on which the Subdivision is being developed and those uses are not regulated or governed by the Declaration.
- 14.13 **Hazards** To the knowledge of the Declarant, there are no existing hazards which affect the subdivision other than the inherent risk of being adjacent to a Golf Course.
- 14.14 **Climate** The average temperature ranges for the subdivision area are shown below:

MONTH	AVERAGE HIGH TEMPERATURE	AVERAGE LOW TEMPERATURE	MEAN TEMPERATURE
January	38.0 F	21.4 F	29.7F
July	82.6F	62.6 F	73.1 F

Monongalia County has an average annual precipitation of approximately 40.59 inches and an average snowfall of 32.1 inches. Precipitation, however, varies annually and all Unit purchasers are advised to implement drainage controls sufficient to handle the most severe precipitation which may occur.

## **XV PROPERTY OWNERS ASSOCIATION**

- 15.0 Membership in the Association is mandatory for each Unit owner, entitling that Unit owner to one vote per Unit on all Association business.

- 15.1 The Association is the entity empowered to enforce the Declaration and all documents referenced therein for the purpose of protecting and ensuring the character, value, aesthetics and appearance of the Subdivision. The Association also owns and maintains the Common Elements and manages the financial affairs of the Subdivision. The Association has the option but not the duty to undertake any specific enforcement action.
- 15.2 During the initial year of operation, Declarant shall provide all snow removal, roadway repairs, mowing and trimming of the Common Elements, and the cost of all utilities consumed in maintaining the Common Elements. Declarant shall also pay the cost of all property taxes on the Common Elements and all Association expenses for insurance, taxes and governmental filing fees. A copy of the declarations page for the Association's insurance coverage provided for the benefit of Unit owners is attached as **Exhibit G**.
- 15.3 Beginning when Declarant elects to no longer pay the costs of the Association (with the exception of Golf Course memberships) and each thereafter, the Association shall adopt an annual budget which shall provide for all known and anticipated expenses of the Association. The costs of the Association will vary from time to time and those costs will to some extent depend on what expenses the Association elects to incur.
- 15.4 Because the Declarant has elected to bear all costs during the initial year of Subdivision development, no actual Association budget is available. A proposed balance sheet and a projected budget for the Association are attached as **Exhibits H and I**. The budget is an estimate prepared by the Declarant under the Assumption that: (a) Declarant shall pay all costs during 2008; and (b) Declarant's belief that there will be no completed and occupied dwellings during said year. The balance sheet and budget are estimates.

*The budget must include, without limitation:*

*(i) A statement of the amount or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;*

*(ii) A statement of any other reserves;*

*(iii) The projected common expense assessment by category of expenditures for the association; and*

*(iv) The projected monthly common expense assessment for each type of unit;*

## **XVI ASSOCIATION ASSESSMENTS:**

The Association must finance its operations by assessing its costs to the Units. If Assessments are not paid when due, the Association has the power and authority to impair the marketability and title of the Unit by perfecting a lien to secure payment of such costs.

- 16.0 There are several types of Assessments:

{R0238026.1}



(a) **Annual Assessments** for the common benefit of all members of the Association and intended to finance the annual operations of the Association. During the initial year of the Subdivision there will be no Annual Assessments and Declarant will bear the cost of all Association expenses. Annual Assessments will begin during the year after the first of the following to occur: (i) when Declarant relinquishes control of the Association; or (ii) when Declarant advises the Association it will no longer bear the Association's expenses. **The minimum Annual Assessment is projected to be not less than \$600.00 per Unit and does not include the cost of Fitness Center Memberships.**

(b) **Special Assessments** which are from time to time necessary to finance the costs of matters either not accounted for in, or which exceed the amount budgeted in, the Annual Assessment.

(c) **Initial Membership Deposit**, which are paid by all Unit purchasers at the time they acquire the Unit. **During 2008, the Initial Membership Deposit is \$300.00 but the Association may increase this fee in the future.**

(d) **Golf Course Membership, Special Assessments**, which are paid at least annually at the rate specified by the Golf Course to the Association and are payable by all parties owning Units which are: (a) suitable for occupancy; and (b) not owned by Declarant and held for sale to consumers.

(e) **Fines and Penalties** which are assessed against fewer than all Unit Owners as the result of a violation of a restriction, rule or regulation of the Association; and

16.1 At the time of this Declaration, there are no current or expected fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Subdivision except for the mandatory Golf Course memberships. The Association may elect to impose such additional fees at a later date.

16.2 Assessments are made for the purpose of paying the Association's actual and anticipated expenses. The Association's expenses are budgeted annually and include, but are not limited to management fees and administrative costs of operation and maintenance of the Common Elements and Association such as, ad valorem taxes, insurance premiums, business registrations, capital expense reserves, snow removal, roadway repairs, mowing, signage, lighting and other similar expenses. Assessments may be increased annually as deemed necessary at the discretion of the Association for the purpose of defraying in whole or in part any appropriate expenses or capital costs of the Association, including without limitation, the costs of any construction, reconstruction, or unexpected repair of streets or parking areas or for necessary fixtures and personal property related thereto.

16.3 Annual Assessments shall be allocated equally to all owners of all Units regardless of location, use or size. The allocation schedule for Annual Assessments is set forth in the Declaration. The cost of Common Elements which benefit all Units is assessed equally to all Units. The cost of Limited Common Elements which may be utilized by less than all Units are assessed to those Units entitled to utilize the Limited Common Elements. With regard to Patio-Homes and Townhomes, the cost of structures which benefit more than one Patio-Home or Townhome are the Limited Common Expense of the benefited Patio-Homes or Townhomes.

- 16.4 The Annual Assessment for each Unit shall be set by the Association Board no later than December 31 of the year before the Assessment is due. The Annual or Common Assessment shall at the Association's option be payable either: (a) in quarterly installments; or (b) in full on or before the 31<sup>st</sup> day of January of each year., The rate of said Annual Assessment shall be established, and may be modified, each year by the Association's Board.
- 16.5 All money collected from Initial Assessments during the period of Declarant's control, and before the first Annual Assessment will be placed in an interest bearing account of the Association and used for future road repair when the Declarant turns the community over to the property owners.
- 16.6 A copy of the Association's initial insurance declarations page is attached as **Exhibit G**.

## **XVII RESALE REQUIREMENTS/EXCHANGE PROGRAM**

- 17.0 The Declarant has no program to assist you in the resale of your Unit. Also, we have made no provisions for exchanging your Unit. To the extent that the Declarant is marketing its Units for sale, such marketing may be in direct competition with the resale of your Unit.
- 17.1 When you sell your Unit, it is your obligation pursuant to the Declaration and the West Virginia Common Interest Ownership Act, West Virginia Code Chapter 36B, Article 4, Section 109, to provide your grantees, assignees and successors in interest with certain documentation. **By West Virginia law no contract for the resale of any Unit in a Common Interest Community such as the Subdivision is binding as to any purchaser until three (3) days after the seller provides the following information:**
- (A) *this Public Offering Statement;*
  - (B) *the Declaration of Protective and Restrictive Covenants;*
  - (C) *the By-Laws of the Association;*
  - (D) *the Rules and Regulations of the Association;*
  - (E) *The most recent regularly prepared balance sheet and income and expense statements, if any, of the Association;*
  - (F) *The current operating budget of the Association; and*
  - (G) *The following information from the Association:*
    - (i) *A description of the type and amount of insurance maintained by the Association for the benefit of the Association's members and Unit owners; and*
    - (ii) *A statement that the Association's Executive Board has no knowledge that any alterations or improvements to the Unit or to the Limited Common Elements assigned to said Unit violate any provision of the Declaration; and*

- (iii) *A statement that the Association's Executive Board has no knowledge of any violations of applicable health or building codes with respect to the Unit; the Limited Common Elements assigned to said Unit; or any other portion of the Common Interest Community; and*
  - (iv) *A statement that there are no leasehold estates affecting the Unit;*
  - (v) *A statement of any capital expenditures anticipated by the Association for the current and two next succeeding fiscal years; and*
  - (vi) *A statement of the amount of any reserves for capital expenditures and any portions of those reserves designated by the association for any specified projects.*
- (H) *A written Statement that to the best of the Association's knowledge:*
- (i) *There are no rights of first refusal or restraints of the free alienability of the Unit to be sold which have an effect on the proposed disposition of the Unit; and*
  - (ii) *The current monthly or annual common expense assessment for the Unit and the amount of unpaid common and/or special assessments currently due and payable; and*
  - (iii) *All other fees are currently payable by the Unit owner; and*
  - (iv) *There are no unsatisfied judgments against the Association and there are no pending suits in which the Association is a Defendant; and*
  - (v) *There are no leasehold estates affecting the Unit or the common areas of which a beneficial ownership and/or use interest is attributable to the Unit; and*
  - (vi) *There are no restrictions in the Declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty or loss to the Unit. The attached declaration contains certain provisions pertaining to limitations affecting the amount that may be received by the Unit owner as the result of condemnation, casualty or loss of the common elements of the Common Interest Community or the termination of the Common Interest Community.*

We prepared forms attached hereto as **Exhibit M** which may be of assistance in complying with the Declaration and the Common Interest Community Ownership Act.

**XVIII WARRANTIES AND LIMITATIONS:** The Subdivision is governed by certain warranties of quality which are set forth in West Virginia Code Section 36B *et seq.* The Declarant makes the offer of all initial sales of all Units contingent upon all purchasers from the Declarant executing a document waiving the limitations period for actions on warranties to two (2) years. Each contract shall contain a waiver provision and a written waiver will be produced to all purchasers at closing. No deed shall be delivered by Declarant absent the voluntary execution of such waiver by the

purchaser. A copy of the Waiver is attached hereto as **Exhibit L** and each deed from the Declarant shall contain language restating the waiver to be incorporated as part of the public land records after recording.

**XIX** **STATUTORY DISCLOSURE:** At the time of this Public Offering Statement, the Declarant has no knowledge of any unsatisfied judgments or pending suits against the Association or any litigation material to the Subdivision.

**XX** **UNIT TAXES/EXPLANATION:**

- 20.0 In West Virginia, standard real estate closing practice is for real estate taxes to be apportioned at closing by a mechanism contrary to statute. Specifically, although taxes are assessed based on a year beginning July 1 and ending June 30, taxes are published on a calendar year basis and the tax lien attaches on a calendar year basis. Therefore, all contracts for Units in The Subdivision provide that taxes will be apportioned on a calendar year basis.
- 20.1 Upon closing of your purchase of a Unit, you will be obligated to pay Monongalia County real estate taxes for the year in which you purchase the Unit. Taxes will be pro-rated between you and the Declarant as of the day of closing. Thereafter, you will be required to pay all taxes assessed against the property. Taxes are payable to the Sheriff of Monongalia County. The annual taxes on an unimproved Unit after the sale to a purchaser will vary from Unit to Unit depending on the assessed value of the property and you should expect your real estate taxes to increase during the 18 months after you purchase your Unit.
- 20.2 In the event that you purchase a Unit which is at the time of conveyance assessed as part of the parent tract rather than as a separate Unit, or in the event that a tax ticket is issued after closing which assesses your Unit as part of a larger tract owned by Declarant, Declarant will be responsible for payment of the ticket and you will be responsible for reimbursing the Declarant for your share of those taxes. You will be obligated to reimburse such costs to the Declarant within fifteen (15) days after Declarant provides you with a copy of a full year or partial year paid tax receipt.
- 20.3 Real Property taxes for each year are assessed based on: (A) the ownership classification and use; and (B) and value of the real estate; on July 1 of the preceding year. There are two tax classifications which apply to properties in The Subdivision. Real estate which is the primary residence of its owner on the assessment date is Class 2. Real Estate which is not the principal residence of its owner on the assessment date is Class 3. Class 3 properties are taxed at the standard levy rate and Class 2 properties are taxed at one-half (½) of the standard levy rate.
- 20.4 All properties owned by the Declarant are Class 3 and will be assessed as Class 3 during the year they are conveyed from the Declarant. If a Unit is conveyed and the deed is recorded prior to July 1 of a given year the subsequent year's taxes will be issued in the name of the purchaser and the tax classification may change based on the new owner. If a Unit is conveyed and the deed is recorded subsequent to June 30 of a given year the taxes for the subsequent year will be issued in the name of the Declarant and the property will be assessed as Class 3.
- 20.5 It is your obligation to contact the Sheriff and Assessor of Monongalia County, West Virginia, to

confirm that any Unit you purchase from the Declarant is correctly assessed for years subsequent to conveyance. You should notify the Sheriff as soon as you move into your home so that the Sheriff may make any appropriate tax classification changes.

#### 20.6 Example taxation calendar:

- A. Taxes for 2008 were based on the classification and value of the land on July 1, 2007.
- B. During April of 2008, the County Commission set the levy rate which when multiplied by the value and the classification factor results in the amount of the taxes.
- C. 2008 Taxes were published and become payable during July of 2008.
- D. The first half (January to the end of June) 2008 taxes were due by September 1, 2008, and delinquent if not paid by October 1, 2008.
- E. The second half 2008 (July to the end of December) taxes were due by March 1, 2009, and delinquent if not paid by April 1, 2009.
- F. Both halves may be paid at any time after July 1, 2008, and there is a pre-payment discount if assessments are paid early.
- G. If the 2008 taxes are not paid prior to November 2009, the land will be sold for back taxes.

20.7 If you construct improvements on a Unit in The Subdivision, please bear in mind that each year's taxes are based on the state of the property on July 1 of the preceding year. Hence, new construction may not be taxed at its post-completion state for as much as two years after closing. If the construction was completed on July 1 of the preceding year but the dwelling was not the principal residence of its owner on that date then taxes for the upcoming year would be issued based on full completed value and at the highest possible levy rate.

#### 20.8 Example of tax calculation:

$(\text{Appraised value on June 30 of preceding year}) * 0.60 = \text{Assessed Value}$
$\text{Assessed Value} * \text{Levy Rate} = \text{Tax}$
If the Unit was the principal residence of its owner on the Assessment date, the tax is reduced by 50%.

If a Unit with dwelling is worth \$200,000 and is the principal residence of its owner of the assessment date, it would be taxed as Class 2 and based on the 2008 Cass Tax District levy rate of .010454 the tax would be calculated as follows:

$$\$200,000 * 0.60 * .010454 = x .5 = \$1,254.48 \text{ per year}$$

If a Unit with dwelling is worth \$200,000 and it is NOT the principal residence of its owner on the

assessment date it would be taxed as Class 3 and based on the 2008 Cass Tax District levy rate of .020908 the tax would be calculated as follows:

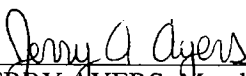
$$\$200,000 * 0.60 * .020908 = \$2,508.96 \text{ per year}$$

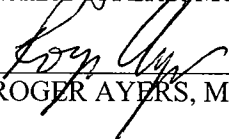
Therefore, you should notify the Assessor's office at (304) 291-7279 as soon as you purchase real estate and as soon as you make the real estate your principal residence. Failure to contact the Assessor in a timely manner may result in your taxes being assessed at twice the appropriate rate for subsequent years. Additional information regarding taxation, levy rates and assessments is available at [www.assessor.org](http://www.assessor.org).

- 20.8 Individuals with certain disabilities and individuals over the age of 65 are eligible for a Homestead exemption on Class 2 properties. This exemption causes the assessed value to be reduced from 60% of the appraised value to 40% of the appraised value. You must contact the Assessors' Office on the second floor of the Courthouse and personally apply for the Homestead Exemption.
- 20.9 In the event that you have any questions with regard to taxation, you may contact the Sheriff's Tax Office at (304) 291-7244.

This Public Offering Statement and the Exhibits hereto, submitted this \_\_\_\_th day of August, 2008, by:

Ayers & Ayers Holdings, L.L.C.,  
A West Virginia limited liability company,

By:   
JERRY AYERS, Member

By:   
ROGER AYERS, Member

**FIRST AMENDMENT TO**  
**DECLARATION OF COMMON INTEREST COMMUNITY**  
**FOR**  
**THE MEADOWS**  
**a residential Planned Community in**  
**Monongalia County, West Virginia**

THIS FIRST AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 22<sup>nd</sup> day of August, 2008, by **AYERS AND AYERS HOLDINGS, L.L.C.**, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713 ("Declaration"); and

**WHEREAS**, Phase I of the Meadows is depicted and shown on that certain map or plat of survey entitled Phase 1 Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 2008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A; and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 500 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the Declaration.

**WHEREAS**, Declarant hereby dedicates 30 Units in Phase II of the Subdivision and hereafter has the right to dedicate and additional 432 Units in future Phases.

**I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase II of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Development Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase II of the Subdivision are Units 1 through 21 and 90 through 98, inclusive, and the roadways known as Oakmont Court, Birdie Court and Meadow Ponds Lane, all as depicted and shown on the map or plat attached hereto and entitled Phase II of THE MEADOWS, A PLANNED COMMUNITY, dated July 31, 2008, and prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is attached hereto as **Exhibit A**, and also recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 46A ("Phase II Plat"). The location of, and proximity between, Phases I and II, are shown on that certain drawing entitled Phases I & II of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760

of Thrasher Engineering, Inc., which said plat is attached hereto as **Exhibit B**. All Units in Phase II of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court and Meadow Ponds Lane are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision.

<b>Total acreage of parent tracts</b>	<b>173.6714</b>
<b>Total acreage dedicated as Phase I</b>	<b>4.854*</b>
<b>Total acreage dedicated as Phase II</b>	<b>9.838</b>
<b>Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units</b>	<b>158.98</b>

<b>Total acreage of Phase I</b>	<b>4.854*</b>
<b>Number of Units in Phase I</b>	<b>38</b>
<b>Total acreage of all Units in Phase I</b>	<b>3.104</b>
<b>Total acreage of Common Elements A, B &amp; C in Phase I</b>	<b>1.75</b>
<b>Total acreage of Limited Common Elements in Phase I</b>	<b>0</b>

(\* =excluding Common Element D which is an easement)

<b>Total acreage of Phase II</b>	<b>9.838</b>
<b>Number of Units in Phase II</b>	<b>30</b>
<b>Total acreage of all Units in Phase II</b>	<b>7.767</b>
<b>Total acreage of Common Elements E, F, G &amp; H in Phase II</b>	<b>2.071</b>
<b>Total acreage of Limited Common Elements in Phase II</b>	<b>0</b>

**Phase II of the Subdivision is subdivided entirely from a 159.4367 acre tract which is identified for taxation purposes for the year 2007 as Cass District Map 11, Parcel 44.**

Phase II constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phase II and the previously dedicated Phase I.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges,



Development Rights and Special Declarant Rights with regard to Phase II in the same manner as were reserved to Declarant in the original Declaration with regard to Phase I. All Units and Common Elements in Phase II are, except to the extent expressly modified herein, subject to all covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phase I.

## II. ALLOCATIONS IN PHASE II and REALLOCATION IN PHASE I:

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as follows:

Table of Allocations	All 38 Units in Phase I Collectively	Each Unit in Phase I	All 30 Units in Phase II Collectively	Each Unit in Phase II
Total Allocated Votes on Association Business	38/68	1/68	30/68	1/68
Total Allocated Common Expense Liability	38/68	1/68	30/68	1/68
Phase I Limited Common Expense Liability	38/38	1/38	0	0
Phase II Limited Common Expense Liability	0	0	30/30	1/30

There are no *express* Limited Common Elements in Phases I or II, however, the above allocations shall apply to *implied* Limited Common Elements, if any. It should be noted that, notwithstanding the fact that the green space in Phase I is a Common Element, rather than a Limited Common Element, the cost and control of maintenance and upkeep of such green space is a Limited Common Expense allocated to the Units in Phase I.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

## III. SPECIFIC PHASE II EASEMENTS:

In addition to those easement excepted and reserved in the Declaration, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **16' Drainage Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified as "16' Drainage Easement" on the Phase II Plat. Said easements are in addition to all other perimeter easements reserved in the Declaration and affect Units 1-8, 10, 12-15, 90 and 97 in Phase II. Each of said easements is sixteen (16) feet in total width (as measured eight (8) feet along each Unit boundary) Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and stormwater from Units and Common Elements throughout the Subdivision in accordance with the stormwater management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant.

(2) **16' Utility Easement:** A right-of-way or easement for installation, construction, laying, extension, maintenance, use, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of: utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to and within the Subdivision, as well as exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. Said easement is identified as "16' Utility Easement" on the Phase II Plat. Said easement is in addition to all other perimeter easements reserved in the Declaration and affects Units 91 and 92 in Phase II. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each Unit boundary).

#### **IV. CONSTRUCTION STANDARDS (Building Control Standards or "BCS").**

**Section X of the Declaration, entitled Construction Standards (Building Control Standards or “BCS”), is amended with regard to Phases I and II, in its entirety and replaced with the following:**

**X CONSTRUCTION STANDARDS (Building Control Standards or “BCS”):**

The following BCS are restrictive covenants, limitations, regulations and agreements imposed upon all Units for the benefit of Declarant, the Association, the owners of other Units, and the and the owners of the Golf Course, the Golf Course Tract. The BCS are restrictive covenants and shall be binding upon all purchasers of Units and/or any and all other parties having any interest therein, and run with the land. The BCS do not apply to improvement and construction of Common Elements, Limited Common Elements, Units or improvements thereto by the Declarant, or exercise by Declarant of any easement right, Development Right or Special Declarant’s Right. The BCS may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should request and procure copies of the current Governing Documents from the Association prior to transfer of any ownership interest in any Unit.

1. All dedicated Phases are restricted to single family residential use. All Units in Phase I are dedicated for single family attached residential Townhomes and no more than one Townhome or PatioHome is permitted on any Unit. All Units in Phase II are dedicated for single family detached residential Dwellings and no more than one detached Dwelling is permitted on any Unit in Phase II.
2. No apartment or condominium may be constructed or operated on any Unit in any portion of Phases I or II. This provision expressly prohibits subdivision of any Unit in Phases I or II wherein there are horizontal delineations of ownership such as multistory Dwellings with separate ownership of the floors or situations where a floor or ceiling forms the boundary between dwellings or Units.
3. All Dwellings, buildings and structures, including detached Dwellings, Townhomes or PatioHomes, shall be of traditional residential character and the BCC is vested with exclusive authority to determine what constitutes traditional residential character taking into consideration the substantive differences between a traditional Townhome, a traditional PatioHome and a traditional Detached Dwelling. BCC shall consider in making such determinations the character and aesthetics of the Subdivision and the impact of the proposed dwelling on the neighborhood, community, other Units, Golf Course and Golf Course Trace. The following are not of traditional residential character and may not be constructed in the Subdivision: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) log homes; (e) art-deco houses; (f) any dwelling with a predominately commercial appearance; and (g) other non-traditional houses which are not common in residential Planned Communities in Monongalia County, West Virginia. Flat and non-peaked roofs are not permitted except for limited porches. Vertical siding is only permitted for trim purposes and vertical siding may not be used as a cover or facade for more than twenty (20%) per cent of any side of any dwelling.

4. No Unit shall be occupied until the same has been substantially completed.
5. The exterior of all structures and improvements constructed or placed on any Unit shall have the appearance of new material.
6. No mobile or modular homes commonly known as “double wides” are permitted within the Subdivision. For the purpose of this provision, mobile and modular homes are homes for which a vehicle title is or has ever been issued, registered or required by the West Virginia Department of Motor Vehicles or any other agency of the State. Panelized construction, pre-engineered homes and modular/sectional construction are permitted in Phases I and II, provided that the completed dwelling appears to be stick built. BCC retains exclusive authority to determine whether any structure is permitted or excluded by the provisions of this paragraph.
7. No dwelling in Phase I, may be constructed more than two (2) stories above the bottom of the Main Floor. No dwelling in Phase II may be constructed more than three (3) stories above the bottom of the Main Floor. For the purpose of this document, the Main Floor is the lowest story of the dwelling which contains the main or primary entrance from the street. For the purpose of this provision, a “story” is the space between the floor below, and the floor above, and if there is no floor above then the distance between the floor below and the ceiling above. The BCC is vested with absolute and unilateral discretion to make final determinations as to which floor or story of a dwelling is Main Floor. BCC may grant certain reasonable exceptions to these provisions to permit cupolas and other extensions beyond the foregoing limitations so long as the extension does not exceed ten percent (10%) of the total footprint of the main floor.
8. No outbuilding or detached structure (“outbuilding”) other than the primary Dwelling is permitted on any Golf Course Unit, Townhome Unit or PatioHome Unit and only one such structure is permitted on any other Unit. No outbuilding shall be constructed to a height greater than set forth below. For the purpose of this document, the ground level of any detached structure or detached garage shall be the level of the lowest entrance or doorway to the Main Floor of the structure. The BCC is vested with absolute and unilateral discretion to make final determinations as to what shall constitute the Main Floor of each outbuilding structure or garage. No outbuilding in Phase II may serve as a detached garage.

<b>Phase or Group of Units</b>	<b>Subject Outbuildings</b>	<b>Regulation</b>
Phase I	All outbuildings	Not Permitted
Phase II Golf Course Units	All outbuildings	Not Permitted
Phase II non-Golf Course Units	All outbuildings except detached garages	Permitted subject to the limitations set forth herein.
Future Phases	Will vary.	Will vary if permitted.

9. No dwelling shall contain less than the minimum square feet, of total finished living area as set forth in the following table. For the purpose of calculating “finished living area” basements, porches, decks and garages may not be included in such calculations.

PHASE	TYPE OF DWELLING	MINIMUM AREA
Phase I	Townhome	960 Sq. Ft.
Phase I	Patio Home	960 Sq. Ft.
Phase II Golf Course Units	Single Family Detached Dwelling	1250 Sq. Ft.
Phase II non-Golf Course Units	Single Family Detached Dwelling	960 Sq. Ft.
Phase II and subsequent Phases		To be determined

10. No outbuildings are permitted in Phase I or on Golf Course Units in Phase II but outbuildings are permitted on non-Golf Course Units in Phase II. If outbuildings are permitted in future Phases, outbuildings shall contain more than the maximum square feet of total above-ground enclosed area and of total structure foot print, than as set forth in the following table.

PHASE	OUTBUILDING	MAXIMUM FOOTPRINT	MAXIMUM TOTAL AREA (ABOVE GROUND)
Phase I	Not Permitted	-0-	-0-
Phase II Golf Course Units	Not Permitted	-0-	-0-
Phase II non-Golf Course Units	One (1) Per Unit. No detached garages permitted.	192 Sq. Ft Approx 12' x 16'	192 Sq. Ft. No more than one (1) story.
Phase III and subsequent Phases	If permitted by an Amendment to this Declaration	To be determined	To be determined

11. No dwelling or building shall be located nearer to the perimeter of the Unit than the established set-back lines set forth below. Provided, however, that due to the topography of the Units, and with the exception of Golf Course set-backs which may not be reduced without the

consent of the Owner(s) of the Golf Course, the minimum set-back lines for certain Units may be reduced as designated or shown on the plats of the Subdivision or as otherwise set forth below. Declarant and the Association are each vested with authority to grant reasonable variances to the established non-Golf Course set-back lines to prevent undue hardship and accommodate unforeseen and unknown circumstances. Provided, however, that all Unit Owners, by acceptance of such a variance, waive and release any and all claims, rights and causes of action which the Unit Owner may have against the Association, Declarant or, if applicable, owners of the Golf Course with regard to any and all damages that might arise with respect to such variance. For the purpose of this requirement, the “front” of each Unit shall, unless otherwise designated by Declarant or BCC, be the boundary or boundaries of the Unit contiguous to a road in the Subdivision and the “rear” of the Unit shall be the opposite boundary or boundaries of the Unit. Declarant and BCC expressly reserve the right to make alternative designations to the extent necessary to assure maximum usability of Units and to compensate for issues arising with regard to topography and Units contiguous to multiple streets, roads or common elements. All Unit purchasers, by acceptance of a Deed for any Unit in the Subdivision, whether from Declarant or a third party, acknowledge and agree that any variance reducing the lineal distance of a set-back by not more than fifty (50%) per cent is reasonable, and that variances for improvements extending more than fifty (50%) per cent of the distance of the set-back may be reasonable depending on the circumstances and potential hardship resulting from failure to grant such variance. Declarant specifically reserves to Declarant and Association the right to grant variances of greater than fifty (50%) per cent as reasonable and necessary with regard to the following Phase II Units which are of atypical shape and/or topography: Units 13, 14, 15, 96 and 98. Declarant may also make similar reservations upon the dedication of future Units in future Phases if the shape or topography of the Unit necessitates set-back concessions to facilitate construction of a Dwelling on the Unit. Association is encouraged to grant such similar variances as may be necessary to permit reasonable construction of Dwellings on all Units.

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

	Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side Boundary(s)	Minimum distance from any Unit boundary abutting a Road or Common Element	Minimum distance from Golf Course
Phase I	10 feet*	10 feet	5 feet	15 feet	10
Phase II	20 feet	20 feet	8 feet	20 feet	20 feet
Future Phases	To be determined	To be determined	To be determined	To be determined	To be determined

\* Due to the practical limitations encountered in Phase I, the original Phase I from set-back was reduced by five (5) feet to facilitate construction of Units.

To the extent that more than one of the above set-backs should apply in any location, the greater distance of the two applicable set-backs shall govern.

13. Townhomes and PatioHomes may be of substantially identical exterior appearance and exterior architectural design to adjoining Units. No detached dwelling may be constructed on any Unit which is of substantially identical exterior appearance and exterior architectural design to any dwelling approved for construction on any adjoining Unit including any Unit which would be adjoining but for a street or road.
14. The exterior wall surfaces of all buildings shall be of either masonry construction, wood, vinyl siding, stucco or drivet or attractive synthetic siding such as Hardy Plank. Specific and appropriate variances to this requirement may be granted on a Unit basis under special circumstances, depending on the style, location, size, character and over-all post construction esthetics of the dwelling and Unit at issue. "Masonry Construction" shall be limited to that of brick or natural or cultured stone. Concrete or cinder block foundations may be exposed provided that: (a) the same are painted to match the exterior appearance of the dwelling or otherwise covered with an approved material; (b) the same are not exposed more than 18" inches above grade on the front of a dwelling and not more than 30" above grade on any other side of a dwelling. No portion of any Unit other than a foundation may have exposed concrete or block. For the purpose of this provision, the term "foundation" shall mean, all portions of the dwelling situate below the Main Floor, as defined above and specifically excludes exposed walls of "walk-out" basements.
15. No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the Public Sewage System. Provided, that temporary facilities are permitted during construction but shall not be within 20 feet of a road.
16. All driveways and sidewalks are to be constructed of concrete, or paved with asphalt, brick, fitted stone or pavers. Non-fitted stone or gravel driveways are not permitted. Weather permitting, driveways and sidewalks shall be completed within one (1) year of commencement of construction. Common, joint or shared driveways ("Joint Driveways") servicing multiple Units are permitted if approved by the BCC. All owners of all Units benefited by joint driveways are jointly and severally liable for the maintenance, construction and upkeep of same in compliance with this Declaration. The Declarant and BCC shall require, as a condition precedent to approval of any joint driveway, a record indemnity, insurance and hold-harmless agreement between the owners of the Units benefited by the Joint Driveway. With the exception of approved joint driveways, which may span the side set-back between benefited Units no driveway may be constructed in any side or rear set-back without prior written consent of the BCC. The driveway limitation imposed by this section is intended for the purpose of maintaining green space, trees and foliage between Units and along the Golf Course.
17. Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any Political Subdivision of the State of West Virginia, under sidewalks and/or driveways at or near the

intersection of same with any road in the Subdivision in order to facilitate the proper drainage of storm water from the streets of the Subdivision. All such culverts shall be no less than twelve (12) inches in diameter and in compliance with the drainage plan for the Subdivision. Each Unit Owner shall continuously maintain all culverts, ditches and drainage lines and drainways on his or her property, whether installed by the Developer, the Association or the Unit Owner, so as to prevent the restriction of water flow through the same. Culverts, ditches, drainage lines and drainways may not be modified by a Unit Owner without written approval of the Association and a recommendation as to the suitability and appropriateness of the modifications from a licensed and insured Engineer approved by the Association's Board of Directors. Such written recommendation shall be addressed to the Association and that the modifications are to be completed in compliance with the Subdivision drainage plan and it shall specify the design, materials and manner of construction. Written request of changes to drainage systems must be made to the Association by the Unit Owner at least thirty (30) days in advance of the next Board meeting.

18. All driveways shall be paved to the existing road surface rather than to the Unit Owners property line or any easement or set-back line.
19. To the extent that the driveway for any Unit slopes down hill from a road to the dwelling constructed on the Unit, all Unit Owners are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road, and/or at each door or garage door which is situate below the elevation of the road. All Unit Owners are further advised that road paving, road modifications and improvement of Units and Common Elements may result in changes to surface water over time which may result in increased surface water flow or redirected surface water flow sufficient that surface water conditions present at the time a dwelling is constructed on a Unit may not remain constant. Each Unit Owner is responsible for, and assumes all risks inherent in, collection and control of surface water conditions which are both present at the time of construction or reasonably foreseeable as a result of passage of time, due to development of other Units and Common Elements specifically including changes in road surfaces or elevations resulting from additional paving. Unit Owners constructing a driveway which has a slope of more than fifteen (15%) ~~seven (7%)~~ per cent and which discharges downhill into a road or roadway are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road to prevent water from the driveway from being discharged, en mass, into the road, and potentially causing damage to the roads, other Units or Common Elements.
20. [INTENTIONALLY DELETED AND RESCINDED]
21. All Units Owners are required to construct at the Unit Owner's cost, and subject to BCC approval, a decorative mounting structure ("pedestal") containing and decorative light and to be located not more than eight (8) feet from each entrance to any driveway from street or road and within 18" of the street or road. The exterior appearance of all pedestals shall match the primary finish utilized on the exterior of the dwelling. All lights mounted in or on a pedestal shall be decorative and of the natural gas or dusk-to-dawn photo-sensitive electric variety. The Association is vested with exclusive authority to determine the size, height, color, style, design, bulb style, overall appearance and wattage of all such lights. The decorative lights must be maintained in working order by the Unit Owner and all lights must be approved by the Association. Neither the pedestal nor the decorative lights may be removed, relocated, painted



or otherwise modified without the prior written consent of the Building Control Committee. All such lights shall be maintained operational by the Unit Owner at all times to assure safety and visibility in the Subdivision and may not be turned off at night or disconnected except as may be necessary for maintenance. The Declarant reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of replacing light bulbs or repairing the decorative lights which such right may be exercised by the Association, at the cost of the Unit Owner, upon not less than five (5) days written notice. Declarant may, at Declarant's option, install Common Element lighting in Townhome Units or PatioHome Units if future Phases are dedicated for same in lieu of a requirement that such Units maintain mailbox or pedestal lighting as aforesaid or in the event that cluster mailboxes are required at such locations by the United States Postal Service.

22. For any Phase and Section which the United States Postal Service provides curb side delivery, BCC shall establish standards for the size, color, style and appearance of all mailboxes. All mailboxes and other delivery boxes shall be installed within the pedestal appurtenant to each driveway. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. Provided, however, that no authorization is required for replacement of a damaged or deteriorated mail box with one of identical appearance and size. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted. In the event Declarant or Association shall establish a uniform mailbox all Unit Owners shall purchase and install same and no non-conforming mailbox or mounting system shall be permitted. In the event that Townhome Units or PatioHome Units are dedicated as part of one or more future Phases, the mail boxes for the same may be Limited Common Elements of the Association.
23. Each Unit shall have sufficient off-street parking to service the dwelling. There shall be no parking in or along streets in the Subdivision, on lawns or sidewalks. Declarant may designate certain parking areas as Limited Common Elements allocated to one or more specific Units or groups of Units. No parking "pad" or paved parking space other than a primary driveway crossing a set-back from a street (or joint driveway) is permitted within any side or rear set-back.
24. Each Unit Owner shall either keep receptacles for garbage and recycling bins inside the Unit or provide receptacles for garbage and recycling bins in a screened area so the receptacles are not visible from the road, neighboring Units, Common Elements or Golf Course, in accordance with Monongalia County Health Department suggestions or reasonable standards as established by the Declarant or BCC.
25. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
26. Declarant is not providing public natural gas service to Units in Phases I or II, but may

elect to provide such service to some or all future Phases. No Unit may be serviced by any fuel tank or similar fuel storage receptacle absent prior written consent of the BCC and then only to facilitate gas fire places and gas appliances situate in Units which are not benefited by public gas service. In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located under ground or completely shielded from view by "year round" foliage or attractive screening. The fuel used in the dwelling or other structures shall be of the smokeless-type; however, fireplaces and/or wood stoves which serve esthetic purposes rather than serving as primary or secondary heat sources for the dwelling and in which wood is used as a fuel shall be excepted from this provision. No such fire-place or wood stove may, however, produce any fume, smoke or affluent which is an unreasonable nuisance or annoyance to the Subdivision of the Golf Course. Wood stoves, fire-places, fire-pits, barbecue pits and wood burning appliances and/or devices are only permitted on the exterior of non-Golf Course Units and then only with prior written consent of the BCC and if the same otherwise do not cause or create a nuisance.

27. Above ground swimming pools are not permitted in the Subdivision. In ground swimming pools are not permitted on Golf Course Units and are only permitted on non-Golf Course Units to the extent approved by the BCC, if the same are: (a) located on the rear of the Unit no nearer to any road than the dwelling situate on the Unit; (b) adequately screened and fenced in accordance with the requirements of the BCC; (c) not within any set-back; and (d) the Unit Owner releases the Association of any liability for same and provides a binding hold-harmless agreement benefiting the Association and which runs with the land. Children's temporary play pools are permitted on Units subject to reasonable regulation by the BCC.
28. All construction sites on Units must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process and all construction refuse shall be removed from site or disposed of in an on-site dumpster at the conclusion of each day of construction. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the development. However, such accumulations in small quantities may be kept towards the rear of the Unit or in a location upon the Unit as designated by the Developer or the BCC. Developer may store any quantity of construction materials on any Common Element, Limited Common Element or portion of one Unit in each Phase owned by the Developer at any given time and Declarant may always store construction materials on any Unit where Declarant is completing any improvement. The Developer shall have the exclusive right to determine which Unit in each Phase shall be used for material storage. Such construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner and kept under tarps or covers. Construction materials may not be burned on any Unit except with BCC consent.
29. In order to maintain the rural and wooded character of the Subdivision, no tree may be removed from certain portions of Units except as specified in the following tables or as otherwise permitted by written approval of the BCC. In determining whether to grant such approvals, BCC shall consider, the potential hazard resulting from the condition of any tree, topography of the land reasonable risk to existing or approved improvements and BCC may require a report from a certified and licensed tree specialist in making such determinations. For the purpose of this paragraph: (a) dwellings and outbuildings are considered "structures"; and (b) the term "base" shall mean a point 18" above ground. Any tree not within the following specified locations may be removed without BCC consent.

Trees	Phases 1 and 2
Trees within any approved surface structure	May be removed.
Trees within 15 feet of a dwelling or out-building	May be removed.
Trees within 5 feet of a driveway, pool, deck, patio, or sidewalk	May be removed if less than 10" in circumference at base.

30. In addition to the foregoing, each Unit Owner shall during final landscaping non-Townhome and non-PatioHome Units cause at least eight (8) reasonably mature shrubs and at least one (1) tree, of a variety and size suitable to BCC, to be planted on the Unit for the purpose of compensating for trees removed as a result of the construction of the dwelling and conversion of green space to paved and improved area. Declarant shall cause reasonable landscaping of Townhome and PatioHome Units in Phase I. All Unit Owners shall have a duty to replace any such shrub or tree which shall not survive for a period of at least twenty-four (24) months from planting. Varieties of trees pre-approved for the purpose of this provision include maples and hardwoods which are at least 8 feet in height, and pines, evergreens and holly trees which are at least three (3) feet in height. For the purpose of this provision reasonably mature shrubs shall be not less than twenty-four (24) inches in height.
31. Prior to any digging or excavating on any Unit, all Unit Owners or their contractors shall call the appropriate Utility providers to ascertain the location of utility lines.
32. Declarant has retained the services of Potesta & Associates, Inc. and Thrasher Engineering, and Consulting, both professional engineering firms for the purpose of designing a comprehensive storm water drainage system within the Subdivision. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit, with any excess storm water discharged into the comprehensive storm water drainage system to be installed by the Declarant and not discharged onto the Golf Course. No Unit Owner may: (a) discharge or release any substance other than unadulterated surface water into the storm water system; (b) make or cause any modification to the storm water drainage system without prior written consent of the Association; or (c) discharge water in concentrated flows into or onto the streets, Common Elements, Golf Course, or other Units except in compliance with the design specifications of the storm water system.
33. No Unit Owner, other than Declarant exercising its Special Declarant's Rights, may subdivide a Unit or combine two or more Units without the written consent of the BCC. Boundary adjustments are permitted pursuant to the provisions of WV Code Section 36B. In the event that two or more contiguous Units are consolidated as a single Unit, all set-back lines and easements along the contiguous sides of the consolidated Units which do not contain drainage or utility services shall be null and void so as to permit single family residential dwelling and attached appurtenances to be constructed across a Unit boundary line. Provided, however, all exterior set back lines and easements, shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements and Limited

Common Elements, and the Common Expense Liability apportioned to said Unit as consolidated shall remain on the basis of two (2) Units. Boundary lines may only be adjusted between Units by mutual agreement of the affected Unit Owners and with prior written consent and approval of the Association. Any subdivision of Units or combination of Units, or any adjustment of boundaries between Units shall be made by deed, accompanied by a plat of survey, which said deed shall be executed by all affected Unit Owners and the Association and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

34. Declarant may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be generally consistent with the tenor and integrity of the residential character of the Subdivision. Declarant specifically reserves the right to make reasonable modifications to the restrictive covenants set forth herein to the extent necessary to facilitate construction of detached Dwellings and PatioHomes and/or other varieties of attached or detached single family Dwellings in various future Phases.
35. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto the Golf Course adjoining Units, Common Elements or into the storm sewers or roadways. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil. The Unit Owner, rather than Declarant, is liable for all discharge from the Unit.
36. No above ground fence may be constructed on any portion of any Golf Course Unit or Townhome Unit. If approved by the BCC, Fences are permitted on other Units unless otherwise restricted subject to the following limitations:
  - a Stone fences and synthetic fences which have the appearance of wood or stone are permitted. Metal wrought iron fences are permitted but hurricane, chain-link, chicken-wire, hardware cloth and other metal fences are not permitted;
  - b No portion of any fence may be constructed more than three (3) feet in height from grade, except for fences constructed around approved in-ground pools, in which case such fences shall be not more than six (6) feet in height from grade;
  - c Fences must be located on the rear or side of the dwelling and no fence may be located nearer to the front of the Unit than the center of the dwelling thereon;
  - d No fence more than three (3) feet in height may be located within any set-back without prior written consent of the owner of the Unit which abuts said set-back;
  - e No fence may deny the Association or Declarant or any other beneficiary of an easement access to the easements and rights-of-way reserved to the Association and/or Declarant and neither Declarant nor Association shall be liable for any damage, cost or injury incurred in the removal of all or any portion of an approved or unapproved fence in the event that the same is located on, over or across any right-of-way or easement reserved

to Association or Declarant herein.

f. The owner of the Unit on which the fence is constructed shall be liable for the proper maintenance, upkeep, construction and placement of the fence at all times.

g. All fences shall be of colors harmonious to the Unit and neighborhood.

37. Underground pet fences are permitted: (a) on the side or rear of non-Golf Course Units but no nearer to any street than the front of the dwelling situate on the Unit; and (b) on the front or side of Golf Course Units but no nearer to the Golf Course than the foundation of the dwelling situate on the Unit.

38. No deck shall be constructed on the front of any dwelling and no deck may be constructed more than two (2) stories above ground. No deck on the rear of any Golf Course Unit may be constructed more than twenty-four (24) inches above ground. No deck may be constructed more than twenty-four (24) inches above-ground unless the area between posts is screened or enclosed, no more than six (6) feet above ground unless the posts are constructed of 6x6 timber supports.

39. Balconies are exterior horizontal second story horizontal surfaces which are: (a) not serviced by any entrance other than from the interior of a dwelling; (b) entirely covered by the roof of a dwelling; (c) partially enclosed on two sides, and totally enclosed on a third side by the dwelling; (d) are engineered as part of the integral design of the dwelling rather than attached to the exterior of the dwelling as in the case of decks; and (e) appear to be part of the exterior facade of the dwelling. One balcony not more than six (6) feet deep is permitted on each dwelling.

40. Beginning at the time the entryway is paved, all construction vehicles, construction material delivery vehicles, cranes, dump trucks, tri-axle vehicles and construction equipment must utilize the construction entrance or construction roads, if available, rather than the paved roads, of the Subdivision unless written permission to the contrary is given by the BCC. Each Unit Owner is charged with the affirmative duty to cause all contractors, invitees, licensees, agents, employees, subcontractors and material suppliers to comply with this provision. In the event of repeated violations of this provision by vehicles traveling to or from any certain and identifiable Unit, the Association may, after reasonable notice to the Unit Owner, assess reasonable fines or penalties to the Unit Owner for each violation hereof.

41. Declarant and BCC each reserve the right to designate the position and facing of any dwelling constructed on any Unit. With regard to any Unit which is contiguous to more than one street in the Subdivision, BCC and Declarant may designate which street the dwelling faces and which street the driveway servicing the dwelling intersects. The following table sets forth the "front" of the following Units:

Phase	Unit	Designated "Front" of Unit
I	All Units 1-38	Par Lane
II	Units 1-8 and Units 94-96	Meadow Ponds Lane
II	Units 10-20	Birdie Court
II	Units 90-92	Oakmont Circle
II	Units 9 & 21	Birdie Court or Meadow Ponds Lane or intersection of both.
II	Unit 93	Oakmont Circle or Meadow Ponds Lane or intersection of both.
Future Phases and Units to be determined.		

42. Exterior hot-tubs are not permitted on Golf Course Units and to the extent approved for non-Golf Course Units shall be situate on decks, porches or patios or on the rear of the Unit but not in a set-back and shall be subject to the same Unit location requirements as Out-buildings but shall, in addition, be reasonably screened from view pursuant to the directives of the BCC. No hot-tub shall be visible from the Golf Course.

43. Vegetable gardens are not permitted on any Unit.

44. Trampolines are not permitted in the Subdivision. Playground equipment, tree houses, sliding boards, swing sets, play houses and all similar improvements are not permitted on Golf Course Units but are permitted on non-Golf Course Units so long as the same are not: (a) situate within set backs without prior consent of the BCC; and (b) located nearer to any street than the front of the dwelling situate on the Unit. The BCC may reasonably regulate all related matters including, but not limited to, location, color, size, height, appearance, density and materials. BCC may, in granting such approvals, reasonably limit the number and size of such improvements on any Unit and the proximity and density of such improvements over multiple Units.

45. Decorative and aesthetic ponds shall, if constructed on Units, be maintained with a filtration and/or recirculation system to prevent stagnant water and mosquitoes, and otherwise be reasonably regulated by the BCC with regard to depth, size and location.

46. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision.

47. Single story dwellings, Townhomes and PatioHomes shall be constructed with a "broken" roof line which contains at least than two (2) roof peak lines or has a roof with a pitch of less than 5-12. Covered porches ay have roofs with a slope of less than 5-12 and be flat, provided that the same are

constructed of subtle materials (e.g., metal, shingled or otherwise approved).

48. Green houses, whether detached or incorporated into a dwelling, are not permitted. So called "sun rooms" which are part of a dwelling and have a primarily transparent exterior are not permitted on the front of any dwelling.

49. Car ports are not permitted.

50. Detached garages are not permitted in Phase I or Phase II. With the exception of Townhome Units and PatioHome Units which need not include garages, each Unit shall include at least a one (1) stall garage. No dwelling or structure may have more than three (3) stalls of garage doors on the same face of the dwelling or structure.

51. No lawn ornament or sign or amenity shall be placed or displayed on the rear of any Golf Course Unit without prior written consent of the Association and then not within any set back.

52. All windows, doors and storm doors of dwellings and outbuildings within 300 lineal feet of the Golf Course shall be of tempered, impact resistant glass resistant to golf ball impact and suitable for construction with the proximity of a Golf Course commensurate with sound construction practices and industry standards, including such superior or enhanced materials as may be developed or may become available and economically feasible for such purposes in the future.

53. All exterior siding and trim utilized on any facing of a Golf Course Unit which is not shielded from golf ball impact shall be constructed of non-breakable material reasonably calculated to withstand foreseeable golf ball impact.

#### **V. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 63 of the 68 Units or 92% of all Units in Phases I and II of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

#### **VI. HEADINGS:**

The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

#### **VII. DESCRIPTION INCLUSIONS BY REFERENCE:**

The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**VIII. SUBMISSION TO LAW:**

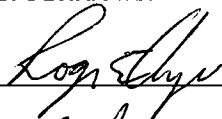
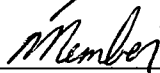
The Declarant, as the legal title holder in fee simple of the parcel, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**IX STATUTE OF LIMITATIONS:**

**All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver."** This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

Witness this 22<sup>nd</sup> day of August, 2008:

**Declarant: Ayers & Ayers Holdings, , LLC, a West Virginia limited liability company, both as Declarant and also as owner of more than sixty-seven (67%) per cent of all Units in The Meadows:**

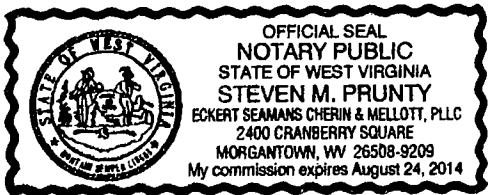
By:   
Its: 



STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 22<sup>nd</sup> day of August, 2008, by Ragu Ayers, in his capacity as manager of Ayers & Ayers Holdings, LLC, a West Virginia limited liability company.

My Commission Expires: August 24, 2014



  
\_\_\_\_\_  
Notary Public

This instrument prepared by Steven M. Prunty  
Eckert Seamans Cherin & Mellott, PLLC  
2400 Cranberry Square  
Morgantown, WV 26508-9209

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JEFFREY L ARNETT  
711 GREENWING RD  
MORGANTOWN, WV 26508-1589

Book Page 1405-718

Carve L. Blaney  
MONONGALIA County 09:56:00 AM  
Instrument No 355529  
Date Recorded 02/16/2010  
Document Type DDV  
Pages Recorded 9  
Recording Fee \$9.00  
Additional \$6.00

**SECOND AMENDMENT TO  
DECLARATION OF COMMON INTEREST COMMUNITY**

**FOR**

**THE MEADOWS**

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

THIS SECOND AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 27th day of January, 2010, by **AYERS AND AYERS HOLDINGS, L.L.C., a West Virginia limited liability company**, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714 (collectively together with all amendments thereto, "Declaration"); and

**WHEREAS**, Phase I of the Meadows is depicted and shown on that certain map or plat of survey entitled Phase I Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 2008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A ("Phase I Plat"); and

**WHEREAS**, Phase II of the Meadows is depicted and shown on that certain map or plat of survey entitled Phase II Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated July 31, 2008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 46A, ("Phase II Plat"); and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the Declaration; and

**WHEREAS**, Declarant hereby dedicates Phase III (containing 12 Units) and Phase IV (containing 19 Units) of the Subdivision, along with certain Common Elements situate in such Phases; and

**WHEREAS**, Declarant exercises its rights both reserved as Declarant and also as a Unit Owner to subdivide Units 25 through 28 in Phase I of the Subdivision to create therefrom Units 25A, 25B, 26A, 26B, 27A, 27B, 28A, and 28B; and

**WHEREAS**, Declarant has revised the plat of Phase I for such purposes; and

**WHEREAS**, as a result of the foregoing dedication of new Units and subdivision of existing Units, the

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Subdivision now contains 99 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, and 19 Units in Phase IV) leaving 701 Units which Declarant may elect to dedicate hereafter in future Phases; and

**WHEREAS**, Declarant also reserved the right to add land to the Subdivision, and Declarant has elected to exercise such right to add land to the eastern boundary of Units 17 and 18, in Phase II and Declarant has revised the map or Plat of Phase II for such purposes.

**WITNESS:** Declarant by exercise of its rights as Declarant and Owner of Units, and Meadow Property Owners Association, Inc., the duly incorporated association of owners of Units in The Meadows Subdivision, hereby make this Declaration:

#### **I. NEW PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III and IV of the Subdivision are shown on that certain drawing entitled Phases I, II, III & IV of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated January 22, 2010, and is attached hereto as **Exhibit A**. All Units in Phase III of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane and Watson Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision.

#### **II. SUBMISSION OF PHASE III TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase III of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Development Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase III of the Subdivision are Units 32 through 34, 60 through 62, and 84 through 89, and the roadways or portions of roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane and Watson Drive, all as depicted and shown on the map or plat attached hereto and entitled Phase III of THE MEADOWS, A PLANNED COMMUNITY, dated January 22, 2010, and prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is attached hereto as **Exhibit B**, and also recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 746 ("Phase III Plat").

#### **III. REVISION OF PHASE II UNITS 17 AND 18 AND SUBMISSION OF NEW PHASE II PLAT:**

Declarant does hereby exercise its reserved Development Right to add land to the Subdivision by adding two (2) parcels, one (1) parcel each to the eastern boundary of Unit 17 and Unit 18 in Phase II, which said parcels are hereby made a part of the original Units 17 and 18 in Phase II as two (2) total Phase II Units. Declarant is, by deed of even date herewith, conveying the parcels so added to Units 17 and 18 to the owners of Units 17 and 18. The land, Units and Common Elements heretofore and hereby dedicated as Revised Phase II of the Subdivision as depicted and shown on the map or plat attached hereto and entitled Revised Phase II of THE MEADOWS, A PLANNED COMMUNITY, dated January 22, 2010, and prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is attached hereto as Exhibit C, and also recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 74A ("Revised Phase II Plat"). The addition of the foregoing

VIL 1405 720

parcels to Units 17 and 18 shall not impact the allocation of votes or liabilities in the Subdivision.

**IV. SUBMISSION OF PHASE IV TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase IV of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Development Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase IV of the Subdivision are Units 73 through 107, and the roadway or portion of roadway known as Eagle Drive, as depicted and shown on the map or plat attached hereto and entitled Phase IV of THE MEADOWS, A PLANNED COMMUNITY, dated January 22, 2010, and prepared by Floyd E. Barga, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is attached hereto as **Exhibit C**, and also recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 15A ("Phase IV Plat").

**V. PHASE I SUBDIVISION OF UNITS 25 THROUGH 28 IN PHASE I TO UNITS 25A THROUGH 28B, and CONSOLIDATION OF UNITS 3, 4, 5, 8 and 9, 12, 13, 34, 35, and 36:**

Declarant acting pursuant to the rights reserved to it in the Declaration and Association acting pursuant to WV Code §36B-2-113, does hereby subdivide Units 25 through 28 in Phase I of the Subdivision as follows:

Unit 25 is subdivided in to Units 25A and 25B;  
Unit 26 is subdivided in to Units 26A and 26B;  
Unit 27 is subdivided in to Units 27A and 27B; and  
Unit 28 is subdivided in to Units 28A and 28B.

Declarant acting pursuant to the rights reserved to it in the Declaration and Association acting pursuant to WV Code §36B-2-113, do hereby consolidate the following Units in Phase I:

Original Units 3 and 4(part) into surviving Unit 3  
Original Units 4 (part) and 5 into surviving Unit 5  
Original Units 8 and 9 into surviving Unit 8  
Original Units 12 and 13 into surviving Unit 12  
Original Units 34 and 35 (part) into surviving Unit 34  
Original Units 35(part) and 36 into surviving Unit 56

As a result of the foregoing, there are no Units 4, 9, 13 or 35 in Phase I after this Amendment and there are thirty-eight (38) total Units in Phase I. Each Unit is allocated an equal share of the votes in the Association and an equal share of the expenses and liabilities of the Association pursuant to the allocation formulas set forth in the Declaration. To the extent that Units ceased to exist and Units were created by the foregoing, the total number of Units in Phase I remained 38.

Each of the foregoing newly subdivided Units or newly consolidated Units is depicted and shown on that certain map or plat attached hereto and entitled Revised Phase I of THE MEADOWS, A PLANNED COMMUNITY, dated January 22, 2010, and prepared by Floyd E. Barga, Jr., P.L.S. #760 of Thrasher

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Engineering, Inc., which said plat is attached hereto as **Exhibit D**, and also recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 338 ("Revised Phase I Plat").

#### VI. CONSOLIDATION OF UNITS 3, 4, 5, 8 and 9, 12, 13, 34, 35, and 36 IN PHASE I:

Each of the foregoing newly consolidated Units is depicted and shown on that certain map or plat attached hereto and entitled Revised Phase I of THE MEADOWS, A PLANNED COMMUNITY, dated January 22, 2010, and prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is attached hereto as **Exhibit D**.

#### VI. FUTURE DEVELOPMENT AND USE LIMITATIONS.

Phases III and IV constitute only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phases I, II, III and IV.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phases III and IV in the same manner as were reserved to Declarant in the original Declaration with regard to Phases I and II.

All Units and Common Elements in Phase III are restricted exclusively to use for single family detached dwellings, subject to all covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phase II.

All Units and Common Elements in Phase IV are restricted exclusively to use for single family attached dwellings, subject to all covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phase I.

The current table of acreage and Units dedicated is set forth on Exhibit E.

#### VII. ALLOCATIONS IN PHASES III and IV and REALLOCATION IN PHASE I:

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on Exhibit F.

There are no *express* Limited Common Elements in Phases III or IV, however, the Exhibit F allocations shall apply to *implied* Limited Common Elements, if any. It should be noted that, notwithstanding the fact that the green space in Phase I is a Common Element, rather than a Limited Common Element, the cost and control of maintenance and upkeep of such green space is a Limited Common Expense allocated to the Units in Phase I.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional

Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

### III. SPECIFIC PHASE II EASEMENTS:

In addition to those easement excepted and reserved in the Declaration, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **16' Drainage Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified as "16' Drainage Easement" on the Phase III Plat and Phase IV Plat. Said easements are in addition to all other perimeter easements reserved in the Declaration and affect Units 60-62, 84-86 and 89 in Phase III and Units 73 through 107 in Phase IV. Each of said easements is sixteen (16) feet in total width (as measured eight (8) feet along each Unit boundary) Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and stormwater from Units and Common Elements throughout the Subdivision in accordance with the stormwater management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant.

(2) **16' Utility Easement:** A right-of-way or easement for installation, construction, laying, extension, maintenance, use, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of: utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to and within the Subdivision, as well as exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. Said easement is in each location where a "Water Line", "Sewer Line", "Utility Line" or

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"Storm Sewer" are shown on the Phase III Plat and Phase IV Plat. This easement is in addition to all other perimeter easements reserved in the Declaration. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of the utility subject of the easement).

**IV. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 63 of the 68 Units or 92% of all Units in Phases I and II of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

**V. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**VI. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**VII. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**VIII. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**Witness this 27<sup>th</sup> day of January, 2010:**

1405 724

Witness this 27<sup>th</sup> day of January, 2010:

Declarant: Ayers & Ayers Holdings, LLC, a West Virginia limited liability company:

By: [Signature]  
Its: Member

The Meadows Property Owners Association, Inc., joins in this Declaration for the exclusive purpose of subdivision of Units 25 through 28 in Phase I of the Subdivision pursuant to WV Code §36B-2-113.

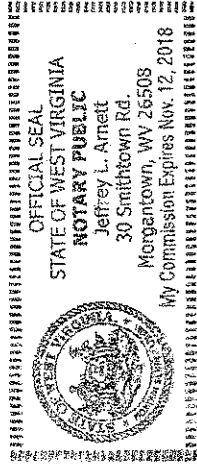
The Meadows Property Owners Association, Inc., a West Virginia corporation:

By: [Signature]  
Its: President

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 28 day of January, 2010, by Roger Ayers in his capacity as Member of Ayers & Ayers Holdings, LLC, a West Virginia limited liability company.  
My Commission Expires: Nov 12, 2018

[Signature]  
Notary Public





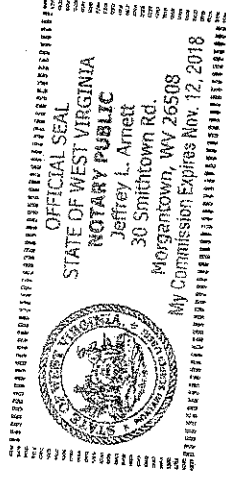
WL1405 ME725

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, to-wit:

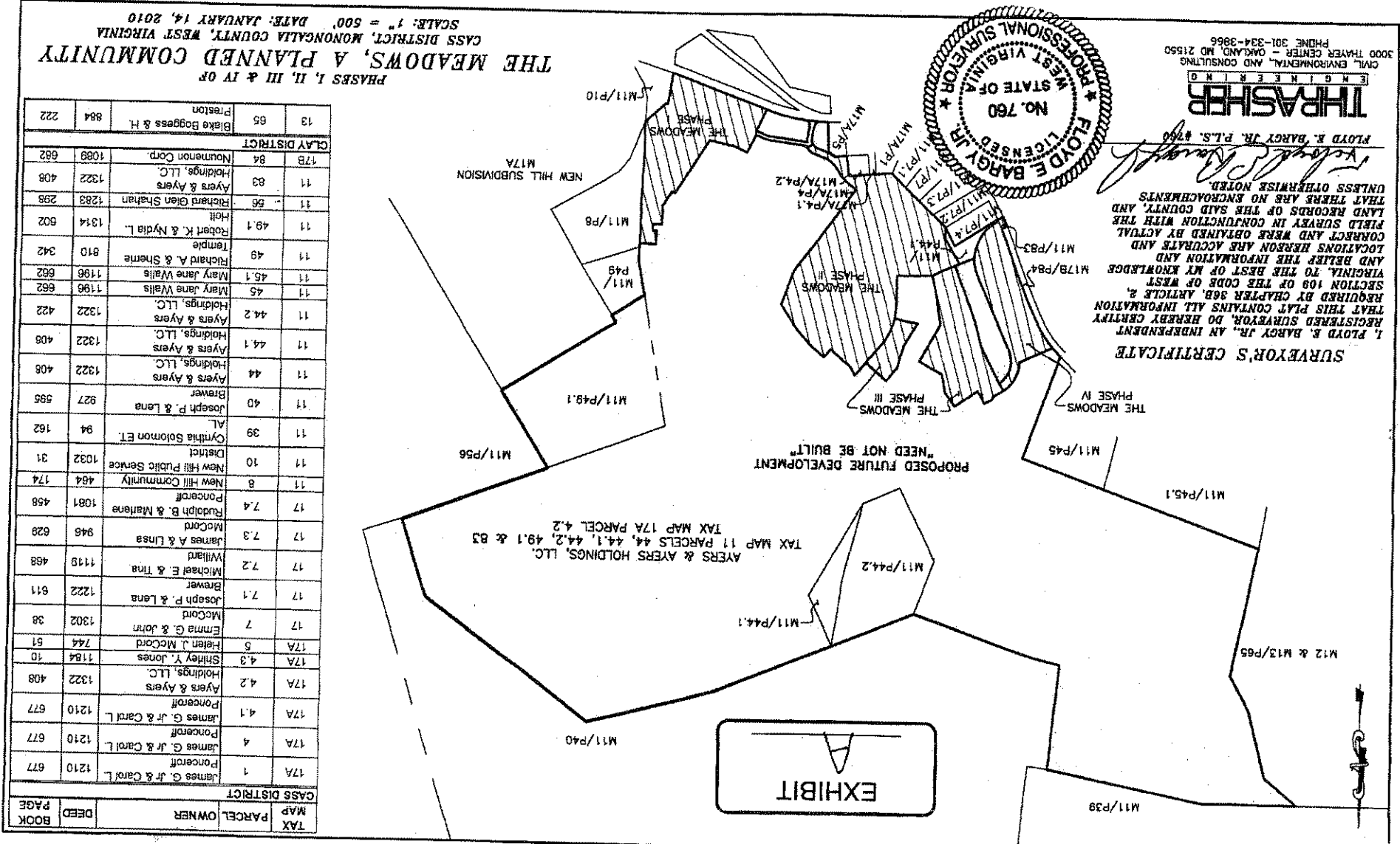
This instrument was acknowledged before me, the undersigned Notary Public, this 28<sup>th</sup> day of July, 2009, by Roger Avers, in his capacity as President of The Meadows Property Owners Association, Inc., a West Virginia non-profit corporation.

My Commission Expires: Nov 12, 2018

  
Notary Public



This instrument prepared by Steven M. Prunty  
Bowles Rice McDavid Graff & Love, LLP  
7000 Hampton Center, Suite K  
Morgantown, WV 26505



**DECLARATION OF COMMON INTEREST COMMUNITY****FOR****THE MEADOWS****a residential Planned Community in  
Monongalia County, West Virginia**

1361-713

THIS DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 19th day of March, 2008, by **AYERS AND AYERS HOLDINGS, L.L.C., a West Virginia limited liability company**, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements for itself and its grantees and assigns, hereby make the following declaration:

**I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby submit as a Planned Community the real estate dedicated hereby, together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto (hereinafter referred to as "Subdivision") to the Planned Development Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). Notwithstanding the fact that only Phase I of the Subdivision is hereby dedicated as a Planned Community form of CIC, Declarant expressly reserves the right to create and dedicate one or more future Phases of the Subdivision as, or to merge the Subdivision with, a Condominium form of CIC.

**II. SUBDIVISION NAME AND LOCATION:**

The name by which this Subdivision is to be identified is "The Meadows". The property comprising the Subdivision is located in Cass Tax District, Monongalia County, West Virginia, and includes only the land dedicated by this instrument or an amendment hereto, notwithstanding the fact that Declarant reserved the right to dedicate specific land by adding future Phases to the Subdivision.

**III. THE LAND:**

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

Phase I is comprised entirely of Townhome Units and PatioHome Units which are either land without Dwellings or land with improved Dwellings when offered for sale by Declarant.

Future Phases may be comprised of Units dedicated for construction and development of Townhomes, PatioHomes, or detached single family Dwellings . All Units in all Phases are limited exclusively to single family residential uses as set forth below.

Phase I, of the Subdivision is hereby dedicated as depicted and shown on that certain Map or Plat entitled Phase 1 Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 1008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A ("Plat"), a copy of which is attached as **Exhibit A**.

<b>Total acreage of parent tracts</b>	<b>173.6714</b>
<b>Total acreage dedicated as Phase I</b>	<b>4.854*</b>
<b>Remaining acreage of parent tracts not dedicated as Falling Water Subdivision but which may be dedicated as future Units</b>	<b>168.817</b>

<b>Total acreage of Phase I</b>	<b>4.854*</b>
<b>Number of Units in Phase I</b>	<b>38</b>
<b>Total acreage of all Units in Phase I</b>	<b>3.168</b>
<b>Total acreage of Common Elements A, B &amp; C in Phase I</b>	<b>1.688*</b>
<b>Total acreage of Limited Common Elements in Phase I</b>	<b>0</b>

(\* =excluding Common Element D which is an easement)

**Phase I of the Subdivision is subdivided entirely from a 159.4367 acre tract which is identified for taxation purposes for the year 2007 as Cass District Map 11, Parcel 44.**

Phase I constitutes only a portion of the Declarant's real estate and no portion of such real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phase I. The land owned by Declarant which is not dedicated as part of Phase I ("Retained Real Estate") is described on **Exhibit B** and such land is benefited by certain rights, rights-of-way, easements, covenants, restrictions, limitations, conditions and servitudes imposed on Phase I by this Declaration.

Declarant reserves the right:

- A. to develop and/or dedicate some or all of its Retained Real Estate as described on **Exhibit B** and the map or plat attached thereto, and also all tracts of land contiguous thereto described on **Exhibit C**, and certain unspecified real estate as

permitted by WV Code §36B, as additional Phases of the Subdivision, and to create additional Units, Common Elements and Limited Common Elements thereon from time to time by recording amendments to this Declaration and recording additional Maps or Plats.

- B subject future Phases, Units, Common Elements and Limited Common Elements, if dedicated, to covenants, restrictions, limitations and conditions materially different than, and imposing greater or lesser standards than, those set forth in this Declaration, provided, that all such Phases shall be limited to residential uses.

Specifically, the topography, characteristics, nature, features of the land, and the type and nature of Units and Unit improvements permitted in future Phases, may result in significant differences between covenants applicable to Phase I and covenants applicable to future Phases, however, all future Phases shall be limited exclusively to residential use.

Any portion of the real estate described in **Exhibits B and C** which is not dedicated (by this instrument or hereafter by amendment to this instrument) as a Phase in the Subdivision is not subject to this Declaration except to the extent that the Declarant has: (1) reserved the right to add such real estate to the Subdivision at a later date; (2) Declarant has reserved rights, rights-of-way and easements in this Declaration for the benefit of said real estate, and (3) said real estate is benefited by covenants, restrictions, limitations imposed on Phase 1.

#### **IV. DEFINITIONS:**

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

1. ABCC: One of two Building Control Committees of the Association. The ABCC is appointed by the Association for the purpose of administering aspects of this Declaration with regard to Units to which contain a completed Dwelling suitable for occupancy.
2. Association: Meadows Property Owners Association, Inc., a non-profit corporation, its successors and assigns, which Association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the Subdivision and its Common Elements.
3. Board: The Board of Directors of the Association herein designated to act on behalf of the Association. The directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with this Declaration and this Declaration shall govern in the event of any dispute or conflict between such documents.
4. Builder: Any entity which purchases one or more Units for the purpose of constructing improvements for resale to consumers in the ordinary course of its business, or which purchases one or more parcels of land for further subdivision, development and/or resale in the ordinary course of its business. Declarant reserves the right to determine when and

whether a purchaser qualifies as a Builder. A Builder is not a successor Declarant unless it fulfills the requirements imposed by § 36B.

5. Building Control Committee and BCC: Two committees of the Association collectively appointed to set and maintain construction standards in the Subdivision (including Construction Standards as defined herein and such Construction Guidelines as may be from time to time established by the Declarant or Association) and to approve or disapprove construction plans and specifications for all buildings, structures, driveways, walls, fences, Dwellings, drainage systems, utility systems, walkways and all other improvements of all sorts, including trees and foliage, which may be erected, placed or cultivated on any Unit. One BCC is a committee appointed by the Declarant ("DBCC") and the second is a committee appointed by the Association ("ABCC"). Declarant's right to appoint all members of the DBCC is generally described as "BCC Rights" (hereinafter defined). The DBCC is vested with authority, generally, over the initial construction of Dwellings and initial completion of Unit improvements sufficient for occupancy. When the initial construction of the Dwelling and appurtenant improvements to a Unit is completed, and the Unit is suitable for occupancy, approval authority with regard to the Unit automatically transfers from DBCC to ABCC with regard to all subsequent matters pertaining to the Unit. To the extent that authority with regard to any Unit at any given time may be vested in either DBCC or ABCC, both BCCs are sometimes hereinafter collectively referred to herein as "BCC" with determinations as to actual authority over a given Unit at a given time to be subjectively determined based on the completion status and initial habitability of the Unit.
6. BCC Rights: The Declarant's right to appoint all members of the DBCC so long as Declarant owns at least one Unit in the Subdivision. Because BCC Rights may be voluntarily surrendered by Declarant at any time and are independent rights reserved to the Declarant in order to protect Declarant's business interests and investments in the Subdivision, BCC Rights are independent and separate from Declarant's initial control of the Association, which said control must terminate at an earlier date as set forth hereinbelow. BCC Rights may continue after termination of Declarant's control of the Association.
7. By-Laws: The By-Laws of the Association as the same may be amended from time to time and which govern the daily operation of the Association to the extent not specified in the Declaration and Articles of Incorporation. To the extent that there is any dispute or conflict between the provisions of the By-Laws and the Articles of Incorporation, the Articles of Incorporation shall govern.
8. Common Elements: All dedicated portions of the Subdivision other than the Units, including, without limitation, all roadways, all easements dedicated or reserved to the Association, and all the improvements and appurtenances thereto, central utilities and services, and areas of common use. References to "Common Elements" on the Plat are solely for general information, and do not define or limit the Common Elements contrary to this document. Rather, depictions on the plat are physical representations of the actual metes and bounds of the Common Elements dedicated hereby. Limited Common Elements, as hereinafter defined, are a sub-variety of Common Elements. There are four

Common Elements in Phase I which are depicted on the Plat as Common Elements A, B C & D.

9. Common Element D: That portion of Meadow Ponds Drive and Par Lane (as depicted on the Plat) which is a right-of-way, rather than a fee estate in land, but is a Common Element in Phase I, and extends from West Virginia Route 7, over and across the Declarant's Retained Real Estate to the fee portion of Par Lane which is Common Element C. Common Element D is subject to certain maintenance agreements and obligations benefiting the Declarant's Retained Real Estate (regardless of whether the same continues to be owned by Declarant) as set forth elsewhere herein.
10. Common Expense(s): Expenditures made by, or financial liabilities of, the Association, including but not limited to costs incurred by the Association in the management, operation, maintenance and upkeep of the Common Elements and Limited Common Elements. Common Expenses also include the cost of insurance, administrative fees, taxes and all other costs reasonably incurred by the Association in fulfillment of its obligations hereunder. Limited Common Expenses, as hereinafter defined, are a subcategory of Common Expenses.
11. Common Expense Liability: The liability expressly or impliedly apportioned to each Unit by this Declaration for the Common Expenses of the Association.
12. Common Interest Community: A Common Interest Community is a group of Units, for which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of real estate including easements such as (the portion of Par Lane and Meadow Ponds Drive designated as Common Element D) described in this Declaration other than a Unit. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options. The Common Interest Community is only those Units, Common Elements and Limited Common Elements which have been dedicated to the CIC form of ownership by recordation of this Declaration, or amendment to this Declaration (including appurtenant maps or plats). Declarant's Retained Real Estate and land which may be dedicated in the future is not part of the Common Interest Community.
13. Construction Guidelines: Rules and Regulations of the Association pertaining to changes, modifications or improvements made to the exterior of a Unit or Dwelling. Construction Guidelines differ from Construction Standards set forth herein to the extent that Construction Guidelines: (a) are not restrictive covenants; (b) are adopted by the Association's Board as Rules and Regulations; and (c) will be implemented from time to time by the Association or Declarant after the recordation of this document. All purchasers of Units are hereby placed on notice inquiry as to the potential existence of non-record Construction Guidelines.
14. Construction Standards: Protective and restrictive covenants governing, limiting and setting the criteria for any change, modification or improvement made to the exterior of a Unit or Dwelling. Construction Standards are set forth in Article X hereinbelow.

15. DBCC: One of two Building Control Committees of the Association. The DBCC is appointed by the Declarant for the purpose of administering aspects of this Declaration with regard to initial improvements to Units, initial construction of Dwellings and improvements, required to make any Unit suitable for occupancy. The DBCC will continue so long as Declarant owns at least one Unit in the Subdivision, or until terminated by Declarant, at which time there will be only one BCC which is appointed entirely by the Association.
16. Declarant: Ayers and Ayers Holdings, L.L.C., a West Virginia Limited Liability Company, and its successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns.
17. Declaration: This Document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC and portions thereof which may be added from time to time.
18. Dedicate, Dedication, Dedicated: Recordation in the office of the Clerk of the County Commission of Monongalia County, West Virginia, of this Declaration or any amendment hereto whereby a Declarant makes real property part of one or more Phases of the Subdivision and by operation of said Declaration or amendment, the real property must be owned, held, transferred, sold, granted, conveyed, leased, and occupied subject to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration or any amendments hereto.
19. Development Rights: Any rights or combination of rights reserved by Declarant in the Declaration to (1) add real estate to a Subdivision; (2) create Units and Common Elements within the Subdivision; (3) subdivide Units or convert Units into Common Elements; (4) add real estate to, or withdraw real estate from, the Subdivision, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.
20. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.
21. Dwelling: A residential structure suitable for use and occupancy as the principal residence of one or more individuals. Detached Dwellings permitted in the Subdivision are houses or possibly PatioHomes. Attached Dwellings which may be permitted in one or more Phases are Townhomes and possibly PatioHomes. The term Dwelling specifically excludes garages and all other out buildings or other permanent or temporary structures even if the same are habitable.
22. Fitness Center: That structure situate on Declarant's Retained Real Estate and not made part of the Subdivision which is constructed to be part of the Golf Course. The Fitness Center is a separate commercial venture which is at the execution hereof owned by the



Declarant but as set forth below may be sold, leased or otherwise transferred along with the Golf Course, by Declarant to a third party.

23. Fitness Center Membership(s): Annual memberships sold by the owner of the Fitness Center permitting the use and enjoyment of the Fitness Center situate on the Golf Course by all residents of each Unit. Fitness Center Memberships are purchased annually by the Association in behalf of all Unit Owners for the benefit of Unit Residents and are part of the Association's Annual Budget which is assessed to all Unit Owners as a Common Expense as part of the Annual Assessment. Fitness Center Memberships are a condition imposed by Declarant on the offering of Subdivision Units for sale to the public. The Fitness Center Memberships are imposed for the benefit of the Golf Course as a financial incentive for its continued operation in the future because Declarant believes the Golf Course is a benefit to the Subdivision.
24. Golf Course: That commercial business conducted on Declarant's Retained Real Estate known as Meadow Ponds Golf Course including the Fitness Center, driving range, tees, greens, fairways, cart paths, Club House, storage buildings and appurtenant landscaping and green spaces. There is no assurance that the Golf Course will continue to operate in the future or that the portion of Declarant's Retained Real Estate on which the Golf Course is situate will be utilized for any specific purpose of any character of use. Declarant specifically contemplates development of the driving range as part of the Subdivision or otherwise, and demolition of the existing Club House upon completion of the Fitness Center. The Golf Course is differentiated from the Golf Course Tract to the extent that the Golf Course Tract is the site of the Golf Course
25. Golf Course Covenants: Those covenants, restrictions and agreements applicable to lands dedicated as, or which may be dedicated as part of, the Subdivision, and which are appurtenant to the portion of Declarant's Retained Real Estate on which the Golf Course is operated, but only so long as the Golf Course is operated. The Golf Course Covenants shall automatically cease to benefit: (a) any portion of the Declarant's Retained Real Estate which ceases to physically be a Golf Course; and (b) any portion of said real estate which ceases to be utilized as a Golf Course (including related appurtenances, amenities and improvements) for a period of ten (10) consecutive years. Golf Course Covenants are those provisions herein which: (a) expressly apply to Golf Course Units or apply to Golf Course Units in a different manner than applicable to non-Golf Course units; (b) are expressly implied for the benefit of the Golf Course; or (c) mention or refer to the Golf Course or the owner, operator, employees or patrons thereof. Golf Course Covenants do not include the obligation to purchase Fitness Center Memberships, which obligation is a separate contractual and covenant obligation appurtenant to land and will not terminate absent consent of the owner of the benefited land.
26. Golf Course Easements: Those rights-of-way and easements benefiting, encumbering and generally affecting lands dedicated as, or which may be dedicated as part of, the Subdivision, which benefit, expressly or impliedly the portions of Declarant's Retained Real Estate which are the site of the Golf Course.
27. Golf Course Tract: That certain portion of Declarant's Retained Real Estate on which

the Golf Course is presently situate and which was conveyed from Robert K. Holt and Nydia Holt to Declarant by Deed recorded in Deed Book No. 1322 at Page No. 408. No portion of the Golf Course is subject to the restrictions, covenants and limitations set forth herein except if, and only to the extent that, land from the Golf Course Tract is hereafter expressly dedicated one or more Phases of the Subdivision. To the extent that future Phases may be dedicated from, or parcels may be subdivided or sold from, the Golf Course Tract, the precisely defined property may decrease in size but the term Golf Course Tract shall continue refer to that land on which the Golf Course is operated and situate. Those portions of Declarant's Retained Real Estate situate South of WV Route 7, and which were conveyed to Declarant by Robert B. Holt, are not part of the Golf Course tract. The Golf Course Tract is differentiated from Declarant's Retained Real Estate to the extent that the Golf Course Tract is less than all of the Declarant's Retained Real Estate being only that portion which is the physical location of the improvements constituting the Golf Course.

28. Golf Course Units: Any Unit, whether Townhome Unit, PatioHome Unit or detached Dwelling Unit, which is contiguous to, or abuts, or shares any common boundary with, any portion of the Golf Course or Golf Course Tract for any distance. A Unit is also a Golf Course Unit if it is separated from the Golf Course by (or would be contiguous to the Golf Course but for) a road, right-of-way, Common Element or Limited Common Element. It is expressly noted that as future Phases are dedicated, Units which previously were Golf Course Units may cease to be Golf Course Units.
29. Governing Documents: Collectively and individually, this Declaration (including the Construction Standards set forth herein) and all Exhibits and amendments hereto, the By-Laws, Articles of Incorporation, Construction Guidelines hereafter specified by the Association or Declarant, and Rules and Regulations of the Association.
30. Limited Common Elements: Those Common Elements which are expressly or impliedly dedicated for use by and benefit of less than all Units, or which are Limited Common Element pursuant to 36B.
31. Limited Common Expense: Those Common Expenses which are attributable exclusively to Limited Common Elements. Limited Common Expenses are allocated to and payable by only those Units which are allocated use, enjoyment and benefit of Limited Common Elements.
32. Limited Common Expense Liability: The liability apportioned by this Declaration to Units entitled to use of Limited Common Elements for the cost of the Limited Common Expenses.
33. Member: Any and every person or entity which or who is a Unit Owner as hereinafter defined, and is therefore part of the composition of the Association is a Member of the Association.
34. PatioHome(s): A Unit which contains one (1) Dwelling and which Dwelling may or may not be attached to one (1) or more other Units or Dwellings. PatioHomes may be smaller

than the standard detached Units and Detached Dwellings permitted in the Subdivision and may be subject to different standards with regard to matters including, but not limited to, Dwelling size, appearance, color, materials, design, Unit size, set-backs, and all other matters which Declarant may decide in its exclusive discretion.

35. Phase: A physically designated boundary within the Subdivision which contains at least one (1) Unit and possibly Common Elements and/or Limited Common Elements and which was created by this Declaration or an amendment hereto which creates Units and adds land to the CIC. The term "Phase" is utilized for various purposes including intra-Phase covenant variations, allocations of interests, and applicability of Development Rights and Special Declarant Rights.
36. Phase I Common Element(s): All portions of Phase I other than the Units in Phase I, comprised of Common Elements A, B, C and D, and certain green space as depicted on the Plat. Common Elements A through C are fee Common Elements but Common Element D is a right-of-way or easement Common Element.
37. Plats: Those plats of survey and plans of the Subdivision heretofore described and recorded by Declarant or Association in the aforesaid Clerk's Office, together with those plats of the Subdivision hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.
38. Pond: Any surface water, storm water or sediment retention or detention facility constructed or installed in or on any Common Element or Common Elements by Declarant.
39. Special Declarant's Rights: Rights expressly reserved for the benefit of a Declarant and any successor Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and signs advertising the Subdivision and model Units and model homes; (iv) use easements through the Common Elements for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision; (v) merge or consolidate the Subdivision with another Subdivision of the same form of ownership; (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant's control; and (vii) to maintain and exercise BCC Rights subject to other provisions hereof.
40. Storm Water Facility: The Subdivision contains a comprehensive storm water and sediment control facility and appurtenant improvements designed by Potesta & Associates, Inc., which are situate within easements granted or reserved to Declarant or Association or situate on Units, Common Elements and Limited Common Elements. The Storm Water Facility includes various drains, pipes, ditches, catch basins, ditches, swales and other mechanisms. Any portion of the Storm Water Facility installed by the Declarant is a Common Element allocated to all Units, and owned and maintained by the Association for the benefit of all Units. To the extent that all, or any portion of the Storm Water Facility, or any component thereof, is subject to any governmental regulation, permit or bond, Declarant reserves the right to at anytime during development, unilaterally

assign such permits and bonds, if any, to Association, at which time, Association shall be liable for compliance with all governmental regulations and requirements. No improvement installed or constructed by any Unit Owner is part of the Storm Water Facility.

41. Townhome: A Unit which contains one Dwelling designated as a Townhome and which Dwelling are attached to one or more contiguous Dwellings inside a building which spans multiple Units. To the extent Declarant shall dedicate Phases or create Units where attached Dwellings are permitted, Declarant shall specify whether Townhomes or PatioHomes are permitted. The distinction between Townhome or PatioHomes is material only with regard to which covenants and restrictions apply to the Individual Units.
42. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described. Except in the case of Townhomes or PatioHomes where the Dwelling may be a Unit, a Unit shall be one lot. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL BENEFICIAL INTEREST IN THE COMMON ELEMENTS, AND A FRACTIONAL LIABILITY FOR COMMON EXPENSES AS DETERMINED BY ARTICLE VIII.
43. Unit Owner: Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding an interest merely as security for performance of an obligation, and including, in respect to all unsold Units, as a Unit Owner the Declarant. All Unit Owners are, by ownership of an interest in a Unit, members of the Association.

## **V. THE DECLARANT AND DEVELOPMENT OF THE SUBDIVISION:**

1. Declarant is the owner of all land dedicated as Phase I in the Subdivision and some of the land which may be dedicated as one or more future Phases of the Subdivision. The Subdivision is comprised of Units (lots) which will eventually be owned by individuals or entities, and Common Elements such as roadways, drainage system and easements which will benefit all Units and will be owned by the Association. Declarant will complete paving of the roadways, all improvements to the Common Elements, and installation of underground utilities to each unit as set forth below. With the exception of those services to be provided by Declarant, the Unit Owners are responsible for all maintenance, improvement and upkeep of the Units and the Association is responsible for all maintenance, improvement and upkeep of the Common Elements and all improvements thereon.
2. Any land dedicated as a Common Element will be deeded or dedicated either in fee or as an easement by Declarant to the Association prior to completion of the Subdivision and it is not necessary that Declarant complete all improvements to Common Elements prior to delivery of such deed or dedicated.

3. Declarant's General Scheme of Development: Declarant is the owner of 168.8134 acres (the residue of the original 173.6714 acres) of real property identified as Declarant's Retained Real Estate on which there are presently: (1) rental properties; (2) the Fitness Center which will also be a replacement club house for the Golf Course; and (3) a public and commercial 18 hole golf course known as Meadow Ponds Golf Course ("Golf Course"). The Golf Course includes a club house, fairways, greens, tees, cart paths, a driving range, storage facilities, parking areas, roads, green space and landscaping and other amenities and improvements. When the Fitness Center is completed, it will be part of the Golf Course. Some of the Retained Real Estate may be incrementally removed from the Golf Course and dedicated as Phases of the Subdivision which contain Units, Common Elements, rights-of-way, easements and amenities. As more of the Retained Real Estate is dedicated as Phases of the Subdivision, less of the Retained Real Estate remains for the Golf Course and rental properties. Declarant is in the business of constructing homes and thus does not intend to own, manage or operate the Golf Course (including the fitness center) in the future. Declarant therefore intends to sell, lease or otherwise transfer ownership and control of the Golf Course to third parties at the earliest possible opportunity.

Declarant's general scheme of development for the Subdivision contemplates that The Meadows be a golf course community, with the Units in each Phase being developed, constructed, sold and occupied adjacent to or in proximity of the Meadow Ponds Golf Course. Declarant believes that the continued existence of the Golf Course is a benefit to and general amenity to the Subdivision which directly or indirectly enhances the value and character of the Units and the quality of life of the owners of those Units. Because Declarant's general scheme of development of the Subdivision also contemplates the sale, conveyance or lease of the Golf Course, and that portion of its Retained Real Estate on which the Golf Course is situate, to third parties, Declarant has implemented certain measures which are reasonably anticipated to encourage continued future operation of the Golf Course by such third parties for the benefit of the Subdivision. Specifically, Declarant has imposed: (a) restrictive and protective covenants on all Units in the Subdivision which benefit the Golf Course and its owners and operators; (b) certain financial incentives whereby owners of Units in the Subdivision are obligated to annually purchase memberships in the Fitness Center; and (c) certain easements, rights-of-way and rights necessary for preservation and operation of the Golf Course. As discussed herein below in greater detail, it is the Declarant's intent and belief that these incentives are mutually beneficial to both the Golf Course, and its owners and operators, as well as the Subdivision and the owners and occupants of Units therein, sufficient to increase the likelihood that the Golf Course will continue to exist in the future and that The Meadows shall continue to be a golf course community.

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

- A. To complete improvements including, but not limited to those improvements indicated on plats and plans filed with the Declaration;
- B. To maintain sales offices, management offices, and signs advertising the Subdivision, Units and models;

- C. To use easements through the Common Elements, Limited Common Elements and Units for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision and to grant others the right to do so;
- D. To merge or consolidate a Subdivision with another Subdivision of the same form of ownership;
- E. To appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant's control;
- F. To appoint or remove all members of the DBCC during any period that Declarant owns at least one (1) Unit in the Subdivision (the DBCC will terminate and all BCC rights vested thereto will pass to the ABCC not later than when Declarant no longer owns any Unit in the Subdivision);
- G. To appoint and remove a majority of members of either BCC during any period that Declarant controls the Association. Also the right to at anytime assign all BCC Rights, in whole or in part to the ABCC;
- H. To approve all revisions and modifications to the Construction Guidelines and Rules and Regulations during any period that Declarant owns at least one (1) Unit in the Subdivision;
- I. To add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised with regard to any tract or parcel of real estate described herein or otherwise identified on **Exhibits B and C**;
- J. To create Units, Common Elements and Limited Common Elements;
- K. To subdivide Units, combine Units, adjust boundaries between Units or convert Units into Common Elements or Limited Common Elements;
- L. To withdraw Common Elements or Limited Common Elements, or any part thereof, and develop the same into Units or add the same to Units;
- M. To store construction equipment and materials on Common Elements, Limited Common Elements, or Units so long as Declarant owns at lease one (1) Unit, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;
- N. To maintain construction signage, contractor signage, broker signage, material supplier signage, financier signage, or other advertisements on Units, Common Elements and Limited Common Elements, so long as Declarant owns at lease one (1) Unit, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;

- O. The right to enter into and onto any Common Element, Limited Common Element or Unit and fix, modify and change the grades and elevations of easements and rights-of-way and all streets within the Subdivision;
- P. To exercise a first right of refusal with regard to any top or other soil removed from any Unit within the Subdivision so long as Declarant owns at least one (1) Unit. In the event that Declarant shall exercise such right, the soil shall be deposited by the Unit Owner in such area of said Subdivision as may be determined by Declarant. In the event that Declarant does not desire said soil, it may then be deposited or disposed of by the Unit Owner elsewhere; and
- Q. To deed and otherwise transfer ownership of Units, Common Elements and Limited Common Elements to the Association.
- R. To, for a period of twenty (20) years from the date of this Declaration, grant easements and licenses permitting any individual or entity to utilize utilities and utility systems, stormwater management systems, and infrastructure servicing and benefiting the Subdivision in connection with the development, use, and enjoyment thereof.
- S. To construct and maintain signage, traffic controls and other necessary improvements within the set backs and easements reserved herein, which such improvements specifically include, but are not limited to, stop signs, speed limit signs and signage advertising the Subdivision and Units therein.
- T. To unilaterally assign permits and regulatory agreements pertaining to the Common Elements, Limited Common Elements, Storm Water Facilities, or improvements thereto, to the Association.

Any and all Development Rights and Special Declarant Rights are and shall, except as set forth to the contrary, be perpetual in duration, non-exclusive, alienable and voluntarily terminable by the Declarant, in whole or in part. Provided, further, the rights set forth in the foregoing Paragraphs I, J and K will expire on the 20<sup>th</sup> Anniversary of this Instrument unless terminated by Declarant prior to such time.

4. Any or all of Declarant's rights and obligations set forth in this Declaration or the Governing Documents may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary. To the extent that any Development Right or Special Declarant Right is assigned or transferred by the Declarant, the transferee is solely responsible for any liabilities arising from the exercise of such rights and Declarant shall not be liable for any injury, damage or harm caused by such post-transfer exercise.

**VI EASEMENTS AND RIGHTS-OF-WAY:**

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

1. Roadway and Common Element Use Easements: Declarant reserves unto itself and its licensees, successors and assigns, as Declarants, perpetual, alienable and releasable non-exclusive easements and rights as follows:
  - A. To make vehicular and pedestrian use of all roads in the Subdivision;
  - B. To utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements for the conveyance, transportation, distribution and use of electricity, telephone equipment, gas, sewer, water, drainage, and other public or private conveniences or utilities within the right of way of the roads and Common Elements of the Subdivision. Declarant reserves the aforesaid easement and rights-of-use for the benefit of Declarant and for any real property contiguous to the Subdivision and all real property which Declarant owns or may hereafter acquire. For the purpose of this document, land is contiguous to the Subdivision and may be added to or dedicated as future Phases of the Subdivision notwithstanding the fact that the land is physically separated from the Subdivision by a State or County Road. Therefore, Declarant expressly reserves the right to add to the Subdivision non-contiguous tracts which are located adjacent to the Subdivision, on the southern side of West Virginia Route 7.
2. Boundary Perimeter Easements: Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way across all portions of all Common Elements and ten (10) feet wide along: (a) each side of all road rights-of-way; (b) along the front and rear boundaries of each Unit (excepting such locations as are within a Dwelling such as Townhome or PatioHomes which may be constructed to an on a Unit Boundary if attached to another similar Unit); and (c) Declarant also reserves non-exclusive easements and rights-of-way five (5) feet wide along each side boundary of each Unit, provided that such Unit is not reserved at locations where two (2) Dwellings are attached. Declarant further reserves such non-exclusive easements and rights-of-way and as otherwise shown on any Plat recorded by Declarant imposing any easement over or across land owned by it. Such reserved easements are for the purpose of:
  - A. installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of:
    1. utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and
    2. lines, mains, drainways, ditches, pipes, culverts and other reasonable



means of transporting, collecting and disbursing surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; and

3. traffic and directional signage and signs advertising Units and the Subdivision and its various Phases, Common Elements, Limited Common Elements, appurtenances and improvements.

- B. cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance.
- C. installing, constructing and completing the infrastructure and improvements to serve the Subdivision, including, but not limited to, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, storm water drainage systems, irrigation systems, sanitary sewer systems, street lights and signage;
- D inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to the Subdivision.
- E. exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein.

3. Exercise of Easement Rights: Each easement, right-of-way and right reserved to Declarant, Association and public utility providers, as aforesaid expressly includes the right to cut any trees, tree roots, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations, surface water control and to maintain reasonable standards of health, safety and appearance. The right to cut and remove foliage as aforesaid expressly includes the right, without liability, to cut, remove and dispose of any tree, branch, root, bush, shrubs or other foliage notwithstanding the fact that less than the entire tree, bush, shrub, branch, root or foliage is situate within the easement and some portion of same is situate outside of the easement. Such right may be exercised by any licensee of Declarant or Association but this reservation shall not be considered an obligation of Declarant to provide or maintain any such drain system, utility or service. All drainage systems installed by Declarant are owned and maintained by the Association. All drainage systems installed by any Unit Owner are owned and maintained by the Unit Owner. There is further reserved the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to remove any improvement located therein or thereon whenever and wherever such action may appear to Declarant and/or Association to be necessary. Neither Declarant nor Association shall be liable to any Unit Owner for damage by reason of the exercise of these easement rights, including the cutting of any trees, tree roots, bushes, foliage, brush or shrubbery, gradings of the soil, or other similar action. To the extent that any trees, tree roots, bushes, foliage, brush, shrubbery, soil or improvement which is damaged or removed is located partially within the aforesaid easement, the same shall be deemed to be entirely within said easement for the purposes of this paragraph. Declarant and/or Association may exercise any right, power or

authority with regard to same, without liability to the Unit Owner by reason of trespass, conversion or any other tort notwithstanding the fact that said tree, foliage, brush and/or improvement is not entirely located within the aforesaid easement. All Unit Owners by acceptance of a deed for a Unit, expressly waive all claims and causes of action against Declarant or Association resulting from or as a result of the exercise of the foregoing rights by the Declarant or Association. Said easements and rights-of-way are reserved to Declarant and Association for the benefit of Declarant and Association in their exercise of the powers and authorities set forth herein below.

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

5. Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements in, over and across Units, Common Elements and Limited Common Elements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property which is within the Subdivision, or any property which Declarant has reserved the right to incorporate into the Subdivision as future Phases thereof. Declarant may exercise such right and power for the benefit of such additional property regardless of whether such additional property is dedicated as future Phases of the Subdivision. In the event that such easement is over or through a Unit, the Owner of the Unit to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Unit Owner of the burdened Unit, which approval shall not unreasonably be withheld, delayed or conditioned.

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

7. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Elements and Limited Common Elements for the purposes of enjoyment, use, access, and development of the Subdivision and all real property which Declarant has reserved the

right to incorporate into the Subdivision, whether or not such property is made subject to this Declaration. The lands to which Declarant reserves such easements are described on **Exhibits B and C**. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements and Limited Common Elements for construction of roads and for connecting, laying, building, using, maintaining, and installing drainage systems and any and all utilities on such property and shall be responsible for reasonable repair and restoration of such damage. Provided that Declarant shall cause same to be reasonably restored. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements and Limited Common Elements as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property or any portion thereof benefiting from such easement which is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along roadway providing access to such property.

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

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

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

11. Golf Course Easements: The Subdivision is subject to those rights-of-way and easements set forth on **Exhibit D**, which are retained by Declarant as appurtenant to that portion of its Retained Real Estate which is the Golf Course Tract. The Golf Course Easements affect both the Common Elements and Units.

12. Miscellaneous Easements: To the extent that any drainway, access way, road, utility or other right-of-way or easement is shown on any Map or Plat, and also to the extent that any utility system, drainage system or component thereof is shown on any Map or Plat, express, alienable, transferable and non-exclusive rights-of-way and easements are reserved to Declarant and Association for use, operation, repair, inspection, maintenance, improvement, modification, construction, removal and reconstruction of the drainage systems, ways, roads and utilities.

### **VIII COMMON ELEMENTS/EXPENSE ALLOCATIONS:**

Common Elements are all land, and improvements thereon, owned by the Association either in fee or easement, by deed or dedication. Common Elements are dedicated for use by all Unit Owners and, when improvements to same are completed by the Declarant shall be owned by and under the control and supervision of the Association. The use of all Common Elements by Unit Owners and their guests is subject to the Governing Instruments including, but not limited to, such Rules and Regulations as may be, from time to time, promulgated by the Association. Certain Common Element improvements such as roads will be completed in stages and each stage of improvements are owned and to be maintained by the Association, when completed. For example, when the road is graded and graveled the first stage of road construction is complete. Base coat asphalt paving and wearing course asphalt paving shall each be a stage of road completion after which the Association's duty to maintain the improvement shall attach.

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

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

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

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

- 1 Streets. The streets and roadways are either rights-of-way or land owned in fee by the Association as Common Elements or Limited Common Elements allocated to all Unit Owners and which must be completed by Declarant. Declarant covenants that (weather permitting ) the entrance way and streets as designated on the plats of the Subdivision shall be paved and completed not later than six (6) months after the sale by Declarant of

its final Unit in the Subdivision. Prior to the completion of all Units in the Subdivision, Declarant shall maintain high quality gravel roads and/or base-coat (type II aggregate asphalt) in the Subdivision. The completed streets shall be paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted thickness of two (2") inches of road base (type II aggregate asphalt) and a one (1") inch average thickness wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards and the widths and thickness of low traffic areas such as cul-de-sacs and dead end roads may be less than set forth in this paragraph. Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving and maintenance of any section of street or roadway beginning at the time that the "wearing" course of type I aggregate asphalt is applied to same. Prior to such time, Association shall maintain the roads, as partially completed.

2. Storm Water Facility: All elements of the Storm Water Facility in all Phases are a Common Element, dedicated to all Units.
3. Townhome and PatioHome Limited Common Elements: Certain portions of the Townhome Units and PatioHome Units may be either express or implied Limited Common Elements. Express Limited Common Elements are those areas specifically so designated by this instrument, and any amendment hereto, or designated as such on a plat. Implied Limited Common Elements are certain fixtures, amenities and improvements which are either located partially within one (1) Townhome Unit or PatioHome Unit and partially outside the Unit; partially within multiple Townhome or PatioHome Units; or else are outside the Townhome Unit or PatioHome Unit but dedicated exclusively for the benefit of the Unit.
4. Common Element D: Common Element D is a non-exclusive right-of-way hereby dedicated to the Association which is part of Phase I and which extends over and across the Declarant's Retained Real Estate as the principal entrance and access to Phase I and lands which may be dedicated as one or more additional and future Phases of the Subdivision. Common Element D lies over and across a portion of Meadow Ponds Drive and part of Par Lane which is land utilized, at the execution hereof, by Declarant as a Commercial Golf Course and the use of same by Declarant and its successors in ownership of said real estate/Golf Course is in no manner restricted by this instrument except to the extent that Declarant may subsequently impose limitations on same or all of its Retained Real Estate and to the extent that certain provisions are imposed requiring certain cost allocations. Association shall, at all times, insure Common Element D, and its use thereof and interest therein in the same manner as its fee Common Elements.

So long as the Golf Course is operated, the Golf Course shall be responsible for a pro rata share of the cost of maintaining Common Element D notwithstanding the fact that the Golf Course and persons utilizing Common Element D for the benefit of the Golf Course are not subject to any use limitations imposed hereby on Units in the Subdivision. The share of such maintenance costs allocated to the Golf Course shall be equal to 150 Units and the Association's share shall be equal to the total number of Units in the Subdivision. That is to say, the Association shall contribute a fraction of such cost

wherein the total number of Units in the Subdivision is the numerator and the denominator is the total number of Units in the Subdivision plus 150. The owner of the Golf Course shall contribute a fraction of such cost wherein 150 is the numerator and the denominator is the total number of Units in the Subdivision plus 150. Association shall annually contribute to the cost of repair, replacement and repaving of the surface of Common Element D. The owner of the fee on which Common Element D is situate shall maintain the paved surface of same (repair, replacement and repaving of asphalt) but shall have no duty to provide or contribute to snow or ice removal, cinders, salt or any other seasonal upkeep. If the Golf Course should cease to be operational, the maintenance obligation shall be pro rata based on actual use with use determined by the average number of vehicles utilizing Common Element A each day for the benefit of each property entitled to benefit of same.

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

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

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

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

4 Declarant reserves the right to create not more than 500 total Units in all phases of the Subdivision. The final Common Expense Liability and Limited Common Expense Liability for each Unit will depend on the total number of Units created by Declarant and the extent to which Limited Common Elements are dedicated. Final Common Expense Liability and Limited Common Expense Liability will not be determined until all Units in all Phases, present and future, are dedicated and in the case of attached Units, constructed. Because there are 38 Units in Phase I, the total Common Expense Liability of Units in Phase I shall not be less than 1/38th of the total Common Expense of the Association.

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

Element (total Units to which the Limited Common Element is allocated, expressly or impliedly).

**EXAMPLE A:**

*If there are 300 Units in the Subdivision then each Unit shall be allocated a one-three hundredth (300th) equitable interest in the Common Elements and a 300th share of the Common Expenses.*

**EXAMPLE B:**

*If there is a Limited Common Element dedicated to 38 Units in Phase I, then each such Unit shall be allocated a 1/38<sup>th</sup> equitable interest in the Limited Common Element and a 1/38th share of the Limited Common Expense attributable thereto.*

*The Common Expenses of the Association are not limited to the cost of the Common Elements and include other Association costs, including Fitness Center Memberships, as set forth below.*

**IX CONSTRUCTION APPROVAL AND BUILDING CONTROL COMMITTEE:**

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

1. So long as Declarant owns at least one (1) Unit in any Phase of the Subdivision. Declarant may appoint all members of the DBCC. The DBCC is vested with the exclusive right to approve the initial construction of all Dwellings and landscaping and improvements appurtenant to the initial construction of the Dwelling. Beginning at the time each Dwelling and initial improvements appurtenant thereto are completed and the Unit is suitable for occupancy, authority to grant such approvals automatically transfers from DBCC to ABCC with regard to all subsequent matters. ABCC is thereafter charged with monitoring, reviewing, approving and overseeing all construction in the Subdivision, on-going maintenance of improvements and compliance with the Building Control Standards ("BCS"), Building Control Guidelines ("BCG") and maintenance of the character, harmony, esthetics and appearance of the Subdivision. Neither BCC is vested with construction approval or oversight authority with regard to completion or repair by Declarant of: Units; Common Elements; Limited Common Elements; drainage or utility systems or any other project or improvement; or exercise of any easement right, Development Right or Special Declarant's Right by Declarant. Declarant may elect to assign or transfer its BCC Rights, in whole or in part, to the Association at any time but not later than when the Declarant no longer owns any Unit in the Subdivision. Each BCC shall be composed of at least three (3) members. All members of the DBCC will be appointed by the Declarant, and during Declarant control of the Association all members of the ABCC shall be appointed by Declarant. After termination of Declarant control of the Association, all members of the ABCC shall be appointed by the Association; and after sale of Declarant's final Unit in the Subdivision or Declarant's surrender of its BCC Rights, the DBCC and ABCC will merge with all members of the surviving ABCC appointed by the Association. The surviving ABCC shall thereafter have not less than three (3) members and may have as many more members as the Association may deem prudent. After termination of the DBCC, the surviving ABCC shall be the "BCC". All BCC members appointed

by the Association shall be appointed by the Board of Directors of the Association. With regard to the ABCC, in the event of any tie vote between the members (due to absence, vacancy or abstention) of the ABCC: (1) if during a period of Declarant Control of the Association, Declarant reserves the right to cast a deciding vote on that issue; and (2) if subsequent to termination of Declarant Control of the Association, the Board of Directors shall cast a deciding vote on that issue. Declarant reserves the right to decide any matter subject to a tie vote by members of the DBCC.

All covenants set forth in Article IX and X are reserved for the Declarant and the Association with enforcement authority vested in the Association or Declarant, subject to the limitations set forth herein. Declarant may unilaterally make multiple full or partial assignments of its BCC rights to the Association at any time during development, and with regard to different portions of the Subdivision, but not later than the sale of Declarant's final Unit in the Subdivision.

No member of the ABCC shall participate in any decision or determination in which there is an actual or apparent personal or professional conflict, as determined by the disinterested members of the Association's Board.

**To the extent that there will be concurrent BCCs (one appointed by the Association and one appointed by the Declarant) during development of the Subdivision, and to the extent that approval and enforcement authority with regard to each Unit will be vested at any time in either one BCC or the other as determined by the subjective status of each Unit, the term BCC is used in this instrument to refer to whichever BCC has authority over the Unit or proposed improvement at any applicable time.**

2. After the initial completion of each Unit by Declarant, no improvement, Dwelling, structure, fence, pool, or wall may be constructed, placed or maintained upon any Unit, and no material modification or alteration to any improvement, including landscaping, may be undertaken, commenced, caused or permitted by any Unit Owner until plans and specifications for the improvement or modification have been approved in writing by the BCC. Provided, however, that no such approval is required with regard to any improvement to the interior of any detached Dwelling or structure if such improvement is not visible from the exterior of the Dwelling or structure or any improvement by Declarant. The BCC is vested with approval authority with regard to structural improvements to the interior of attached Dwellings if the improvement may structurally impact another attached Unit. **All prospective Unit Owners are advised to obtain written preliminary construction plan approval from BCC prior to purchasing a Unit in the Subdivision. It is further recommended that if the prospective purchaser has any doubt as to whether the proposed plans will be approved, the purchaser's contract should be made contingent upon such preliminary approval.** All approvals granted by DBCC are binding on the ABCC as its successor.

3. BCC shall review such plans and specifications with regard to issues which include, but are not limited to: (1) exterior color; (2) exterior construction materials; (3) structural design; (4) plot plan/site-layout location on the Unit; (5) utility entrances; (6) driveway entrances; (7) walls, (8) exterior elevations, topography, finished grades; (9) landscaping and location of structures, improvements, walkways and driveways, (10) impact on existing vegetation; (11) surface water and drainage control measures and concerns including sedimentation control; (12) parking; (13) grading and elevations; (14) traffic visibility; (15) with regard to Estates Units only, view



easements benefiting Common Elements and other Units; (16) impact and effect on other Units; (17) dimensions; (18) exterior lighting; (19) general appearance and traditional residential character; (20) impact on the Golf Course and compliance with the Golf Course Covenants; and (21) any matter addressed by the BCG or BCS. The BCC may also consider with regard to any application any factors which it deems relevant including, without limitation, harmony of exterior design and color with surrounding structures and environment. With regard to color: (a) BCC expressly reserves the right to require color variation within the Subdivision to prevent color redundancy in certain areas; and (b) to limit primary finish colors of structures to those commonly identified as earth tones and certain other usual and customary traditional house colors.

4. BCC may require Unit owners to submit such additional detail and supporting data, studies, samples, architect's renderings, and reports as may be reasonably necessary for BCC to adequately review the proposed plans and specifications. BCC may reasonably require the Unit Owner to furnish survey maps or plats prepared by licensed engineers, land surveyors and other professionals with regard to any pertinent issue including, but not limited to, surface water and drainage impact of the improvements. The BCC may retain a qualified engineering firm to review construction plans with regard to matters requiring professional expertise and training. The BCC may retain such other professionals as may be necessary for the execution and administration of its duties. The cost of such professional services shall be a charge to the Unit Owner requesting review or plan approval.

5. BCC shall approve, disapprove, or grant partial approval and comment as to additional requirements, plans and specifications within thirty (30) days from the time that all materials required by BCC have been submitted. The BCC shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest, welfare of the Subdivision, any Unit Owner, Association or Declarant. All decisions of BCC shall be subject to appeal or review by the Board of Directors of said Association.

6. A pre-condition to plan approval and authorization by the BCC or Declarant for any Unit Owner to commence construction is that the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against Declarant, BCC or Association for any and all damages sustained as the result of future damage to, or removal of, any appurtenance or improvement which when constructed encroaches upon or into any easement.

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

8. The Declarant, Association and BCC shall not under any circumstances be liable to any Unit Owner for damage or injury resulting from the grant or denial of approval of construction plans whether said plans be for the injured party's Unit or another Unit in the Subdivision. All Unit Owners by acceptance of a deed subject to the Governing Instruments release Declarant,

BCC and Association from liability for injury and damage directly or indirectly resulting from such plan approval. Each Unit Owner in improving his/her own Unit bears all liability for injury to person or property resulting from such improvement and shall indemnify, defend and hold harmless Declarant, Association and BCC from all claims, causes of action and liabilities resulting from said improvement. All Unit Owners are charged with developing and improving their property in a reasonable and prudent manner so as to avoid injury or damage to person, property, other Units, Common Elements or Limited Common Elements.

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

10. The standards established for plan approval are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision and do not create any duty to any present or future Unit Owner. Review and approval of any application by the BCC, or Declarant is made on the basis of aesthetic considerations only and BCC, Declarant and Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor of the impact of such improvements, including drainage systems and excavations on other Units.

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

The following BCS are restrictive covenants, limitations, regulations and agreements imposed upon all Units for the benefit of Declarant, the Association, the owners of other Units and the Golf Course, the Golf Course Tract and the respective owner(s). The BCS are restrictive covenants and shall be binding upon all purchasers of Units and/or any and all other parties having any interest therein, and run with the land. The BCS do not apply to improvement and construction of Common Elements, Limited Common Elements, Units or improvements thereto by the Declarant, or exercise by Declarant of any easement right, Development Right or Special Declarant's Right. The BCS may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should request and procure copies of the current Governing Documents from the Association prior to transfer of any ownership interest in any Unit.

1. All dedicated Phases are restricted to single family residential use. All Units in Phase I are dedicated for single family attached residential Townhomes or PatioHomes and no more than one Townhome or PatioHome is permitted on any Unit.

2. No apartment or condominium may be constructed or operated on any Unit in any portion of Phase I. This provision expressly prohibits subdivision of any Unit in Phase I wherein there are horizontal delineations of ownership such as multistory Dwellings with separate ownership of the floors or situations where a floor or ceiling forms the boundary between Dwellings or Units.
3. All Dwellings, buildings and structures, including Townhomes or PatioHomes, shall be of traditional residential character and the BCC is vested with exclusive authority to determine what constitutes traditional residential character taking into consideration the substantive differences between a traditional Townhome, a traditional PatioHome and a traditional Detached Dwelling. BCC shall consider in making such determinations the character and aesthetics of the Subdivision and the impact of the proposed Dwelling on the neighborhood, community, other Units, Golf Course and Golf Course Trace. The following are not of traditional residential character and may not be constructed in the Subdivision: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) log homes; (e) art-deco houses; (f) any Dwelling with a predominately commercial appearance; and (g) other non-traditional houses which are not common in residential Planned Communities in Monongalia County, West Virginia. Flat and non-peaked roofs are not permitted except for limited porches. Vertical siding is only permitted for trim purposes and vertical siding may not be used as a cover or facade for more than twenty (20%) per cent of any side of any Dwelling.
4. No Unit shall be occupied until the same has been substantially completed.
5. The exterior of all structures and improvements constructed or placed on any Unit shall have the appearance of new material.
6. No mobile or modular homes commonly known as "double wides" are permitted within the Subdivision. For the purpose of this provision, mobile and modular homes are homes for which a vehicle title is or has ever been issued, registered or required by the West Virginia Department of Motor Vehicles or any other agency of the State. Panelized construction, pre-engineered homes and modular/sectional construction are permitted in Phase 1, provided that the completed Dwelling appears to be stick built. BCC retains exclusive authority to determine whether any structure is permitted or excluded by the provisions of this paragraph.
7. No Dwelling in Phase 1, may be constructed more than two (2) stories above the bottom of the Main Floor. For the purpose of this document, the Main Floor is the lowest story of the Dwelling which contains the main or primary entrance from the street. For the purpose of this provision, a "story" is the space between the floor below, and the floor above, and if there is no floor above then the distance between the floor below and the ceiling above. The BCC is vested with absolute and unilateral discretion to make final determinations as to which floor or story of a Dwelling is Main Floor. BCC may grant certain reasonable exceptions to these provisions to permit cupolas and other extensions beyond the foregoing limitations so long as the extension does not exceed ten percent (10%) of the total footprint of the main floor.

8. No outbuildings or detached structure (“outbuilding”) other than the primary Dwelling is permitted on any Golf Course Unit, Townhome Unit or PatioHome Unit and only one such structure is permitted on any other Unit. No outbuilding shall be constructed to a height greater than set forth below. For the purpose of this document, the ground level of any detached structure or detached garage shall be the level of the lowest entrance or doorway to the Main Floor of the structure. The BCC is vested with absolute and unilateral discretion to make final determinations as to what shall constitute the Main Floor of each outbuilding structure or garage.

Phase I	All outbuildings	Not Permitted
Future Phases	Will vary.	Will vary if permitted.

9. No Dwelling shall contain less than the minimum square feet, of total finished living area as set forth in the following table. For the purpose of calculating “finished living area” basements, porches, decks and garages may not be included in such calculations.

PHASE	TYPE OF DWELLING	MINIMUM AREA
Phase I	Townhome	960 Sq. Ft.
Phase I	Patio Home	960 Sq. Ft.
Phase II and subsequent Phases		To be determined

10. No outbuildings are permitted in Phase I. If outbuildings are permitted in future Phases, outbuildings shall contain more than the maximum square feet of total above-ground enclosed area and of total structure foot print, than as set forth in the following table.

PHASE	OUTBUILDING	MAXIMUM FOOTPRINT	MAXIMUM TOTAL AREA (ABOVE GROUND)
Phase I	Not Permitted	-0-	-0-
Phase II and subsequent Phases	If permitted by an Amendment to this	To be determined	To be determined

	Declaration		
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11. No Dwelling or building shall be located nearer to the perimeter of the Unit than the established set-back lines set forth below. Provided, however, that due to the topography of the Units, and with the exception of Golf Course set-backs which may not be reduced without the consent of the Owner(s) of the Golf Course, the minimum set-back lines for certain Units may be reduced as designated or shown on the plats of the Subdivision or as otherwise set forth below. Declarant and the Association are each vested with authority to grant reasonable variances to the established non-Golf Course set-back lines to prevent undue hardship and accommodate unforeseen and unknown circumstances. Provided, however, that all Unit Owners, by acceptance of such a variance, waive and release any and all claims, rights and causes of action which the Unit Owner may have against the Association, Declarant or, if applicable, owners of the Golf Course with regard to any and all damages that might arise with respect to such variance. For the purpose of this requirement, the "front" of each Unit shall, unless otherwise designated by Declarant or BCC, be the boundary or boundaries of the Unit contiguous to a road in the Subdivision and the "rear" of the Unit shall be the opposite boundary or boundaries of the Unit. Declarant and BCC expressly reserve the right to make alternative designations to the extent necessary to assure maximum usability of Units and to compensate for issues arising with regard to topography and Units contiguous to multiple streets, roads or common elements. All Unit purchasers, by acceptance of a Deed for any Unit in the Subdivision, whether from Declarant or a third party, acknowledge and agree that any variance reducing the lineal distance of a set-back by not more than fifty (50%) per cent is reasonable, and that variances for improvements extending more than fifty (50%) per cent of the distance of the set-back may be reasonable depending on the circumstances and potential hardship resulting from failure to grant such variance.
12. The construction set-backs are the following number of lineal feet from as follows:

	Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side Boundary(s)	Minimum distance from any Unit boundary abutting a Road or Common Element	Minimum distance from Golf Course
Phase I	15 feet	10 feet	5 feet	15 feet	10
Future Phases	To be determined	To be determined	To be determined	To be determined	To be determined

13. Townhomes and PatioHomes may be of substantially identical exterior appearance and exterior architectural design to adjoining Units. No detached Dwelling may be constructed on any Unit which is of substantially identical exterior appearance and exterior architectural design to any Dwelling approved for construction on any adjoining Unit including any Unit which would be adjoining but for a street or road.
14. The exterior wall surfaces of all buildings shall be of either masonry construction, wood, vinyl siding, stucco or drivet or attractive synthetic siding such as Hardy Plank. Specific and appropriate variances to this requirement may be granted on a Unit basis under special circumstances, depending on the style, location, size, character and over-all post construction esthetics of the Dwelling and Unit at issue. "Masonry Construction" shall be limited to that of brick or natural or cultured stone. Concrete or cinder block foundations may be exposed provided that: (a) the same are painted to match the exterior appearance of the Dwelling or otherwise covered with an approved material; (b) the same are not exposed more than 18" inches above grade on the front of a Dwelling and not more than 30" above grade on any other side of a Dwelling. No portion of any Unit other than a foundation may have exposed concrete or block. For the purpose of this provision, the term "foundation" shall mean, all portions of the Dwelling situate below the Main Floor, as defined above and specifically excludes exposed walls of "walk-out" basements.
15. No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the Public Sewage System. Provided, that temporary facilities are permitted during construction but shall not be within 20 feet of a road.
16. All driveways and sidewalks are to be constructed of concrete, or paved with asphalt, brick, fitted stone or pavers. Non-fitted stone or gravel driveways are not permitted. Weather permitting, driveways and sidewalks shall be completed within one (1) year of commencement of construction. Common, joint or shared driveways ("Joint Driveways") servicing multiple Units are permitted if approved by the BCC. All owners of all Units benefited by joint driveways are jointly and severally liable for the maintenance, construction and upkeep of same in compliance with this Declaration. The Declarant and BCC shall require, as a condition precedent to approval of any joint driveway, a record indemnity, insurance and hold-harmless agreement between the owners of the Units benefited by the Joint Driveway. With the exception of approved joint driveways, which may span the side set-back between benefited Units no driveway may be constructed in any side or rear set-back without prior written consent of the BCC. The driveway limitation imposed by this section is intended for the purpose of maintaining green space, trees and foliage between Units and along the Golf Course.
17. Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any Political Subdivision of the State of West Virginia, under sidewalks and/or driveways at or near the intersection of same with any road in the Subdivision in order to facilitate the

proper drainage of storm water from the streets of the Subdivision. All such culverts shall be no less than twelve (12) inches in diameter and in compliance with the drainage plan for the Subdivision. Each Unit Owner shall continuously maintain all culverts, ditches and drainage lines and drainways on his or her property, whether installed by the Developer, the Association or the Unit Owner, so as to prevent the restriction of water flow through the same. Culverts, ditches, drainage lines and drainways may not be modified by a Unit Owner without written approval of the Association and a recommendation as to the suitability and appropriateness of the modifications from a licensed and insured Engineer approved by the Association's Board of Directors. Such written recommendation shall be addressed to the Association and that the modifications are to be completed in compliance with the Subdivision drainage plan and it shall specify the design, materials and manner of construction. Written request of changes to drainage systems must be made to the Association by the Unit Owner at least thirty (30) days in advance of the next Board meeting.

18. All driveways shall be paved to the existing road surface rather than to the Unit Owners property line or any easement or set-back line.
19. To the extent that the driveway for any Unit slopes down hill from a road to the Dwelling constructed on the Unit, all Unit Owners are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road, and/or at each door or garage door which is situate below the elevation of the road. All Unit Owners are further advised that road paving, road modifications and improvement of Units and Common Elements may result in changes to surface water over time which may result in increased surface water flow or redirected surface water flow sufficient that surface water conditions present at the time a Dwelling is constructed on a Unit may not remain constant. Each Unit Owner is responsible for, and assumes all risks inherent in, collection and control of surface water conditions which are both present at the time of construction or reasonably foreseeable as a result of passage of time, due to development of other Units and Common Elements specifically including changes in road surfaces or elevations resulting from additional paving. Unit Owners constructing a driveway which has a slope of more than seven (7%) per cent and which discharges downhill into a road or roadway are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road to prevent water from the driveway from being discharged, en mass, into the road, and potentially causing damage to the roads, other Units or Common Elements.
20. Prior to construction of a driveway or walkway, each Unit Owner shall cause a four (4") inch schedule 40 P.V.C. electrical conduit with caps on each end to be buried under the portion of driveway which runs over top all the utility rights-of-way or lines, at the exact depth and location as to be designated by the BCC and/or Declarant, and or utility provider benefited by the easement, or their successors or assigns. Such conduit shall be suitable in all manners for future installation of utility distribution and transmission services and Declarant expressly reserves, for and in behalf of itself, its successors and/or assigns including the Association the right to utilize, and to permit others to utilize, such electrical conduit for such purposes. This provision is specifically intended to facilitate subsequent utility upgrades and installations to prevent disturbance of finished driveways.

21. All Units Owners are required to construct at the Unit Owner's cost, and subject to BCC approval, a decorative mounting structure ("pedestal") containing and decorative light and to be located not more than eight (8) feet from each entrance to any driveway from street or road and within 18" of the street or road. The exterior appearance of all pedestals shall match the primary finish utilized on the exterior of the Dwelling. All lights mounted in or on a pedestal shall be decorative and of the natural gas or dusk-to-dawn photo-sensitive electric variety. The Association is vested with exclusive authority to determine the size, height, color, style, design, bulb style, overall appearance and wattage of all such lights. The decorative lights must be maintained in working order by the Unit Owner and all lights must be approved by the Association. Neither the pedestal nor the decorative lights may be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. All such lights shall be maintained operational by the Unit Owner at all times to assure safety and visibility in the Subdivision and may not be turned off at night or disconnected except as may be necessary for maintenance. The Declarant reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of replacing light bulbs or repairing the decorative lights which such right may be exercised by the Association, at the cost of the Unit Owner, upon not less than five (5) days written notice. Declarant may, at Declarant's option, install Common Element lighting in Townhome Units or PatioHome Units if future Phases are dedicated for same in lieu of a requirement that such Units maintain mailbox or pedestal lighting as aforesaid or in the event that cluster mailboxes are required at such locations by the United States Postal Service.
22. For any Phase and Section which the United States Postal Service provides curb side delivery, BCC shall establish standards for the size, color, style and appearance of all mailboxes. All mailboxes and other delivery boxes shall be installed within the pedestal appurtenant to each driveway. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. Provided, however, that no authorization is required for replacement of a damaged or deteriorated mail box with one of identical appearance and size. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted. In the event Declarant or Association shall establish a uniform mailbox all Unit Owners shall purchase and install same and no non-conforming mailbox or mounting system shall be permitted. In the event that Townhome Units or PatioHome Units are dedicated as part of one or more future Phases, the mail boxes for the same may be Limited Common Elements of the Association.
23. Each Unit shall have sufficient off-street parking to service the Dwelling. There shall be no parking in or along streets in the Subdivision, on lawns or sidewalks. Declarant may designate certain parking areas as Limited Common Elements allocated to one or more specific Units or groups of Units. No parking "pad" or paved parking space other than a primary driveway crossing a set-back from a street (or joint driveway) is permitted within any side or rear set-back.
24. Each Unit Owner shall either keep receptacles for garbage and recycling bins inside the



Unit or provide receptacles for garbage and recycling bins in a screened area so the receptacles are not visible from the road, neighboring Units, Common Elements or Golf Course, in accordance with Monongalia County Health Department suggestions or reasonable standards as established by the Declarant or BCC.

25. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
26. Declarant is not providing public natural gas service to Units in Phase I, but may elect to provide such service to some or all future Phases. No Unit may be serviced by any fuel tank or similar fuel storage receptacle absent prior written consent of the BCC and then only to facilitate gas fire places and gas appliances situate in Units which are not benefited by public gas service. In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located under ground or completely shielded from view by "year round" foliage or attractive screening. The fuel used in the Dwelling or other structures shall be of the smokeless-type; however, fireplaces and/or wood stoves which serve esthetic purposes rather than serving as primary or secondary heat sources for the Dwelling and in which wood is used as a fuel shall be excepted from this provision. No such fire-place or wood stove may, however, produce any fume, smoke or affluent which is an unreasonable nuisance or annoyance to the Subdivision of the Golf Course. Wood stoves, fire-places, fire-pits, barbecue pits and wood burning appliances and/or devices are only permitted on the exterior of non-Golf Course Units and then only with prior written consent of the BCC and if the same otherwise do not cause or create a nuisance.
27. Above ground swimming pools are not permitted in the Subdivision. In ground swimming pools are not permitted on Golf Course Units and are only permitted on non-Golf Course Units to the extent approved by the BCC, if the same are: (a) located on the rear of the Unit no nearer to any road than the Dwelling situate on the Unit; (b) adequately screened and fenced in accordance with the requirements of the BCC; (c) not within any set-back; and (d) the Unit Owner releases the Association of any liability for same and provides a binding hold-harmless agreement benefiting the Association and which runs with the land. Children's temporary play pools are permitted on Units subject to reasonable regulation by the BCC.
28. All construction sites on Units must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process and all construction refuse shall be removed from site or disposed of in an on-site dumpster at the conclusion of each day of construction. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the development. However, such accumulations in small quantities may be kept towards the rear of the Unit or in a location upon the Unit as designated by the Developer or the BCC. Developer may store any quantity of construction materials on any Common Element, Limited Common Element or portion of one Unit in each Phase owned by the Developer at any given time and Declarant

may always store construction materials on any Unit where Declarant is completing any improvement. The Developer shall have the exclusive right to determine which Unit in each Phase shall be used for material storage. Such construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner and kept under tarps or covers. Construction materials may not be burned on any Unit except with BCC consent.

29. In order to maintain the rural and wooded character of the Subdivision, no tree may be removed from certain portions of Units except as specified in the following tables or as otherwise permitted by written approval of the BCC. In determining whether to grant such approvals, BCC shall consider, the potential hazard resulting from the condition of any tree, topography of the land reasonable risk to existing or approved improvements and BCC may require a report from a certified and licensed tree specialist in making such determinations. For the purpose of this paragraph: (a) Dwellings and outbuildings are considered "structures"; and (b) the term "base" shall mean a point 18" above ground. Any tree not within the following specified locations may be removed without BCC consent.

Trees	Phase 1
Trees within any approved surface structure	May be removed.
Trees within 15 feet of a Dwelling or out-building	May be removed.
Trees within 5 feet of a driveway, pool, deck, patio, or sidewalk	May be removed if less than 10" in circumference at base.

30. In addition to the foregoing, each Unit Owner shall during final landscaping non-Townhome and non-PatioHome Units cause at least eight (8) reasonably mature shrubs and at least one (1) tree, of a variety and size suitable to BCC, to be planted on the Unit for the purpose of compensating for trees removed as a result of the construction of the Dwelling and conversion of green space to paved and improved area. Declarant shall cause reasonable landscaping of Townhome and PatioHome Units in Phase I. All Unit Owners shall have a duty to replace any such shrub or tree which shall not survive for a period of at least twenty-four (24) months from planting. Varieties of trees pre-approved for the purpose of this provision include maples and hardwoods which are at least 8 feet in height, and pines, evergreens and holly trees which are at least three (3) feet in height. For the purpose of this provision reasonably mature shrubs shall be not less than twenty-four (24) inches in height.
31. Prior to any digging or excavating on any Unit, all Unit Owners or their contractors shall call the appropriate Utility providers to ascertain the location of utility lines.
32. Declarant has retained the services of Potesta & Associates, Inc., a professional engineering firm for the purpose of designing a comprehensive storm water drainage system within the Subdivision. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit, with any excess

storm water discharged into the comprehensive storm water drainage system to be installed by the Declarant and not discharged onto the Golf Course. No Unit Owner may: (a) discharge or release any substance other than unadulterated surface water into the storm water system; (b) make or cause any modification to the storm water drainage system without prior written consent of the Association; or (c) discharge water in concentrated flows into or onto the streets, Common Elements, Golf Course, or other Units except in compliance with the design specifications of the storm water system.

33. No Unit Owner, other than Declarant exercising its Special Declarant's Rights, may subdivide a Unit or combine two or more Units without the written consent of the BCC. Boundary adjustments are permitted pursuant to the provisions of WV Code Section 36B. In the event that two or more contiguous Units are consolidated as a single Unit, all set-back lines and easements along the contiguous sides of the consolidated Units which do not contain drainage or utility services shall be null and void so as to permit single family residential Dwelling and attached appurtenances to be constructed across a Unit boundary line. Provided, however, all exterior set back lines and easements, shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements and Limited Common Elements, and the Common Expense Liability apportioned to said Unit as consolidated shall remain on the basis of two (2) Units. Boundary lines may only be adjusted between Units by mutual agreement of the affected Unit Owners and with prior written consent and approval of the Association. Any subdivision of Units or combination of Units, or any adjustment of boundaries between Units shall be made by deed, accompanied by a plat of survey, which said deed shall be executed by all affected Unit Owners and the Association and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
34. Declarant may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be generally consistent with the tenor and integrity of the residential character of the Subdivision. Declarant specifically reserves the right to make reasonable modifications to the restrictive covenants set forth herein to the extent necessary to facilitate construction of detached Dwellings and PatioHomes and/or other varieties of attached or detached single family Dwellings in various future Phases.
35. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto the Golf Course adjoining Units, Common Elements or into the storm sewers or roadways. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil. The Unit Owner, rather than Declarant, is liable for all discharge from the Unit.
36. No above ground fence may be constructed on any portion of any Golf Course Unit or Townhome Unit. If approved by the BCC, Fences are permitted on other Units unless otherwise restricted subject to the following limitations:
  - a Stone fences and synthetic fences which have the appearance of wood or stone are

permitted. Metal wrought iron fences are permitted but hurricane, chain-link, chicken-wire, hardware cloth and other metal fences are not permitted;

- b No portion of any fence may be constructed more than three (3) feet in height from grade, except for fences constructed around approved in-ground pools, in which case such fences shall be not more than six (6) feet in height from grade;
  - c Fences must be located on the rear or side of the Dwelling and no fence may be located nearer to the front of the Unit than the center of the Dwelling thereon;
  - d No fence more than three (3) feet in height may be located within any set-back without prior written consent of the owner of the Unit which abuts said set-back;
  - e No fence may deny the Association or Declarant or any other beneficiary of an easement access to the easements and rights-of-way reserved to the Association and/or Declarant and neither Declarant nor Association shall be liable for any damage, cost or injury incurred in the removal of all or any portion of an approved or unapproved fence in the event that the same is located on, over or across any right-of-way or easement reserved to Association or Declarant herein.
  - f The owner of the Unit on which the fence is constructed shall be liable for the proper maintenance, upkeep, construction and placement of the fence at all times.
  - g. All fences shall be of colors harmonious to the Unit and neighborhood.
37. Underground pet fences are permitted: (a) on the side or rear of non-Golf Course Units but no nearer to any street than the front of the Dwelling situate on the Unit; and (b) on the front or side of Golf Course Units but no nearer to the Golf Course than the foundation of the Dwelling situate on the Unit.
38. No deck shall be constructed on the front of any Dwelling and no deck may be constructed more than two (2) stories above ground. No deck on the rear of any Golf Course Unit may be constructed more than twenty-four (24) inches above ground. No deck may be constructed more than twenty-four (24) inches above-ground unless the area between posts is screened or enclosed, no more than six (6) feet above ground unless the posts are constructed of 6x6 timber supports.
39. Balconies are exterior horizontal second story horizontal surfaces which are: (a) not serviced by any entrance other than from the interior of a Dwelling; (b) entirely covered by the roof of a Dwelling; (c) partially enclosed on two sides, and totally enclosed on a third side by the Dwelling; (d) are engineered as part of the integral design of the Dwelling rather than attached to the exterior of the Dwelling as in the case of decks; and (e) appear to be part of the exterior facade of the Dwelling. One balcony not more than six (6) feet deep is permitted on each Dwelling.
40. Beginning at the time the entryway is paved, all construction vehicles, construction

material delivery vehicles, cranes, dump trucks, tri-axle vehicles and construction equipment must utilize the construction entrance or construction roads, if available, rather than the paved roads, of the Subdivision unless written permission to the contrary is given by the BCC. Each Unit Owner is charged with the affirmative duty to cause all contractors, invitees, licensees, agents, employees, subcontractors and material suppliers to comply with this provision. In the event of repeated violations of this provision by vehicles traveling to or from any certain and identifiable Unit, the Association may, after reasonable notice to the Unit Owner, assess reasonable fines or penalties to the Unit Owner for each violation hereof.

41. Declarant and BCC each reserve the right to designate the position and facing of any Dwelling constructed on any Unit. With regard to any Unit which is contiguous to more than one street in the Subdivision, BCC and Declarant may designate which street the Dwelling faces and which street the driveway servicing the Dwelling intersects. The following table sets forth the "front" of the following Units:

Phase	Unit	Designated "Front" of Unit
1	All Units 1-38	Par Lane
Future Phases and Units to be determined.		

42. Exterior hot-tubs are not permitted on Golf Course Units and to the extent approved for non-Golf Course Units shall be situate on decks or patios or on the rear of the Unit but not in a set-back and shall be subject to the same Unit location requirements as Out-buildings but shall, in addition, be reasonably screened from view pursuant to the directives of the BCC.
43. Vegetable gardens are not permitted on any Unit.
44. Trampolines are not permitted in the Subdivision. Playground equipment, tree houses, sliding boards, swing sets, play houses and all similar improvements are not permitted on Golf Course Units but are permitted on non-Golf Course Units so long as the same are not: (a) situate within set backs without prior consent of the BCC; and (b) located nearer to any street than the front of the Dwelling situate on the Unit. The BCC may reasonably regulate all related matters including, but not limited to, location, color, size, height, appearance, density and materials. BCC may, in granting such approvals, reasonably limit the number and size of such improvements on any Unit and the proximity and density of such improvements over multiple Units.
45. Decorative and aesthetic ponds shall, if constructed on Units, be maintained with a filtration and/or recirculation system to prevent stagnant water and mosquitoes, and otherwise be reasonably regulated by the BCC with regard to depth, size and location.
46. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision.

47. Single story Dwellings, Townhomes and PatioHomes shall be constructed with a "broken" roof line which contains at least two (2) roof peak lines or has a roof with a pitch of less than 5-12. Covered porches ay have roofs with a slope of less than 5-12 and be flat, provided that the same are constructed of subtle materials (e.g., metal, shingled or otherwise approved).
48. Green houses, whether detached or incorporated into a Dwelling, are not permitted. So called "sun rooms" which are part of a Dwelling and have a primarily transparent exterior are not permitted on the front of any Dwelling.
49. Car ports are not permitted.
50. Detached garages are not permitted and with the exception of Townhome Units and PatioHome Units, each Unit shall include at least a one (1) stall garage. No Dwelling or structure may have more than three (3) stalls of garage doors on the same face of the Dwelling or structure.
51. No lawn ornament or sign or amenity shall be placed or displayed on the rear of any Golf Course Unit without prior written consent of the Association and then not within any set back.
52. All windows, doors and storm doors of Dwellings and outbuildings within 300 lineal feet of the Golf Course shall be of tempered, impact resistant glass resistant to golf ball impact and suitable for construction with the proximity of a Golf Course commensurate with sound construction practices and industry standards, including such superior or enhanced materials as may be developed or may become available and economically feasible for such purposes in the future.
53. All exterior siding and trim utilized on any facing of a Golf Course Unit which is not shielded from golf ball impact shall be constructed of non-breakable material reasonably calculated to withstand foreseeable golf ball impact.

#### **XI VARIANCES FROM THE BUILDING CONSTRUCTION STANDARDS ("BCS"):**

Either the Declarant or the Association may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein. It is expressly intended that the BCS be administered to foster construction of Dwellings on all Units and prevent hardship resulting from issues such as topography, and geological and soil conditions not foreseen by Declarant at the execution hereof and in its design of the Subdivision. Provided, however, that in granting such variances, conformity with the interest and purposes of the Declarant's general development scheme shall be a paramount consideration of the BCC. Provided also that in every instance such variance or adjustment will not be substantively, materially and unreasonably detrimental or injurious to other Units, property or improvements in the Subdivision. The BCC shall have specific authority to grant variances, in appropriate circumstances. Any Unit Owner, by acceptance of any variance, waives and releases for and in behalf of his successors and assigns,

any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant or either BCC with regard to any and all damages that might arise with respect to such variance. The Unit Owner further agrees to bear the entire risk associated with the removal of the appurtenance or improvement (including, but not limited to, trees, shrubs and landscaping) in the event Declarant, Association or any utility provider must enter a set-back or easement for any permitted purpose. The Declarant, Association and public utility providers shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage caused to any part of any appurtenance or improvement located within an easement resulting from the exercise of any reserved easement right. The provisions of this paragraph apply equally to appurtenances and improvements, including trees and foliage, regardless of whether same are located entirely within the easement or partially in the easement and partially outside the easement. As noted above, in order to prevent undue hardship a variance reducing a set-back by not more than 50% is agreed by all Unit Owners to be reasonable but no Golf Course set-back may be reduced or subject of a variance without the written consent of the owner of the Golf Course.

## **XII UNIT AND COMMON ELEMENT USE AND OCCUPANCY RESTRICTIONS:**

The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon all Units and Common Elements for the benefit of Declarant, Association, the Golf Course, the Golf Course Tract and its owners, and all Unit Owners. Said restrictions shall be binding upon all purchasers or any and all other parties having any interest therein but shall not be binding on Declarant or any Unit owned by Declarant and held for sale or development purposes. These restrictions are also applicable to all tenants, guests, invitees, family and other non-Unit Owners present within the Subdivision at the invitation of, or with the express or implied permission of, any Unit Owner, in which case the Unit Owner is charged with assuring the compliance by such persons. These restrictions are covenants running with the land and may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should obtain copies of the most recent and most current Governing Documents from the Association prior to transfer of any ownership interest in any Unit.

1. Units may only be utilized for single family residential purposes. No more than one (1) Dwelling shall be erected or maintained on any Unit. All Units except Townhomes or PatioHomes shall be detached. Townhomes and PatioHomes are only permitted in Phases or Sections or on Units expressly dedicated for same by Declarant. Certain limited home office uses are permitted provided that: such use does not entail the travel of clients, invitees, delivery persons or any other individual or entity to the Unit for any business purposes other than normal deliveries by such service providers, such as UPS and Federal Express, which customarily make residential deliveries in the Subdivision. The term "single family" shall, for the purpose of this restriction, mean that there shall be no more than one resident of any Unit who is unrelated by marriage or blood to at least one other resident of the Unit. No outbuilding may be utilized as a residence.
2. All Units, including all landscaping and improvements in or on Units, shall at all times be aggressively maintained in an attractive manner consistent with the Governing

Documents. Except as set forth in the succeeding sections, each Unit Owner shall also be responsible for maintaining the landscaping within that portion of any adjacent Common Element located between the Unit and improvement to a contiguous Common Element (e.g. Unit Owners shall mow and trim to the road even if their Unit stops short of the road). This obligation of maintenance includes the duty to monitor and maintain drainways, ditches and drainage systems and to report any deficiencies or defects in same to the Association. No Unit Owner shall, however, have the right to remove any landscaping, trees, shrubs or vegetation caused to be located in such area by the Association or the Declarant without prior written permission from the Association. Responsibility of the Unit Owner for maintenance of landscaping includes, but is not limited to, mowing, trimming and watering of lawns as reasonable or necessary to maintain the same in a healthy condition, reasonable trimming of shrubs and trees, and removal and replacement of dead and diseased trees. All Golf Course Units shall be maintained to, or reasonably near, the standard of the Golf Course.

3. Because Phase I consists entirely of Townhome and PatioHome Units, all lawn maintenance and lawn care in Phase I shall be performed by the Association to assure uniform appearance of all lawns in Phase I. The Association shall contract for reasonable lawn maintenance and lawn care in accordance with the standards set forth herein and the cost of same shall be a Limited Common Expense assessed to the Units in Phase I. Declarant may elect to require Association lawn maintenance and lawn care of future Phases depending on the size and character of the Units therein, and the Association may elect to provide for Association maintenance of any Units or Phases which are not so restricted by Declarant.
4. Except as may be necessary for delivery and construction purposes, there shall be no recreational vehicles, trailers, snowmobiles, jet skis, campers, motor homes, boats or boat trailers parked in any driveway or the yard of any Unit nor on any Common Element and all of same must be parked in garages.
5. No Dwelling shall be occupied until the same has been substantially completed.
6. No Unit may be utilized for any activity which: (a) tends to cause an unclean, unhealthy or unsafe condition to exist outside of the enclosed structure of the Unit; (b) emits a foul or obnoxious odor or any fumes, dust, smoke, or pollution; or (c) which creates any noise, unreasonable risk of fire or explosion, or other conditions such as music or noise which are a public or private nuisance either within the Subdivision or with regard to the Golf Course or guests, invitees or patrons of the Golf Course.
7. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision.
8. No Unit may be utilized for any activity which violates any local, state or federal law or regulation.
9. No outdoor storage of goods, personal property, construction materials, or equipment is permitted except during construction on the Unit on which such materials are being stored.



10. Neither the Units nor the Common Elements shall be used for, nor the location of: (a) any use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of any Units, except for home and vehicle alarm devices used exclusively for security purposes; (b) use and discharge of firecrackers or fireworks or firearms of any variety; or (c) hunting, trapping or the cleaning and preparation of game or fowl.
11. No dumping or placement of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any Common Element including any drainage system, drainage ditch or other storm water system serving the Subdivision or any stream or pond therein. None of the foregoing substances may be applied to any portion of a Unit so as to directly or indirectly discharge into or onto the Golf Course.
12. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit. Large snakes, alligators, crocodiles, and aggressive canines commonly known as Rotweilers and Pit Bull terriers are prohibited. All pets that are kept upon any Unit shall reside in the Dwelling and not be permitted to run at large or cause damage or injury to other Unit Owners or their Unit property. Dog houses are not permitted. All animals shall be fenced or be kept on the interior of Dwellings, or on leashes while accompanied by their owners. No animal may be tied, chained or otherwise restrained on the exterior of a Unit by any means other than by fence or electronic means or allowed to cause any unreasonable disturbance to any other Unit Owner or the Golf Course. No more than 4 animals may be kept on any Unit at any time. The Association may require the removal of any animal which creates a materially unreasonable nuisance by sound, provided, however, that the removal of such animal must: (a) first be approved by a majority of all Units in the same Phase as the Unit at issue; or (b) be by written demand by the owner(s) of the Golf Course. To the extent that "underground" or "electronic" pet fences are utilized to restrain any pet on a Golf Course Unit, the same may not permit the pet within ten (10) feet of the Golf Course.
13. No commercial animal breeding activity is allowed upon any Unit.
14. No Unit nor any building (or portion thereof) erected thereon shall be used for, or allowed to be the site of, any noxious, offensive or illegal activities, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision, neighborhood, or Golf Course.
15. No commercial signs, including "For Rent", "For Sale", "Garage Sale", or other similar signs shall be erected, placed or maintained on the side or rear of a Golf Course Unit. Such signs may be displayed on non-Golf Course Units or on any Common Elements, only with the written permission of the Association or except as may be required by legal proceedings. Not more than one political sign or sign advertising or advocating any candidate for public office or political issue may be displayed on, or be visible from, any Unit at any time ("Political Signs"). No Political Signs be displayed for a period of more

than ten (10) days during any calendar month nor more than ten (10) days before or two (2) days after the election or vote subject of such sign and all of such signs shall be less than six (6) square feet in total placard area . No signs of any type may be placed or displayed at or near the entrance of the Subdivision. Provided however, that Special Advertisements and other signs may be erected, placed or maintained by Declarant pursuant to their Special Declarant's Rights, and/or the Exclusive Broker of the Subdivision selected which shall be appointed by the Declarant. This includes "For Sale" or "For Rent" whether by a Unit Owner or by a Real Estate Agent. Builders, contractors and material suppliers are permitted to display signage on any Unit at such times as they are actively providing services and materials to the Unit pursuant to any construction or project approved by the Association. The Association may impose reasonable non-discriminatory restrictions as to the size, substance and location of such signage.

16. All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.
17. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to replacement value of the Unit and improvements. In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to grade. If the Unit Owner chooses to reconstruct, the Owner shall restore all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty or other disaster. Each Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.
18. All Owners of Golf Course Units shall exercise special care to assure that any portion of the Unit within fifteen (15) feet of the Golf Course shall at all times be maintained to the same, or substantially the same, standards as the Golf Course.
19. All lawns must be well maintained (mowed and trimmed) in an attractive condition commensurate with the BCC standards at all times. Special attention must be given to all those areas of vegetation which are visible from roadways and Golf Course. Any portion of the Common Elements situate between a road and a Unit must be at all times maintained and mowed by the owner of the Unit. Unless the Association expressly agrees in writing to maintain any easement, each Unit Owner is obligated to maintain the surface of all easements located on the owner's Unit and the improvements, including drainage controls, situate therein.
20. No clothes lines of any type may be erected or placed upon any Unit.
21. Except during construction of an individual unit, no loud power tool may be operated on the exterior of any Unit between 9:00 p.m. and 9:00 a.m. Loud power tools include, but are not limited to, the following: lawn mowers, trimmers, shredders, chain saws, jack hammers, snow blowers, circular and other electric or gas powered saws, etc. Provided, however, that snow blowers and snow removal equipment shall be an exception to this

requirement when utilized to remove snow from the driveway and sidewalk of a Unit.

22. There is a posted speed limit of 15 M.P.H. throughout the development and all vehicles, motorized or other shall at all times adhere to all roadway and traffic regulations promulgated by the Association.
23. No vehicle may be parked in any street or on any Common Element except for such in such locations as may be specified by the Association or Declarant. Not more than four (4) vehicles may be parked in the driveway of the Unit provided that the driveway is of sufficient size to accommodate same. The Association may from time to time grant reasonable exceptions permitting additional vehicles to be parked on a Unit or if reasonably necessary, restrict the number of vehicles which may be parked on a Unit. The Association may periodically grant any Unit Owner additional parking privileges, including parking on the streets for special occasions and events. This provision shall be specifically inapplicable to parking for meetings of the Association, and its committees, BCC and Board of Directors. Each non-Townhome and non-PatioHome Unit shall include a two (2) car garage and at least one (1) stall of such garages must be utilized for storage of vehicles.
24. No motor vehicle or vehicle with a motor or engine shall be operated on any street of the Subdivision except: (a) Golf carts and motor vehicles with current licensure by the State of West Virginia; and (b) if operated by the holder of a valid State issued driver's license. No motor vehicle or vehicle with an engine (other than a golf cart) shall be operated on any non-roadway Common Element, path, walkway or trail at any time other than during construction or for the purpose of maintaining same. Go carts, dirt bikes, and all terrain vehicles, may never be operated in the Subdivision.
25. All Unit Owners shall be subject to fine or penalty as a result of violation of any of these restrictions by the Unit Owner, the Unit Owner's family, friends, guests and invitees, or any other occupancy of the Unit or any Common Element as a result of ownership of the Unit by the Unit Owner. In the event of such an uncured violation the Association may deny the violator non-Unit Owner the right of entry onto and use of the Common Elements of the Subdivision including but not limited to the roadways. In such circumstance, the Association may, after proper warning to the Unit Owner, impose fines or penalties against the Unit Owner or cause the non-Unit Owner violator prosecuted or otherwise pursue civil remedies against the violator for trespass on the Association's property. To the extent that 36B and this Declaration require notice of violation prior to assessment of a fine or penalty for parking or motor vehicle violations, a single initial notice by the Association shall be sufficient for the purposes of subsequent violations by any Unit Owner or Unit Owners.
26. No Unit Owner shall interfere with any retention or detention Pond, or Stormwater Facility in the Subdivision ("hazards"). By acceptance of a deed from the Declarant, each Unit Owner covenants and agrees, for and on behalf of himself, his successors and or assigns, to exercise extraordinary care to protect all family, residents, visitors, guests, tenants, invitees, and licensees of the Unit Owner from such hazards including injury to person or property resulting from the hazards. Children are not permitted in the vicinity of

the hazards unless accompanied and at all times supervised by an adult. Each Unit Owner, by acceptance of a deed covenants and agrees to: (i) defend, hold harmless and indemnify the Association and Declarant from any injury to the Unit Owner or the Unit Owner's family, children, guests, invitees and licensees, or their property, as the result of the hazards; (ii) to include in any lease or document granting occupancy or tenancy of any Unit an express provision that all tenants of the Unit Owner shall defend, hold harmless and indemnify the Association and Declarant from any injury to the tenant or the tenant's family, children, guests, invitees and licensees, or their property, as the result of the hazards and that Tenant will at all times exercise extraordinary care to protect tenant, and all family, residents, visitors, guests, tenants, invitees, and licensees of the tenant from the hazards.

27. No Unit Owner shall trespass onto or interfere with any portion of the Golf Course nor interfere with the peaceful use or operation thereof by the Owners of the Golf Course or their guests, invitees or patrons. Each Unit Owner, by acceptance of a deed from the Declarant, covenants and agrees for and in behalf of themselves, their successors and assigns to cause all family, residents, visitors, guests and tenants of the Owner and the Owner's Unit to: (a) comply with all material provisions hereof, specifically including all Golf Course Covenants; and (b) exercise extraordinary care to avoid injury as a result of Golf Course hazards and specifically that the Unit Owner will advise such persons to exercise extraordinary care to avoid such injuries.
28. All Unit Owners, by acceptance of a deed from Declarant, for and in behalf of themselves, their successors and/or assigns, release the Golf Course, and the owner(s) and operator(s) thereof, including the officers, directors, shareholders, principals and affiliates of said owner(s) from any liability, claim or charge resulting from injury to person or property resulting from the flight, travel or movement of golf balls from the Golf Course into the Subdivision in the usual course of business or usual play of golf on the Golf Course. All Unit Owners, for and in behalf of themselves, their family, guests, invitees, successors and assigns knowingly and voluntarily acknowledge and assume all risks of residing near and owning and utilizing or occupying property which abuts or is within immediate proximity to a Golf Course and waive all liability resulting from the obvious and apparent hazards to person or property caused by golf ball flight.

### **XIII THE ASSOCIATION - PURPOSE, MEMBERSHIP, POWERS, STRUCTURE:**

1. **Purpose:** The Association has been established for the purpose of administering the Subdivision in accordance with the Governing Documents maintaining the Common Elements, and facilitating Fitness Center Memberships. The Association is charged with maintaining the collective interests of the majority of Units owners rather than the individual interests of any one or more owners to the extent same are contrary to the community's collective interests. Provided, however, that to the extent certain covenants and restrictions apply to Golf Course Units or expressly or impliedly benefit the Golf Course, the Association is also charged with maintaining and enforcing the same because the continued existence of the Golf Course is a recognized benefit to the Subdivision. The responsibilities of the Association include, but are not limited to:

- A. maintenance, upkeep and administration of the Common Elements and Limited Common Elements including, but not limited to the Stormwater Treatment System;
- B. interpretation and enforcement of the Governing Documents;
- C. upholding the community standards within the Subdivision; and
- D. administration of the ABCC.
- E. maintenance and management of Association funds; and
- F. all other purposes for which Unit Owner Associations are formed.

2. Membership: Every person or entity who is an owner of a full or fractional interest in any Unit, shall, by reason of ownership, automatically be a Member of the Association, and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of Incorporation of the Association, the By-Laws of the Association, and further subject to all rules and regulations promulgated or adopted by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the Subdivision, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder as provided by the West Virginia Uniform Common Interest Ownership Act. Notwithstanding any contrary provision in any Governing Document, all Association voting is on a per-Unit basis regardless of the number of members owning an interest in a Unit.

3. Specific Powers of the Association: The Association has the power to:

- A. Adopt and amend By-Laws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expense from Unit Owners;
- C. Hire and discharge managing agents and other employees, agents and independent contractors;
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Subdivision;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- G. Cause additional improvements to be made as a part of the Common Elements;
- H. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the Subdivision may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
- I. Grant easements, leases, licenses and concessions through or over the Common Elements;
- J. Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;
- K. Cause to be placed or kept in effect liability insurance on Common Elements;
- L. Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration,

- By-Laws and Rules and Regulations of the Association;
- M. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration or statements of unpaid Assessments;
  - N. Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
  - O. Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent this Declaration expressly so provides;
  - P. Exercise any other powers conferred by the Governing Documents executed and delivered by the Declarant;
  - Q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
  - R. Exercise any other powers necessary and proper for the governance and operation of the Association and the Common Elements, and;
  - S. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.
  - T. Annually or otherwise assess as Common Assessments or Special Assessments the cost of Fitness Center Memberships and cause the same to be owner/operator of the Golf Course in behalf of the Unit Owners.

4. Non-Discretionary Obligations of Association: The Association shall, beginning at the time each improvement to a Common Element or Limited Common element is completed by Declarant, be responsible for maintenance, repair, replacement and upkeep of the Common Elements and Limited Common Elements, including, but not limited to: (a) snow removal and roadway repairs; (b) lawn care and maintenance of the entryway and all Subdivision signage; (c) paying property taxes; (d) maintaining insurance on all Common Elements; (e) monitoring, maintenance and upkeep of the Storm Water System including all drainways and drainage systems constructed or installed by the Declarant or the Association; (f) use, maintenance, operation, control and regulation, of all Stormwater facilities and other Common Elements subject to governmental permitting and approvals, and the respective permits therefor, in accordance with, and as required by said governmental authorities. The Association is not charged with the duty to maintain drainage systems and surface water controls installed or constructed on Units by the Unit Owner. The Declarant alone is liable for all expenses in connection with real estate owned by Declarant and subject to the Development Rights except to the extent the Association is charged with maintaining completed improvements as set forth herein. No other Unit Owner and no other portion of the Subdivision is subject to a claim for payment of those expenses. Provided, that each improvement shall for the purpose of this provision be deemed to be completed when: (a) physically completed; or (b) if to be completed in stages when each stage is complete. For example, roads will be completed in stages, gravel, base coat, paving, and wearing coverage or top coat paving. Each such stage, when completed, will be maintained by the Association. All Unit Owners accept this provision by acceptance of a deed and agree that the community's best interests are served by not having the roads fully completed until the conclusion of construction because otherwise the Association alone is responsible for construction traffic.

Assessment, collection and payment of Fitness Center Membership fees by Association are also non-discretionary duties of the Association and shall be completed annually as part of the Association's annual budget and Annual Assessments for so long as the Fitness Center continues to exist and the Golf Course continues to be a Golf Course. No temporary cessation of operation or partial destruction of the Fitness Center shall constitute a cessation hereunder if reconstruction or

renewal of operations shall commence in a reasonable time.

5. Discretionary Powers of Association: The BCC and Association have the power, but not the duty, to enforce the Governing Documents. In the event of unforeseen circumstances, violations of the Governing Documents may occur which are of minor impact to the community or which would result in an unreasonable hardship in the event that strict adherence to the Governing Instruments is pursued.

In determining whether any action shall be taken to enforce the Governing Instruments, the respective party with enforcement port is authorized to take into consideration such factors as individual hardship to the violating party and a cost benefit analysis of the reasonable return to result from enforcement and expenditure of Association funds in furtherance of enforcement. Thus the Association and BCC have the right, but not the obligation to enforce any part of the Governing Documents. The Association and BCC are expressly authorized to avoid participation in disputes between individual homeowners or disputes which are appropriately addressed by legal authorities. In the event that Association or BCC should elect not to pursue any action they reasonably believe is not in the best interest of the majority of Unit Owners to do so, Unit Owners may individually or collectively bring suit to enforce the Governing Documents against other Unit Owners, provided however, that such litigation shall be for the purpose of compelling compliance by a Unit Owner and not: (a) to compel any action by the Association; or (b) for damages resulting from any action or inaction by Association or BCC. By acceptance of a deed subject to the Governing Documents, all Unit Owners release the Declarant, BCC and Association from any and all liability resulting from a good faith Declarant, BCC or Association decision not to take any enforcement action which the Declarant, BCC or Association's Board deem in good faith to not be in the best financial or other collective interest of the Subdivision or the majority of the Unit Owners.

6. Association Right to Perform Maintenance: In the event any owner of any Unit shall fail to maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, notice shall be provided by the Board, in writing, to the owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees to enter upon said Unit and repair, maintain and restore the Unit and the exterior of the buildings and any other improvements erected thereon to the extent authorized by law. Such right may be exercised with regard to lawn maintenance by two-thirds (2/3) of such Board of Directors and otherwise only by fifty-one (51%) percent of the Unit Owners of the Phase in which the Unit at issue is situate, shall have voted in favor of its being exercised and such vote may be made by ballot or proxy or other permitted means. The cost of such exterior maintenance and maintenance of the Unit performed by the Association shall be added to and become part of the annual charge to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon. All Unit Owners by acceptance of a deed subject to the Governing Documents covenant and agree that such entry and maintenance shall not constitute an actionable trespass or breach of the peace.

7. Board of Directors: The initial Board of Directors (hereinafter "Board") shall be appointed by the Declarant. As certain increments of Units are conveyed by Declarant, a percentage of Board Members will be elected by the Membership of the Association. After termination of Declarant Control all Board Members will be elected by Unit Owners.

8. Board Powers: The Board is generally empowered as follows:

- A. Except as otherwise provided in this Declaration or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the members of the Board are required to exercise care to the following standards: (i) if appointed by the Declarant, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.
- B. The Board may not act on behalf of the Association to amend the Declaration, to terminate the Subdivision or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.
- C. The Board shall annually adopt a proposed budget for the succeeding fiscal Association year, which budget shall include the cost to all Unit Owners of Fitness Center Memberships.
- D. Subject to subsection (5), there shall be an initial period of Declarant's control of the Association during which Declarant or persons or entities designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent (75%) of the Units that may be conveyed to Unit Owners other than Declarant; (ii) Two years after Declarant has 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. Declarant may voluntarily surrender the right Declarant control at any time, and may also surrender its right to appoint and remove members of the Board before termination of that period, but in such event, Declarant may require for the duration of the period of Declarant's control certain specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, to be approved by the Declarant before it becomes effective. For the purpose of determining the percentage of Unit which may be conveyed, percentage shall be based on the total number of Units in all existing and future Phases of the Subdivision.
- E. The initial number of Board members shall be two (2). Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be conveyed to Unit Owners other than Declarant, the number of Board Members shall be increased to three (3) and at least one of the members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be conveyed to Unit Owners other than Declarant, the number of Board Members shall be four (4) and not less than two (2) of the members of the Board must be elected by Unit Owners other than the Declarant. Declarant reserves the right to appoint at least one (1) member of the Board during the period after Declarant relinquishes control of the Association with such right terminating when Declarant no longer owns at least one (1) Unit in the Subdivision. For the purpose of this Paragraph, calculations of percentages of Units which may be conveyed to Unit Owners other than Declarant shall be based on the total number of Units in existing Phases and also the total number of Units Declarant may create in future Phases.



- F. The Board shall elect all officers of the Association who shall conduct the daily business and affairs of the Association. Officers may be Board members. The Board members shall take office upon election.
  - G. Notwithstanding any provision of this Declaration or By-Laws to the contrary, the Unit Owners, by majority vote of all Units may remove any member of the Board with or without cause, other than a member appointed by the Declarant.
  - H. If entered into before the Board elected by the Unit Owners takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners takes office. Provided, however, that such termination may not be made by less than ninety (90) days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the Subdivision or reduce its size; or (ii) a proprietary lease. This section shall also not apply to any provision herein pertaining to Fitness Center Memberships which are imposed for the benefit of all Units to reasonably increase the likelihood that the Golf Course shall continue to exist and which are conditions precedent to the offer of Units for sale by Declarant to the Public.
  - I. The Association Board is expressly authorized and empowered to accept assignment of BCC Rights from the Declarant and the Association Board may not refuse assignment of any BCC right, in whole or in part.
  - J. The Association Board is expressly authorized and empowered to accept assignment of any permit or regulatory agreement pertaining to any Common Element or Limited Common Element or improvement thereto, including, but not limited to ponds and drainage systems, and the Association Board may not refuse assignment of any BCC right, in whole or in part.
  - K. The Association is authorized to negotiate, communicate, contract with, and submit payments to the Owner/Operator of the Golf Course with regard to Fitness Center Memberships for and in behalf of all Members and Unit Owners.
9. Board Meetings / Quorum: A quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty percent (50%) of the votes on that Board are: physically present at the beginning of the meeting; present by electronic means such as telephone or video conference; or represented by proxy, or otherwise as permitted by law and the By-Laws.
10. By-Laws: The By-Laws of the Association, and all amendments thereof, in addition to other matters, provide and shall provide:
- A. Election and appointment of Directors as set forth above.
  - B. Election by the Board of a president, treasurer, secretary and other officers of the

Association;

- C. The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;
- D. The delegation by the Board or officers of duties to other persons or to a managing agent;
- E. Which of its officers may prepare, execute, certify and record Amendments to this Declaration on behalf of the Association;
- F. A method for amending the By-Laws; and
- G. For collection and payment of Fitness Center Memberships and all matters relating thereto.

11. Association Meetings: A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president; a majority of the Board; or by Unit Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the By-Laws shall cause notice to be hand-delivered, delivered electronically, 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 the Unit Owner. Provided, that if the official representative of the Board charged with serving notice of the meeting shall fail to do so within thirty (30) days, such notice may be dispatched by the members calling the meeting. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove an officer or member of the Board.

12. Emergency Meetings: Emergency Meetings may be called by any acting Officer or Director or by Unit Owners having ten percent five (5%) per cent of the votes in the Association in the event of vacancy of all Director positions or otherwise in the event of a bona fide emergency. Emergency Meetings may be called not less than five (5) days in advance of any meeting, the party(s) calling the meeting shall cause notice to be hand-delivered, delivered electronically, 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 the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda. A quorum is present at any Emergency Meeting if persons entitled to cast twenty (20%) of all votes allocated are present. Voting in the Meeting shall be by simple majority of the quorum unless a higher percentage is required by this instrument or applicable law.

13. Phase Meetings. Meetings of the Unit Owners of any Phase with regard to business of the Phase (e.g., lawncare of Phase I wherein Association is charged with maintaining Phase I lawns for the Unit Owners in Phase I) may be called in the same manner as Emergency Meetings but notice and quorum requirements shall be based on the total number of Units in the Phase, disregarding Units in other disinterested Phases.

#### **XIV ASSOCIATION MEETINGS AND VOTING:**

1. Association Meeting, Quorum and Voting: Unless the By-Laws or Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the total votes of the Association are present in person, via electronic means including, but not limited to telephone, or by proxy at the beginning of the meeting. Voting at a

meeting where a quorum is present shall be cast as follows:

- A. Members of the Association shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated on the principle of "one vote for one Unit" with all owners of a Unit collectively entitled to cast one vote.
- B. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the 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 owners. There is majority agreement if any one of the 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 owners of the Unit.
- C. All voting shall, unless a higher percentage is required by other provisions of this instrument or applicable law, be by simple majority of a quorum present at the any meeting.
- D. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other 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 Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after that date, unless it specifies a shorter term.
- D. Units owned by the Association are not entitled to vote. Voting rights of Members as set forth in the By-Laws may not be inconsistent with the provisions of this Article.
- E. Only Members in good standing shall be entitled to vote. A Member shall lose his good standing status should any Association assessments or fines remain delinquent for a period of sixty (60) days past the date the same were due and payable. The Association is not obligated to notify a Unit Owner that the Unit is no longer in good standing. Any Unit Owner may participate in a meeting by first satisfying such delinquency, even if paid during the meeting.
- F. Voting shall be by simple majority of the quorum present for the meeting unless a higher percentage is required by this instrument or applicable law due to the subject matter of the business to be conducted.

2. Association Voting by Ballot in lieu of Meeting: Business of the Association, including elections but excluding approval of the budget, may, at the Board's option, be conducted by ballot and submission of ballots or proxies in lieu of a meeting. In the event that business is conducted by ballot, the Board shall distribute to all members an agenda of the business to be addressed by ballot including a detailed narrative explanation of the issues. Each Unit shall also receive a ballot which clearly states that it shall not be counted unless returned to the Association by a specified date. In the event that an

issue is to be addressed by ballot and less than a quorum of ballots are returned to the Association by the ballot cut-off date, the Board may either resubmit all unanswered ballots or circulate a petition and obtain such additional votes by petition as are necessary to constitute a quorum for the purposes of the business to be addressed.

In the event that any Member reasonably believes that the Board is on any specific matter or matters not acting in accordance with the interests or desires of the Members holding a majority of votes in the Association, such Member may circulate a petition setting forth such concerns in specific detail. If the petition is signed in behalf of lots to which forty (40%) per cent of votes are allocated (and by at least one owner of each such lot), the Board shall within forty-five (45) days conduct an official membership vote on the matter or matters by Special Meeting of the membership, ballot and or proxy, which ever mechanism or mechanisms are most reasonably calculated to achieve the most comprehensive response in behalf of the greatest number of Units.

Voting at any meeting may be conducted by any means permitted pursuant to West Virginia Code Section 31E-7-704, including by electronic means.

## **XV ASSOCIATION FINANCIAL MATTERS, BUDGET AND RECORDS:**

1. Annual Budget: The Board shall annually adopt a proposed budget for the succeeding fiscal year and within thirty (30) days after adoption of any proposed budget for the Subdivision, the Board shall provide a summary of the budget to all the Unit Owners. Unless a majority of all Unit Owners reject the budget, the budget is ratified. In the event the proposed budget is rejected by a majority of the Unit Owners, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. Provided, however, that said prior budget shall be increased proportionate to any increase which may have occurred in the Consumer Price Index from the date of the adoption of the preceding budget and the date of the proposed budget. The Consumer Price Index shall be set by the U. S. Department of Labor, Bureau of Labor Statistics or any successor thereof. The initial budget for the Association was adopted by the Declarant for the year 2007, and is estimated.

2. Financial Needs/Basis for Budget: The Annual Budget shall be based on the actual anticipated financial needs of the Association. Matters which may be included in the Association's annual budget include, but are not limited to the costs of: (1) property taxes for the Common Elements; (2) Association business licensing and registration fees and the cost of other governmental filings; (3) insurance; (4) snow removal; (5) preventative maintenance, repair and upkeep of the roadways, drainage systems and Common Elements; (6) legal fees, accounting fees and auditor fees; (7) improvements to Common Elements; (8) operational expenses such as mailings, notices, record keeping and maintenance of accounts; (9) periodic inspection of drainage systems and utility systems by qualified professionals; (10) mowing and trimming of vegetation in and on the Common Elements; (11) budget preparation expenses; and Fitness Center Memberships.

Because continued operation and existence of the Golf Course are an acknowledged benefit to all Units, mandatory annual Fitness Center Memberships are a financial incentive for the Golf Course Tract to continue to exist and be operated as a Golf Course.

- A. So long as the Golf Course continues to be operated as a golf course with a Fitness Center, all owners of each Unit shall annually purchase one (1) Unit membership in the Fitness Center which shall, subject to reasonable limitations imposed in the ordinary course of business, permit all residents or occupants of the Unit to utilize the Fitness Center and the amenities therein. All Fitness Center Memberships shall be purchased and paid for collectively by the Association, shall run on a calendar year basis, shall be part of the Annual Assessment of the Association as a Common Expense of all Unit sand when purchased each year by the Association, run with each Unit as an appurtenance to the Unit.
- B. The Association shall have no duty, but may elect, to purchase "Golf Course Memberships" for any Unit Owner or Unit Owners.
- C. All Golf Course Memberships shall be personal to the Unit Owner and be paid by the Unit Owner purchasing same to the offering entity. All Fitness Center Memberships shall be annually purchased, in behalf of the Unit Owners, by the Association as part of the annual expenses of the Association as a Common Expense of all Units, from monies derived from Annual and Special Assessments of the Association. The annual Fitness Center membership fee, per Unit, shall be provided by the owner/operator of the Golf Course to the Association not later than the 1<sup>st</sup> day of October of the year preceding the Fitness Center membership year. The Association shall cause the fee for each Unit to be included as a budget item in its budget for the succeeding fiscal year to be assessed to all Units as part of the its Annual Assessment for said year. All Fitness Center membership fees shall be annually paid by the Association to the owner/operator of the Fitness Center: (a) 10% on or before January 15; and (b) the remaining 90% on or before April 1. Because the cost of annual Fitness Center Memberships is a Common Expense of the Association, the Association may pursue collection and enforcement of the assessment for same by any means or mechanism permitted by this Declaration or West Virginia law, including perfection of liens and or litigation.
- D. Any Unit created during a calendar year (and for which not Fitness Center Membership Fee was budgeted, collected or paid by Association for such Unit and year) may elect to purchase a Fitness Center Membership for the remainder of the year by paying the pro-rated membership fee directly to the owner/operator of the Fitness Center.
- E. The Association shall at all times maintain, and at least monthly provide to the owner/operator of the Fitness Center, a complete list of: (a) all dedicated Units including the Unit address and number; (b) the owners of all Units, including their mailing addresses if different from the Unit; and (c) all occupants of the Unit entitled to Fitness Center Membership privileges. All Unit Owners are required to notify the Association within ten (10) days of: (a) a change of mailing address of the Unit Owners, or any of them; (b) a change of ownership of the Unit; (c) a change of occupants of the Unit entitled to Fitness Center Membership privileges. The owner/operator of the Fitness Center may issue evidence of membership and may also deny use of the Fitness Center to any individual who cannot produce proof of membership.
3. Association Accounts: The Association shall maintain the following bank or investment accounts which said accounts shall not be co-mingled and all such accounts shall require signatures of not less than two Officers or Directors for any disbursement or withdrawal:

A. Operating Account: The operating account is the fiscal account from which the Association shall pay its daily expenses. The Operating Account is funded with revenue including Annual Assessments and interest accrued thereon, and receipts from fines and penalties. Any excess funds remaining in the Operating Account at the end of a fiscal year shall be transferred, within four (4) months after the end of the operating year to the Capital Account. The four (4) month delay is intended to permit the Operating Account to be funded by payment of subsequent year's Annual Assessments.

B. Capital Account: The capital account is a the fiscal account from which the Association shall accumulate funds for, and when appropriate pay for, long term capital expenses such as future paving, drainage system repairs and other reasonably certain significant expenses such as replacement of improvements to the Common Elements and Limited Common Elements (e.g. future replacement of the Sewage Treatment Facility). All monies held in the Capital Account are held on account of individual Units as a credit for future reasonably certain expenses. Funds held in the Capital Account may be transferred to the Operating Account as a credit to the individual Units and in lieu of a Special Assessment in the event of unforeseen operating expenses which exceed the sums budgeted by Association during any fiscal year. The Capital Account is funded with: (1) excess sums remaining in the Operating Account at the end of any fiscal year; (2) Special Assessments for capital expenses; (3) Annual Assessments for capital expenses; (4) Initial Membership Deposits; and (5) Voluntary Capital Contributions by Declarant. Nothing herein shall be deemed to limit or prohibit investment of the Association's capital funds in reliable sources which are reasonably certain to generate revenue greater than interest paid on bank accounts.

C. Road Fund Account: All road fund deposits required by the BCC and posted by Unit Owners to secure compliance with the Governing Documents during construction and intended to prevent roadway damage during construction shall be held in an independent Association bank or investment account which shall if possible be interest bearing and shall not be co-mingled with other Association funds.

4 Initial Account Funding: Declarant shall fund each of the above three Association accounts with **\$300.00** and said sums shall at Declarant's option, be credited against future Declarant obligations for Assessments and/or Voluntary Capital Contributions by Declarant.

5 Association Records: The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing Subdivision assets and to permit the Association to provide, upon request, for a fee relative to each Unit, a Unit Resale Summary setting forth information required to be submitted to a Purchaser by a Unit Owner to lawfully convey his Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended. The fee for copying and provision of documents and for provision of Unit Resale Certificates shall not exceed ten (10%) percent of the most recent Annual Common Expense Assessment.

## **XVI ASSOCIATION - ASSESSMENTS, FINES, AND FEES:**

The Association is vested with authority to levy Annual Assessments, Special Assessments, fines, fees, penalties, Initial Membership Assessments and to require the posting of Road Fund Bonds or Road Fund deposits pursuant to the Governing Documents. All levies made by Association, whether Annual, Special or fines, fees and penalties, shall run with the land and ownership of the

Unit. Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from assessment liability. All Units are subject to Assessment. Common Elements, Limited Common Elements and land which may be dedicated as future phases of the Subdivision, but which has not been dedicated, are not subject to Assessment. Assessments apply to only those Units which were dedicated and in existence at the time of levy. Any Expense Assessment or installment thereof bears interest from the date the same is due at the rate to be established by the Association which rate shall not exceed twelve percent (12%) per year

1. Annual Assessment for Common Expenses:

- A. Declarant Obligation: Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Assessments must be made at least annually based on a budget adopted at least annually by the Association.
- B. Common Expenses to be levied pursuant to Common Expense Liability: All Common Assessments and Special Assessments levied as a result of Common Expenses must be levied against all Units proportionate to the Units' respective Common Expense Liability as allocated herein below.
- C. Units Not Subject to Assessment: Provided, however, that Assessments may only be levied against those Units which are in existence on the date of Assessment. Units which are created during a fiscal year are not subject to Assessment until the succeeding fiscal year.
- D. Limited Common Expense Assessment: To the extent reasonably determinable, any Common Expense or portion thereof exclusively benefiting fewer than all of the Units must be assessed exclusively against the Units benefited. Limited Common Expenses must be assessed exclusively against those Units entitled to utilize, and benefited by, the Limited Common Element subject thereof.
- E. Judgment Assessments: Assessments to pay a judgment against the Association may be made only against the Units in the Subdivision at the time the judgment was entered, and in proportion to their Common Expense Liability.
- F. Common Expense Attributable to Unit: If any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against such Unit Owner's Unit.
- G. Minimum Annual Assessment: The minimum Annual Assessment for Common Expenses is, at the execution hereof, (notwithstanding the fact that no Annual Assessment will be made during 2007) is **Six Hundred Dollars (\$600.00) for Phase I exclusive of the Fitness Center Membership** and the minimum Annual Assessment shall never be less than the original amount. Unless specifically increased during any given year by the Association Board of Directors, the minimum Annual Assessment shall increase each year by a percentage equal to the increase in the average variation in the Consumer Price Index for All Items in the Pittsburgh, Pennsylvania, region as

computed and reported by the U.S. Department of Labor or its successor, but under no circumstance shall the annual increase be less than two and one-half (2.5%) percent. During the period of Declarant Control, the Annual Assessment for Common Expenses may not exceed **One Thousand Two Hundred Dollars (\$1,200.00) per year** absent Declarant's prior written consent, which such consent shall not be unreasonably withheld. Declarant may set higher minimum annual assessments for Limited Common Elements allocated to a Phase or group of Units in a Phase (e.g. Townhome and PatioHome Units) because of the cost of Limited Common Elements allocated those Units.

- H. Initial Membership Deposit: The Board shall have authority, on behalf of the Association, to establish and collect an Initial Membership Fee or community service fee from the transfer of ownership of each Unit, which said fee shall be payable at closing and shall be the obligation of the purchaser to pay. All Initial Membership Fees shall be deposited by the Association in its capital reserve account to be held for future repairs, maintenance and improvement of the Common Elements and Limited Common Elements, preservation and maintenance of natural areas, development or improvement of recreational facilities on the Common Elements and for community events and community activities benefiting the Unit Owners. The initial membership fee is, and during Declarant control of the Association shall remain **Three Hundred Dollars (\$300.00)**. After termination of Declarant Control, the Board shall have the sole discretion to determine the amount and method of determining such Initial Membership Deposit, provided, however, that the Initial Membership Fee shall never exceed or be greater than one-half of the most recent Annual Assessment for Common Expenses. Initial Membership Fees are not due or payable as the result of any conveyance or transfer to a Builder as defined herein, to a successor Declarant or to any entity wholly owned by the Declarant. Provided, however, that Initial Membership Deposits shall be due when such otherwise exempt Units are subsequently conveyed by such entities to the ultimate consumer.
- I. Fitness Center Membership Assessments: Fitness Center Membership Assessments shall be made annually to all Units as a Common Expense and Common Assessment of the Association and additional assessments for such purposes may be made periodically as Special Assessments if necessary. **The initial Fitness Center Membership Fee for the year 2007 and the year 2008 is \$450.00 per Unit but may increase or decrease in the future.**

2. Special Assessments: In addition to Annual Assessments, the Board may periodically levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments must be budgeted for and levied against all Units proportionate to the Units' Common Expense Liability allocation. Special Assessments may, at the Board's discretion, be made payable over a period of time which extends beyond the calendar year in which same is levied.

3. Fines and Penalties: The Association may assess any Unit Owners with reasonable fines and penalties for any uncured material violation of the Governing Documents. The Association may not Assess Units owned by Declarant for any material violation by Declarant as Declarant rather than Declarant as a Unit Owner. The Association, not the Declarant, is vested with exclusive authority to



assess and levy fines and penalties resulting from violations of the Construction Standards or Construction Guidelines or any BCC ruling. Prior to assessing any reasonable fine or penalty Association shall:

- A. provide the Unit Owner with written notice of the violation and a reasonable opportunity to cure same, which said period shall except in circumstances where the violation is reasonably likely to result in immediate damage or injury to person or property, not be less than thirty (30) days;
- B. if the violation continues after initial notice, notify Unit Owner that a fine or penalty will be imposed if the violation is not cured within an additional thirty (30) days;
- C. notify the Unit Owner of the amount of the fine, whether the fine will be re-occurring and if so on what basis; and
- D. afford Unit Owner an opportunity to address the offense at a hearing with the Association Board. The Association shall not levy any fine or penalty against a Unit Owner, and the Association shall not attempt to collect any fine or penalty if Unit Owner produces a petition signed by the owners entitled to cast votes on behalf of fifty-one (51%) percent of all Units indicating that said Unit Owners oppose the fine or approve of the violation.

4. Surplus of Assessment: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any pre-payment of reserves must be credited to the Unit Owners in proportion to their Common Expense liability assessed to them to reduce their future Common Expense Assessments. The Association may, at the option of its Directors, elect to retain such excess in its capital fund for future maintenance and improvement of the Common Elements in which case such excess shall be a credit on behalf of the Units owners with regard to such future expenses.

5. ***Limitation on Assessments: The initial purchase price of all lots in the Subdivision reflects the improvements provided by Declarant and which Declarant has elected to provide in the future. Declarant has elected to forego construction of certain amenities which, if constructed by Declarant would have resulted in a greater Unit sales price at the time of the initial sale of each Unit from Declarant to purchaser. Declarant does not intend to create, install or otherwise cause any of the following amenities and improvements:***

- A. sidewalks or street lights
- B. comprehensive or uniform roadway curbing
- C. the addition of fire hydrants other than as shown on the plats
- D. construction of any Common Element or Limited Common Element improvement such as a pool, park, pavilion, gazebo, playground equipment or other amenity not included in Declarant's development plan.

6. ***Agreement Not to Undertake Additional Improvements without Declarant's Consent:***

***By acceptance of a Deed from the Declarant, each unit purchaser, his or her successors and assigns, covenant and agree that, so long as Declarant owns at least one (1) Unit, the Association***

*shall not, without Declarant's prior written consent, make any assessment for the cost or purpose of installing, constructing or otherwise paying the cost of the above amenities and improvements.*

Because Declarant would not have undertaken development and sale of the Subdivision and Units therein if it intended to affect the above amenities and improvements, the Association may not undertake such capital improvements without Declarant's consent or until Declarant no longer owns any interest in any Unit. Provided, however, in the event that Declarant should elect to implement or install such amenities and improvements to any portion of the Subdivision, but not all of the Subdivision, no such partial provision of amenities and/or improvement shall be deemed to create any obligation for Declarant to provide same to all Units in the Subdivision.

## **XVII ASSOCIATION LIENS:**

1. Lien for Assessments: The Association has a lien on a Unit for any Assessment levied against that Unit or fines imposed against its Unit Owner from the time the Assessment or fine becomes due. 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. The Association may perfect a lien against any Unit, or a lien against all Units, from the date on assessment becomes due and issue releases as payments are made.

2. Assessment Lien Priority: A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the Assessment sought to be enforced becomes delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, courtesy or other like exemptions.

3. Limitation on Liens: A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due. This limitation shall, however, only apply to the lien against real property and shall in no manner restrict the limitations period applicable to the underlying obligation.

4. Enforcement of Lien: This section does not prohibit actions to recover sums for any valid Association lien or prohibit the Association from taking a deed in lieu of foreclosure.

5. Attorney's Fees, Costs, Expenses: Any Lien shall include the costs of preparation, service, and recordation of same. A judgment or decree in any action brought to enforce a lien or collect any past due assessment, shall include costs and reasonable attorney's fees for the prevailing party.

6. Statement of Assessment Balance: The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit Owner's interest in real estate. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board and/or every Unit Owner.

7. Notice of Lien: 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 owner of his liability for payment of the Assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. The notice shall contain:

- A. a legally-sufficient description of the Unit;
- B. the name or names of the Owners of the Unit;
- C. the amount of unpaid Assessments due, together with the date when each became due; and,
- D. the date of recordation.
- E. the Clerk of the County Commission in whose office the notice is recorded shall index the notice in the appropriate lien books in the names of the Unit Owners as debtors and in the name of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.

8. Release of Lien: Upon payment of the Assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense of the Unit Owner in the office of the Clerk wherein the notice of the lien was filed.

9. Other Association Liens: A judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the Subdivision at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association. If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to Article V, Section I, the holder of that security interest shall exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.

### **XVIII ASSOCIATION - MISCELLANEOUS MATTERS:**

1. Tort and Contract Liability: An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong occurred during any period of Declarant's control and the Association gives Declarant reasonable notice of, and an opportunity to defend against the action, Declarant is then liable to the Association or to any Unit Owner for (i) all other losses not covered by insurance suffered by the Association or that Unit Owner, and (ii) all costs that the Association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever Declarant is liable to the Association under this section, Declarant is also liable for all expenses of litigation, including reasonable attorney's fees incurred by the Association. Any statute of limitation affecting the Association's right of action under this section is tolled until the termination of Declarant's control. A Unit Owner is not precluded from maintaining an action contemplated by this section because he is a Unit Owner, member or officer of the Association.

2. Association Conveyance or Encumbrance of Common Elements: Beginning at the time Common Elements are deeded to the Association, portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons 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 agrees to that action. Provided, however, that:

- A. An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed, by the requisite number of the Unit Owners.
- B. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements but the contract is not enforceable against the Association until approved by the vote of the owners of eighty percent (80%) of all Units. Provided, however, that no such contract or conveyance may be made by the Association without Declarant's consent at any time prior to termination of Declarant's right to add additional real estate to, and dedicate future Phases of, the Subdivision. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- C. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the Subdivision is void.
- D. A conveyance or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access or ingress, egress and regress across the roads and ways as designated upon the recorded plats of the Subdivision.
- E. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

3. Insurance:

A. 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:

1 Property insurance on the Common Elements against fire and extended coverage perils for undeveloped Units. The total amount of insurance after application of any deductibles must be not less than replacement 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,

2 Liability insurance, including medical payments insurance, in limits of \$1,000,000 and thereafter, in an amount determined by the Board so to cover 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. During the period of Declarant control, such insurance may be by rider to a Declarant's policy of insurance pertaining to the Subdivision.

A. If the insurance described in subsection A is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

C Insurance policies carried pursuant to subsection A must, if available, provide that:

1 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 the Association;

2 The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

3 No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy; and,

4 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 Association's policy provides primary insurance.

D The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to contrary provision set forth herein and as otherwise set forth by West Virginia law, the proceeds must 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 Subdivision is terminated.

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

F An insurer which 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 in any portion of the Subdivision. The insurer issuing the policy may not cancel or refuse it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

G Any portion of Common Elements or Limited Common Elements of the Subdivision for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association, and any portion of any Unit which is damaged or destroyed must be repair or replaced promptly by the Unit Owner, unless (i) the Subdivision 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 all Units, vote not to rebuild. The cost of repair or replacement by Association in excess of insurance proceeds and reserves is a Common Expense. If the entire loss is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Subdivision. Any surplus insurance proceeds shall be credited to the Common Expense for the benefit of the Unit Owners who were members of the Association at the time of the loss. All costs of repair or rebuilding by a Unit Owner must be born by the Unit Owner. In the absence of actual hardship, the Unit Owner shall rebuild or replace in a reasonable time period which shall not exceed one (1) year from occurrence of the damage or destruction.

**XIX ASSOCIATION RULES AND REGULATIONS:**

1. Purpose/Amendment: The initial Rules and Regulations of the Association, if any, have been promulgated by the Declarant and are intended as a mechanism for establishing guidelines for use of the Units and Common Elements. The Rules and Regulations may be amended by the Association Board for the purpose of explaining, interpreting and expanding the provisions of the Governing Documents. Provided, however, that no such modification to the Rules and Regulations shall be contrary to the express intent hereof, illegal discriminatory, or enforceable against any party until twenty (20) days after the Rules and Regulations have been published to all Unit Owners. Further, so long as Declarant owns any Unit in the Subdivision, no such amendment may be made without Declarant's prior written consent. To the extent that any issue may arise as to the interpretation or intent of this instrument, Association shall defer to Declarant's intent as stated and affirmed by Declarant, any remaining principal or principals of Declarant, or the scrivener hereof. Rules and Regulations are not covenants running with the land but are enforceable so long as not in conflict with this instrument and are properly implemented to supplement this instrument or explain ambiguities herein.

2. Limitations on Rules and Regulations: Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules and Regulations of the Association, all Rules and Regulations shall comply with the following provisions:

A Similar Treatment. Similarly situated Unit Owners shall be treated similarly.

B Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units shall not be abridged, except that the Association may adopt time, place, size, lighting, number and manner restrictions with respect to displays visible from outside the structure.

C Signs. No rules shall regulate the content of political signs; however, rules may regulate the size, time, place, number and manner of posting such signs within the limitations set forth elsewhere herein. No rules may prevent the advertising of a Unit for sale or lease but rules may limit the size, number, placement and location of such signs.

D Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members and to limit the total number of occupants permitted in each Residential Unit on the basis of the size and facilities of the Residential Unit and its fair use of the Common Element.

E Activities Within Units. No rule shall interfere with the activities carried on within the confines of structures on Units, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities within Residential Units which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the

Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate noise or traffic, unfavorable publicity, parking hazards, unsightly conditions visible from outside of the Units, or an unreasonable source of annoyance to the Community.

F Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Element available, from adopting generally applicable rules for use of Common Element, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Element or violate the Governing Documents. This provision does not affect the Association's right to increase or levy assessments.

G Alienation. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Element or violate the Governing Documents. This provision does not affect the Association's right to increase or levy assessments.

H Abriding Existing Rights. No rule shall require a Unit Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Unit Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule

I Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Subdivision or other properties in the vicinity of the Subdivision nor increase the cost to Declarant thereof.

The limitations herein shall only limit rule making authority exercised by the Association; they shall not apply to amendments to this Declaration adopted by Declarant or Unit Owners in accordance with the provisions hereof.

## **XX REPRESENTATIONS AND WARRANTIES:**

1. All Unit Owners herein, their heirs, successors and assigns, by their acceptance and recordation of a deed conveying any interest in any Unit acknowledge the conditions, limitations, restrictions, provisions, exceptions and reservations set forth herein. The Declarant makes no



representation or warranty direct, express or implied, which is contrary to the provisions hereof and no representation or warranty by any realtor, real estate broker or real estate agent contrary to the provisions of this document shall be binding on the Declarant unless reduced to writing and signed by the Declarant.

2. The Subdivision is a Common Interest Community created and designed for use as a single-family residential community. Declarant makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all expressed or implied warranties of quality are excluded. Units are being offered for sale by Declarant upon an "AS IS" basis.

3. All Purchasers from Declarant shall execute a separate instrument attached as an Exhibit to the Public Offering Statement and marked as "Agreement and Waiver." This Agreement and Waiver, between Declarant and Purchaser, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two (2) years of the date the Purchaser enters into possession. Purchasers should consult the Agreement and Waiver for more detailed information. All Units are subject to a One (1) year express builder warranty as set forth in the Public Offering Statement and two (2) year statutory warranty. To the extent that any appliance or fixture is covered by any dealer warranty, manufacturer warranty, installer warranty or other warranty offered by any party other than Declarant, all Unit Owners must exhaust all remedies under such warranties prior to pursuing any warranty from the Declarant. The Agreement and Waiver is attached as Exhibit J to the Public Offering and the Builder Warranty is attached as Exhibit P to the Public Offering.

4. All Purchasers by acceptance of a deed conveying any interest in any Unit, acknowledge, covenant and agree that there is no assurance or representation made by Declarant or any other party contrary to the following:

A. Declarant is developing Meadows Ponds as a golf course community contiguous to the 18 hole Meadows Ponds Golf Course currently owned by Declarant. Declarant desires that Meadow Ponds Golf Course continue in operation in the future for the benefit of the Subdivision, Association and Unit Owners. However, Declarant is not in the business of owning or operating golf courses and Declarant therefore intends to sell, convey, lease, or otherwise transfer ownership and/or operation of the Golf Course to third parties.

B. Declarant believes that the continued existence of the Golf Course is a direct and material benefit to the Association both with regard to esthetic aspects of green space and also the functional benefit of the amenities afforded to Unit Owners in the immediate proximity of the Subdivision. Declarant has, however, limited control over the future existence and operation of the Golf Course and whether the Golf Course will continue to exist in and with its present state, condition, use and purpose. Declarant anticipates that the continuity of the Golf Course is more likely if it remains a financially viable venture generating reasonable profits to its owner and or operator. For this purpose Declarant has constructed the Fitness Center as part of the Golf Course and imposed

obligatory annual membership obligations on the Association and Unit Owners as a financial incentive for continuation of the Golf Course and the benefits it provides to the Subdivision, Association and Unit Owners.

C. Notwithstanding such incentives, there is no assurance that the Golf Course shall continue to be a profitable business entity. Therefore, with the exception of Paragraph \_\_\_\_, below, no Unit Purchaser is given any assurance that the Golf Course shall continue to exist, or that the land on which the same is situate shall not be subdivided or developed for other purposes. All Unit Owners are thus, encouraged to participate in the Golf Course and the amenities offered therein for as a financial incentive for the continuation of the Golf Course.

D. Declarant covenants and agrees, that in the event of any sale, lease, or assignment of the Golf Course or the land on which the same is physically situate, or any operating interest therein, it shall impose the following covenants, requirements and restrictions for the benefit of the Association:

(i) So long as the Golf Course continues to be operated as a golf course with a Fitness Center, all owners of each Unit shall annually be offered by the Owner/Operator of the Golf Course, the right to purchase one (1) Unit membership in the Fitness Center which shall, subject to reasonable limitations imposed in the ordinary course of business, permit all residents or occupants of the Unit to utilize the Fitness Center and the amenities therein. Unit Memberships shall run on a calendar year basis, and when purchased each year, run with the land as an appurtenance to the Unit, but shall otherwise be non-transferable and non-assignable by the Unit Owners. The annual Unit Membership purchase price shall be ninety (90%) of the cost for which memberships affording the same benefits (generally family memberships) are offered to non-Unit Owner members of the public.

(ii) So long as the Golf Course continues to be operated as a golf course with a Fitness Center, the Owner/Operator shall offer "Golf Course Memberships" to all Unit Owners: (a) at ninety (90%) of the cost for which memberships affording the same benefits (generally family memberships) are offered to non-Unit Owner members of the public; and (b) to the extent that a limited number of Golf Course Memberships are offered for sale, the Unit Owners will be afforded not less than a thirty (30) day first option to purchase same before Golf Course Memberships are offered to non-Unit Owner members of the public. Golf Course Memberships may be offered of varying varieties and at varying times, subject to reasonable limitations as to assignability, transferability or the number of benefited Unit Owners, all of which variations and contingencies shall be subject to determination by the owners or operators of the Golf Course.

(iii) The owners of the Golf Course shall, with reasonable notice and at times which do not interfere with business operations, provide to the Association at no charge, meeting space in the Fitness Center or Club House four (4) times a year for the annual and other meetings of the Association.

(iv) All Golf Course Memberships shall be personal, to be paid by the Unit Owner purchasing same to the offering entity. All Fitness Center Memberships shall be annual purchased, in behalf of the Unit Owners, by the Association as part of the annual expenses of the Association as a Common Expense of all Units, from monies derived from Annual and

Special Assessments of the Association. The annual Fitness Center membership fee, per Unit, shall be provided by the owner/operator of the Golf Course to the Association not later than the 1<sup>st</sup> day of October of the year preceding the Fitness Center membership year. The Association shall cause the fee for each Unit to be included as a budget item in its budget for the succeeding fiscal year to be assessed to all Units as part of the its Annual Assessment for said year. All Fitness Center membership fees shall be annually paid by the Association to the owner/operator of the Fitness Center: (a) 10% on or before January 15; and (b) the remaining 90% on or before April 1. Because the cost of annual Fitness Center Memberships is a Common Expense of the Association, the Association may pursue collection and enforcement of the assessment for same by any means or mechanism permitted by this Declaration or West Virginia law, including perfection of liens and or litigation.

(v) Fitness Center Memberships are an appurtenance running with the Units which transfer automatically with any deed or other instrument vesting fee legal title to a Unit (excluding leases and instruments granted to create liens or otherwise secure obligations) regardless of whether the membership is mentioned in the instrument.

(vi) All occupants/residents of a Unit are entitled to the benefits of the fitness center membership, provided, that reasonable restrictions and limitations may be imposed by the owner/operator of the Fitness Center to prevent abuses of this provision or any interpretation of same which would afford Fitness Center privileges to an unreasonable number of individuals or individuals who do not reside in the Unit either permanently, on a seasonal or vacation basis, or as family, or tenants of the Unit Owners. Fitness Center memberships do not extend to guests, employees, licensees or invitees of the Unit Owner and all Unit Owners are subject to suspension of Fitness Center privileges for abuse of Fitness Center membership privileges or the rules and regulations of the Fitness Center.

(vii) Any Unit created during a calendar year (and for which not Fitness Center Membership fee was budgeted, collected or paid by Association for such Unit and year) may elect to purchase a Fitness Center Membership for the remainder of the year by paying the pro-rated membership fee directly to the owner/operator of the Fitness Center.

(viii) All Units, whether occupied or improved, are benefited by Fitness Center Membership privileges set forth herein, and it is expressly contemplated that Unit Owners may, as otherwise permitted, utilize and enjoy the benefits of the Fitness Center Memberships, prior to the time that an occupiable Dwelling is completed on the owner's respective Unit.

(ix) The Association shall at all times maintain, and at least monthly provide to the owner/operator of the Fitness Center, a complete list of: (a) all dedicated Units including the Unit address and number; (b) the owners of all Units, including their mailing addresses if different from the Unit; and (c) all occupants of the Unit entitled to Fitness Center Membership privileges. All Unit Owners are required to notify the Association within ten (10) days of: (a) a change of mailing address of the Unit Owners, or any of them; (b) a change of ownership of the Unit; (c) a change of occupants of the Unit entitled to Fitness Center Membership privileges. The owner/operator of the Fitness Center may issue evidence of membership and may also deny use of the Fitness Center to any individual who cannot produce proof of membership.

(x) Notwithstanding any foregoing provision to the contrary, Declarant covenants and agrees that any deed, lease or other agreement whereby ownership of, or the right to operate the Golf Course, including the Fitness Center, is transferred by Declarant to any third party, shall provide that: (a) neither the Golf Course nor the Fitness Center may cease to be operated in such capacity for a period of ten (10) years from the date of this Declaration; and (b) if the Golf Course or Fitness Center shall cease to be operated in such capacity after the expiration of said ten (10) year time period, the no portion of the Golf Course Tract within 200 lineal feet of the Subdivision may be utilized for any commercial or industrial purpose. Declarant may impose such additional restrictions and covenants in such instruments for benefit of the Declarant and/or third party benefit of Association.

## **XXI REMEDIES**

In the event of any violation of the provisions of the Declaration by any Unit Owner other than Declarant (either by the Unit Owner's own conduct or by the conduct of any occupant of a Unit, or other person present in the Subdivision or on the Unit as a guest, family member, or invitee of a Unit Owner), the Association and Declarant shall have all of the rights and remedies which are set forth in the Governing Documents or otherwise provided for in the West Virginia Acts to which this Subdivision is submitted and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any subject actions or proceedings, against Unit Owners including Court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expenses of the Association and the Association shall have a lien against the Unit for all of the same.

## **XXII AMENDMENT:**

The provisions of this Declaration may be changed, modified or rescinded with regard to future Units, future Phases added to or created within the Subdivision or real estate withdrawn from the Subdivision by an instrument in writing setting forth such change, modification or rescission and executed by Declarant.

The provisions of this Declaration may also be changed, modified or rescinded as to platted and dedicated Units and Phases which have not been withdrawn by Declarant by the Unit Owners by an instrument in writing setting forth such change, modification or rescission and executed by vote or agreement of all Owners of Units to which not less than sixty-seven percent (67%) of all Units. The Amendment shall be executed, acknowledged and properly recorded for the Association by its President; provided, however, no change, modification or rescission may increase or create Special Declarant's Rights, increase the maximum number of Units, impermissibly alter Unit boundaries or increase the allocated interests of a Unit or the uses to which any Unit is restricted, without the consent or agreement

of all Owners of all affected Units and their respective lien holders unless otherwise specified in this Declaration.

No Amendment directly or indirectly materially affecting any covenant or restriction benefiting, expressly or impliedly, the Golf Course or Golf Course Tract, shall negatively impact the Golf Course or Golf Course Tract, or the Owners thereof, unless also acknowledged by said Owners. The covenants and restrictions benefiting the Golf Course may not be amended or rescinded unilaterally by the Unit Owners absent express written consent of the Owners of the Golf Course and Golf Course Tract.

The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Acts to which the Subdivision is submitted, and **FURTHER PROVIDED** that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Declarant or Board where alteration of the provisions hereof are made solely to bring this document into compliance with the Acts aforesaid, other existing law or to correct errors of scriveners, architect or surveyor with no notice to Unit Owners or lien holders as above said unless such change, modification or rescission directly adversely and materially affects an individual Unit Owner's or lien holder's interest in the real estate or appurtenances held as security.

### **XXIII. NOTICES**

Notices provided for in the Act or Governing Documents shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at the Unit address provided by said Owner to Association. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners or registering same with the West Virginia Secretary of State. Any Unit Owner may designate a different address for notice to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof. Upon written request to the Board setting forth its address, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or the By-Laws to be given to the Owner or Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in the absence of submission of a lien holder's address.

### **XXIV. SEVERABILITY**

If any provision of this Declaration or any Governing Documents , or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and the Governing Documents and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration, or the Governing Documents shall be construed as if such

invalid part was never included therein.

## **XXV. PERPETUITIES AND RESTRAINTS ON ALIENATION**

If any provision of the rights-of-way, easements, options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the President of the United States, George W. Bush.

## **XXVI. TERMINATION AND EMINENT DOMAIN:**

1. Termination: The Subdivision (which includes all Units, Common Elements, rights and restrictions herein created) may be terminated only by agreement of owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate must be evidenced by: (1) the execution of a termination agreement; or (2) ratification of a termination agreement by the requisite number of Unit Owners. The termination agreement or individual ratifications thereof must: (i) be executed in the same manner as a deed; (ii) specify a date after which the agreement or ratification shall become void if not recorded before that date. No termination agreement shall be valid until recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

(A) Notwithstanding any provision to the contrary herein contained, Declarant may, by recording a Notice of Termination, terminate this Declaration as to the entire Subdivision prior to the recordation of the first deed for a Unit from the entire Subdivision or within that particular phase but not as to any remaining phase.

(B) Foreclosure or enforcement of a lien or encumbrance against the entire Subdivision or any part thereof does not itself terminate the Subdivision or withdraw that part thereof from the Subdivision or from this Declaration and other related documents herein set forth.

(C) The termination agreement may provide all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.

(D) The Association, on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. Upon termination, if any real estate is to be sold following termination, title to that real estate vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effectuate the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner and the Unit Owner's successors in interest have an

exclusive right to occupancy of that portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Declaration.

(E) If a lien or encumbrance against a portion of real estate has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure may record an instrument excluding the real estate subject to that lien or encumbrance from the Subdivision.

2. Eminent Domain: If a Unit is acquired by eminent domain or any part of any Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Unit and its allocated interests, whether or not any Common Element are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocating. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element. Further:

(A) Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, (i) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially-acquired Unit are automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

(B) If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association.

## **XXVII. SEPARATE TITLES AND TAXATION:**

After conveyance by the Declarant, each Unit, together with its interest in the Common Elements, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.

## **XXVIII. RIGHTS AND OBLIGATIONS OF GRANTEES:**

Each Grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same **SUBJECT TO** all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and **ALL MATTERS SET FORTH IN**

**THIS DECLARATION.** All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such Grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

**XXIX. HEADINGS:**

The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**XXX. DESCRIPTION INCLUSIONS BY REFERENCE:**

The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**XXXI. SUBMISSION TO LAW:**

The Declarant, as the legal title holder in fee simple of the parcel, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**XXXII STATUTE OF LIMITATIONS:**

**All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver."** This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.



**EXHIBITS TO DECLARATION OF COMMON INTEREST COMMUNITY  
FOR  
THE MEADOWS SUBDIVISION**

DESCRIPTION	EXHIBIT
Plat of land dedicated as Phase I The Meadows Subdivision	A
Description of land owned by Declarant which may be dedicated as one or more future phases of The Meadows Subdivision.	B
Description of land not owned by Declarant but which may be dedicated as one or more future phases of The Meadows Subdivision if acquired by Declarant.	C
Description of Golf Course Property and Golf Course Covenants affecting The Meadows Subdivision.	D

*Exhibits  
to Declaration of Common Interest Community  
Braden Place Subdivision*

**EXHIBIT A**

**TO**

**DECLARATION OF COMMON INTEREST COMMUNITY**

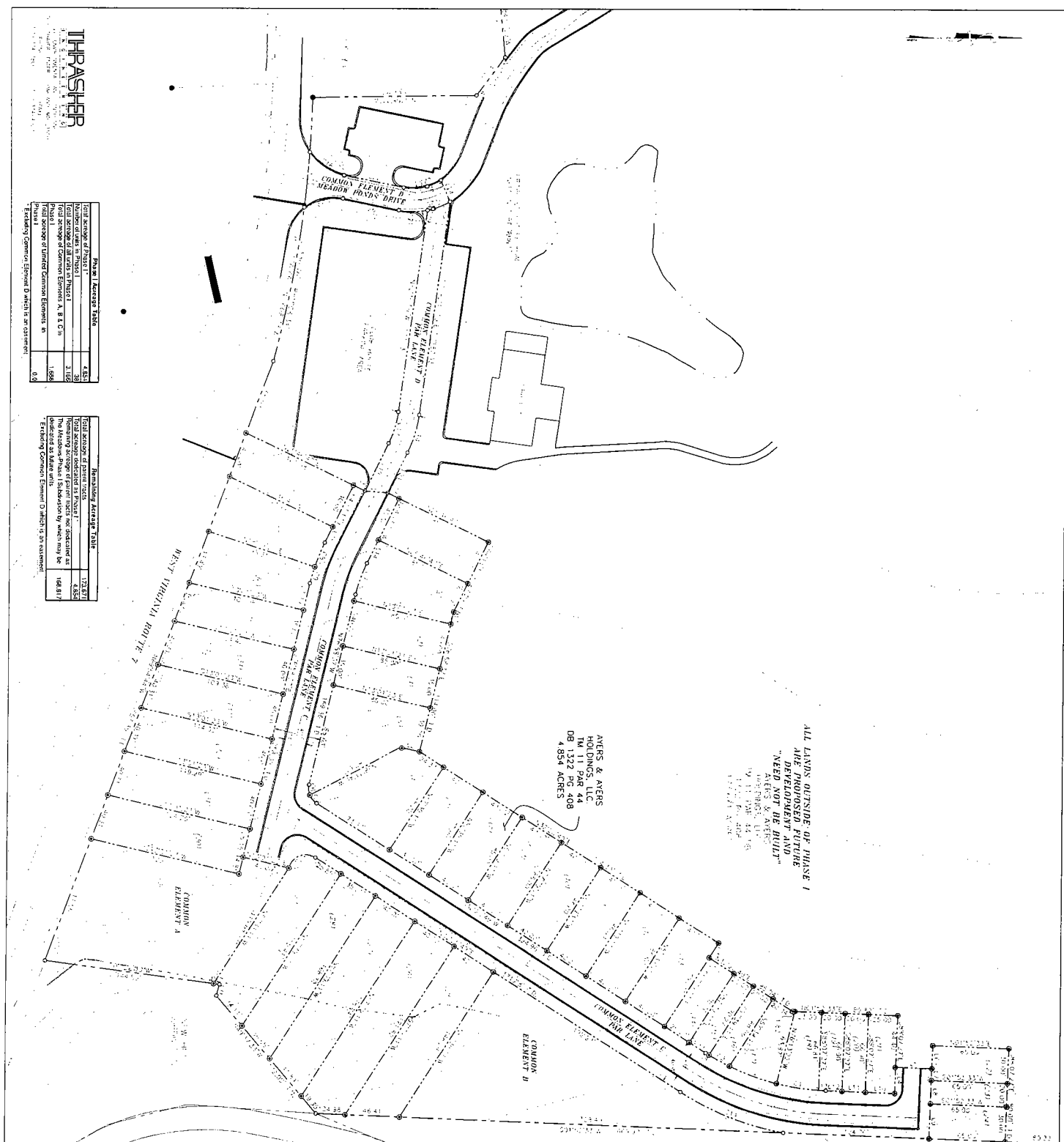
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**LAND OWNED BY DECLARANT WHICH IS DEDICATED  
AS PHASE I OF THE MEADOWS SUBDIVISION**

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That certain map or plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet 5, Envelope 35A, which is incorporated herein by reference.

Phase 1 is subdivided from, but does not include all of, the property conveyed to the Grantor by those certain deeds which are recorded in the Office of the said Clerk in Deed Book No. 1322 at Pages 408 and 422. The remaining lands of Declarant not dedicated as Phase I are depicted on Exhibit B and B1.



ALL LANDS OUTSIDE OF PHASE  
AIE PROPOSED FUTURE  
DEVELOPMENT AND  
"NEED NOT BE BUILT"  
AEROS & AEROS  
CORPORATE, LTD.  
1911 PARK AVE.  
NEW YORK, N.Y.

AYERS & AYERS  
HOLDINGS, LLC.  
TM 11 PAR 44  
DB 1322 PG 408  
4.854 ACRES

Phase I Average Table	
Total acreage of Phase I	4,851
Number of units in Phase I	38
Total acreage of all units in Phase I	2,106
Total acreage of Common Elements A, B & C in Phase I	1,698
Total acreage of Limited Common Elements in Phase I	0.0

Remaining Acreage Table	
Total acreage of parent tracts	173,671
Total acreage dedicated as Phase I	4,854
Remaining acreage of parent tracts not dedicated as Phase I	168,817

<sup>1</sup> Excludes Corporate-Owned Tracts as described in the preceding table.

1. **ELIOT BARBER, JR.**, N. NORTHEAST CORNER REGISTERED VOTER, AND  
WIFE, **CECILE**, THAT THE LAND WAS REGISTERED IN THE NAME OF  
B. CUMPER, JR., ARTICLE 4, SECTION 169 OF THE CODE OF WEST VIRGINIA  
AND THAT THE LAND WAS NOT IN THE POSSESSION OF THE VOTERS AT  
THE LOCATION WHEREON THE AFFIDAVIT WAS SUBMITTED. THE AFFIDAVIT  
ATTESTS THAT THERE WAS NO ANNUAL RENT OR RENTALS OF THE  
LAND, NOR THAT THERE WAS NO ANNUAL DIVIDEND IN EXCESS  
OF FORTY DOLLARS.

LEGEND

- 1/2" REDUC. FOUND  
1/2" REPAIR SET  
PUMPED CLEAN OUT  
WATER LINE  
SEWER LINE  
UTILITY LINE  
STORM SEWER  
.....  
PIPING DEVELOPMENT AREA  
"NEED NOT BE WELT"

[illegible][illegible][illegible][illegible]

**EXHIBIT B**

**TO**

**DECLARATION OF COMMON INTEREST COMMUNITY**

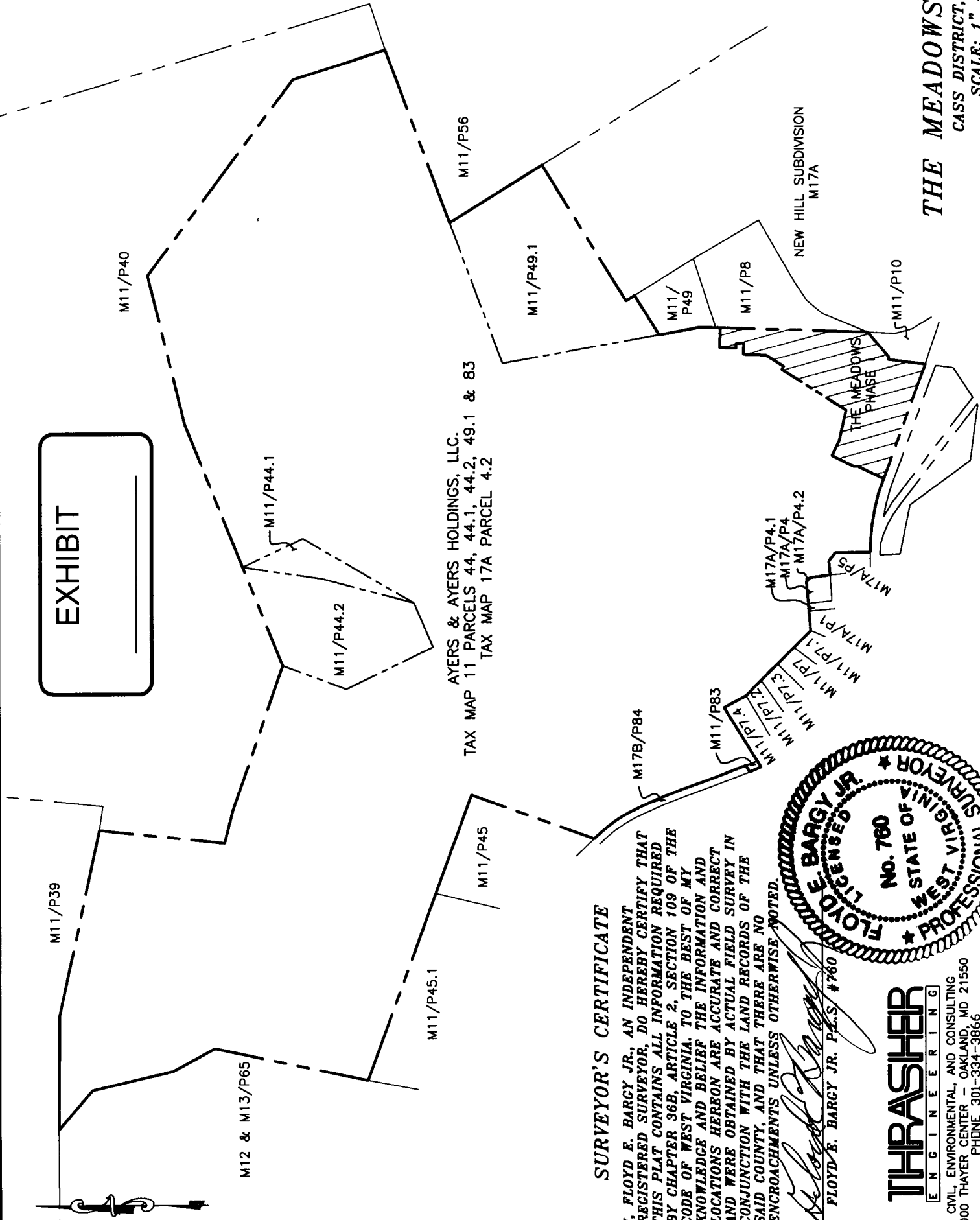
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**LAND OWNED BY DECLARANT WHICH MAY BE DEDICATED AS ONE OR MORE PHASES OF THE  
MEADOWS SUBDIVISION**

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At the execution of the Declaration to which this Exhibit is appended, Declarant has dedicated only one (1) phase of The Meadows Subdivision, namely Phase 1. Pursuant to the Declaration, Declarant has reserved the right to add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised at any time within ten (10) years after the execution of this document, with regard to the following parcels of real estate owned by Declarant at the execution hereof, together with the appurtenances thereunto belonging, which said real estate is situate in Cass Tax District of Monongalia County, West Virginia, located near West Virginia Route 7, and more particularly described in those certain deeds which are recorded in the Office of the said Clerk in Deed Book No. 1322 at Pages 408 and 422. Said lands are more particularly shown on the Exhibit B1 attached hereto.

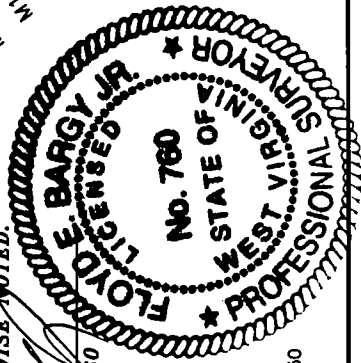
TAX MAP	PARCEL	OWNER	DEED	BOOK PAGE
CASS DISTRICT				
17A	1	James G. Jr & Carol L. Ponceroff	1210	677
17A	4	James G. Jr & Carol L. Ponceroff	1210	677
17A	4.1	James G. Jr & Carol L. Ponceroff	1210	677
17A	4.2	Ayers & Ayers Holdings, LLC.	1322	408
17A	4.3	Shirley Y. Jones	1184	10
17A	5	Helen J. McCord	744	51
17	7	Emma G. & John McCord	1302	38
17	7.1	Joseph P. & Lena Brewer	1222	611
17	7.2	Michael E. & Tina Willard	1119	468
17	7.3	James A & Linsa McCord	946	629
17	7.4	Rudolph B. & Marlene Ponceroff	1081	458
11	8	New Hill Community	464	174
11	10	New Hill Public Service District	1032	31
11	39	Cynthia Solomon ET. AL.	94	162
11	40	Joseph P. & Lena Brewer	927	595
11	44	Ayers & Ayers Holdings, LLC.	1322	408
11	44.1	Ayers & Ayers Holdings, LLC.	1322	408
11	44.2	Ayers & Ayers Holdings, LLC.	1322	422
11	45	Mary Jane Walls	1196	662
11	45.1	Mary Jane Walls	1196	662
11	49	Richard A. & Sherrie Temple	810	342
11	49.1	Robert K. & Nydia L. Holt	1314	602
11	56	Richard Glen Shahan	1283	298
11	83	Ayers & Ayers Holdings, LLC.	1322	408
17B	84	Nourmenon Corp.	1089	682
CLAY DISTRICT				
13	65	Blake Boggess & H. Preston	884	222



EXHIBIT

SURVEYOR'S CERTIFICATE

I, FLOYD E. BARGY JR., AN INDEPENDENT REGISTERED SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT CONTAINS ALL INFORMATION REQUIRED BY CHAPTER 36B, ARTICLE 2, SECTION 109 OF THE CODE OF WEST VIRGINIA. TO THE BEST OF MY KNOWLEDGE AND BELIEF THE INFORMATION AND LOCATIONS HEREON ARE ACCURATE AND CORRECT AND WERE OBTAINED BY ACTUAL FIELD SURVEY IN CONJUNCTION WITH THE LAND RECORDS OF THE SAID COUNTY, AND THAT THERE ARE NO ENCROACHMENTS UNLESS OTHERWISE NOTED.



FLOYD E. BARGY JR. P.E.S. #760

**THRASHER**  
ENGINEERING

CIVIL, ENVIRONMENTAL, AND CONSULTING  
3000 THAYER CENTER - OAKLAND, MD 21550  
PHONE 301-334-3866

PHASE 1 OF  
**THE MEADOWS, A PLANNED COMMUNITY**  
CASS DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA  
SCALE: 1" = 500' DATE: MARCH 12, 2008

## EXHIBIT C

TO

## DECLARATION OF COMMON INTEREST COMMUNITY

-----

**LAND NOT OWNED BY DECLARANT BUT WHICH MAY BE DEDICATED AS ONE OR MORE  
PHASES OF THE MEADOWS SUBDIVISION IF ACQUIRED BY DECLARANT**

-----

At the execution of the Declaration to which this Exhibit is appended, Declarant has dedicated only one (1) phase of The Meadows Subdivision, namely Phase I. Pursuant to the Declaration, Declarant has reserved the right to add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised at any time within ten (10) years after the execution of this document, with regard to any or all portions of the following parcels of real estate which are not at the execution hereof owned by Declarant, but which rights may be exercised if Declarant should hereafter acquire any interest in any portion of the following described real estate situated in Cass Tax District of Monongalia County, West Virginia:

	2007 Cass Tax District identifier assigned by Monongalia County Assessor's Office			Approximate Acreage
	Tax Map	Tax Parcel	Parcel Split	
1	11	39	00	41.33
2	11	40	00	84.07
3	11	45	00	5.2
4	11	45	01	6.27
5	11	46	00	0.75
6	11	47	00	0.585
7	11	48	00	
8	11	49	00	1.71
9	11	56	00	47.235
	17A	1	00	
	17A	4	00	0.368
	17A	4	01	0.06
	17A	4	05	
	17A	5	00	

Witness this 19<sup>th</sup> day of March, 2008: YOL 1361 PAGE 789

Declarant: Ayers & Ayers Holdings, , LLC, a West Virginia limited liability company,

By: *Roger Ayers*

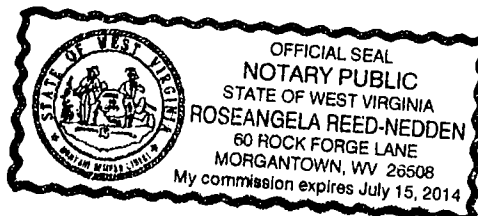
STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 19<sup>th</sup> day of March, 2008, by ~~Rose Angela Reed-Nedden~~ *Roger Ayers*, in his capacity as manager of Ayers & Ayers Holdings, LLC, a West Virginia limited liability company. *Roger Ayers*  
*mcl*

My Commission Expires: July 15, 2014

*Rose Angela Reed-Nedden*  
Notary Public



This instrument prepared by Steven M. Prunty  
Eckert Seamans Cherin & Mellott, PLLC  
2400 Cranberry Square  
Morgantown, WV 26508-9209

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PHILIP D MOONEY  
P.O. BOX 842  
MORGANTOWN, WV 26507-0842

Carve L. Blaney  
MONONGALIA County 12:15:51 PM  
Instrument No 427992  
Date Recorded 10/07/2011  
Document Type COV  
Pages Recorded 10  
Recording Fee \$10.00  
Additional \$7.00

**FOURTH AMENDMENT TO  
DECLARATION OF COMMON INTEREST COMMUNITY  
FOR  
THE MEADOWS  
a residential Planned Community in  
Monongalia County, West Virginia**

THIS FOURTH AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the \_\_\_\_\_ day of September, 2011, by **AYERS AND AYERS HOLDINGS, L.L.C., a West Virginia limited liability company**, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714, Second Amendment thereto recorded in Deed Book No. 1405 at Page No. 718, and Third Amendment thereto recorded in Deed Book No. 1441 at Page No. 264 (collectively together with all amendments thereto including this instrument, "Declaration"); and

**WHEREAS**, Phase I of the Meadows is depicted and shown on those certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 35A and 73B ("Phase I Plats"); and

**WHEREAS**, Phase II of the Meadows is depicted and shown on that certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 46A, and 74A ("Phase II Plats"); and

**WHEREAS**, Phase III of the Meadows is depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 74B ("Phase III Plat"); and

**WHEREAS**, Phase IV of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 75A, but said map or plat was rescinded and replaced in its entirety by that certain revised map or plat recorded Map Cabinet No. 5, Envelope 108B; and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the original Declaration; and

**WHEREAS**, Declarant desires to dedicate Phase V of the Subdivision containing 16 Units and certain Common Elements, as depicted, set forth and shown on that certain Map or Plat entitled Phase V of The Meadows, A Planned Community, dated September 6, 2011, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of

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Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument; and

**WHEREAS**, as a result of this dedication of Phase V, the Subdivision now contains 114 Units (39 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, 18 Units in Phase IV, and 16 Units in Phase V) leaving 686 Units which Declarant may elect to dedicate hereafter in future Phases.

**I. PHASE V PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III, IV and V of the Subdivision are shown on that certain drawing entitled Phases I, II, III, IV and V of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated September 6, 2011, and which is attached hereto as **Exhibit A**. All Units in all Phases of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane, Watson Drive, and Eagle Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision. Common Elements A through Q as depicted and shown on the Plats are dedicated as Common Elements of the Association.

**II. SUBMISSION OF PHASE V TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase V of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Community Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase V of the Subdivision are Units 63 through 71, 131 and 132, and 161 through 165, and the roadways and Common Elements as depicted and shown on the map or plat attached hereto and entitled Revised Phase V of The Meadows, A Planned Community, dated September 6, 2011, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument, which said plat is made a part hereof by reference as **Exhibit B**, and is recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 115A ("Phase V Plat").

**III. FUTURE DEVELOPMENT AND USE LIMITATIONS:**

Phase V constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phases I, II, III, IV and V.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phase V in the same manner as were reserved to Declarant in the Declaration with regard to Phases I, II, III and IV.

All Units and Common Elements in Phase V are restricted exclusively to use for single family DETACHED dwellings, subject to all, and the same, covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phases 2 and 3.

The current table of acreage and Units dedicated is set forth on Exhibit C.

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**IV. ALLOCATIONS IN PHASE V:**

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on **Exhibit D**.

There are no *express* Limited Common Elements in Phase V, however, the **Exhibit D** allocations shall apply to *implied* Limited Common Elements, if any exist by operation of law.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

**V. SPECIFIC PHASE V EASEMENTS:**

In addition to those rights-of-way and easements excepted and reserved in the Declaration or by the Phase V Plat, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **16' Drainage and Access Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified with a specified width on the Phase V Plat. Said easements are in addition to all other easements reserved in the Declaration and affect all Units in Phase V. Each of said easements is reserved to the width shown on the Phase V Plat. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and stormwater from Units and Common Elements throughout the Subdivision in accordance with the stormwater management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the

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capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width.

(2) **15' and 20' Utility Easement:** A right-of-way or easement for installation, construction, laying, extension, maintenance, use, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of: utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to and within the Subdivision, as well as exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. Said easement is in each location where a "Water Line", "Sewer Line", "Utility Line" or "Storm Sewer" with regard to any utility system or utility services depicted and shown on the Phase V Plat for which no other easement is expressly excepted or reserved. This easement is in addition to all other perimeter easements reserved in the Declaration. The easements is fifteen (15) feet in total width (as measured eight [7.5] feet along each side of the utility subject of the easement with regard to all "utilities" except sewer and with regard to sewer is is twenty (20) feet in total width (as measured ten [10] feet along each side of the sewer line).

(3) **50' Easement:** A right-of-way or easement exists fifty (50) feet in width along the Equitrans Carnegie Natural Gas line as depicted and shown on the Phase V Plat, 25' feet from center line "as-built" unless shown otherwise.

(4) **10' Access Easement:** A right-of-way or easement is reserved over and across Units 131 and 132, as shown on the plat for access to Common Element Q, which may, or may not, be dedicated as a future walking trail Common Element. The right-of-way or easement "NEED NOT BE DEDICATED" and improvements thereto "NEED NOT BE BUILT". In the event that the walking trail is developed and dedicated hereafter reasonable improvements thereto may be made within the 10' Access Easement for recreational purposes and also access to Common Element Q. If the Declarant elects to dedicate the walking trail/10' Access Easement, the same shall be a Common Element for the benefit of all Units in all Phases. If Declarant elects to not dedicate the walking trail/10' Access Easement, the same will remain a private right-of-way or easement retained by Declarant appurtenant to its retained lands permitting access thereto and also to Common Element Q.

(5) NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE V.

**VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

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capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width.

(2) **15' and 20' Utility Easement:** A right-of-way or easement for installation, construction, laying, extension, maintenance, use, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of: utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to and within the Subdivision, as well as exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. Said easement is in each location where a "Water Line", "Sewer Line", "Utility Line" or "Storm Sewer" with regard to any utility system or utility services depicted and shown on the Phase V Plat for which no other easement is expressly excepted or reserved. This easement is in addition to all other perimeter easements reserved in the Declaration. The easements is fifteen (15) feet in total width (as measured eight [7.5] feet along each side of the utility subject of the easement with regard to all "utilities" except sewer and with regard to sewer is is twenty (20) feet in total width (as measured ten [10] feet along each side of the sewer line).

(3) **50' Easement:** A right-of-way or easement exists fifty (50) feet in width along the Equitrans Carnegie Natural Gas line as depicted and shown on the Phase V Plat, 25' feet from center line "as-built" unless shown otherwise.

(4) **10' Access Easement:** A right-of-way or easement is reserved over and across Units 131 and 132, as shown on the plat for access to Common Element Q, which may, or may not, be dedicated as a future walking trail Common Element. The right-of-way or easement "NEED NOT BE DEDICATED" and improvements thereto "NEED NOT BE BUILT". In the event that the walking trail is developed and dedicated hereafter reasonable improvements thereto may be made within the 10' Access Easement for recreational purposes and also access to Common Element Q. If the Declarant elects to dedicate the walking trail/10' Access Easement, the same shall be a Common Element for the benefit of all Units in all Phases. If Declarant elects to not dedicate the walking trail/10' Access Easement, the same will remain a private right-of-way or easement retained by Declarant appurtenant to its retained lands permitting access thereto and also to Common Element Q.

(5) NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE V.

**VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

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This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 100% of all Units in Phase V of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

**VII. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**VIII. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**IX. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**X. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**XI. GOLF COURSE PROVISIONS:**

All covenants, conditions, limitations, restrictions, requirements, agreements, duties, rights, privileges and other provisions of the Declaration relating to the golf course, specifically including those related to assumption of risk with regard to ownership and occupancy of land in proximity to a public golf course, are incorporated herein by reference and applicable to Phase V and all Units and Common Elements therein.

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Witness this 14 day of September 2011:Declarant: Ayers & Ayers Holdings, LLC,  
a West Virginia limited liability company:By: Roger E AyersIts: memberSTATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 14 day of September, 2011, by Roger E Ayers, in his capacity as manager of Ayers & Ayers Holdings, LLC, a West Virginia limited liability company. MARK

My Commission Expires: August 7, 2019Jacquelyn S McDonald  
Notary Public

This instrument prepared by Steven M. Prunty  
Bowles Rice McDavid Graff & Love, LLP  
7000 Hampton Center, Suite K  
Morgantown, WV 26505

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**EXHIBIT C**  
**Dedicated Acreages**

Total acreage of parent tracts	173.6714
Total acreage dedicated as Phase I	4.854*
Total acreage dedicated as Phase II	9.843
Total acreage dedicated as Phase III	3.7611
Total acreage dedicated as Phase IV	2.484
Total acreage dedicated as Phase V	7.023
Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units	152.629

Total acreage of Phase I	4.854*
Number of Units in Phase I	38
Total acreage of all Units in Phase I	3.104
Total acreage of Common Elements A, B & C in Phase I	1.75
Total acreage of Limited Common Elements in Phase I	0

(\* =excluding Common Element D which is an easement)

Total acreage of Phase II	9.843
Number of Units in Phase II	30
Total acreage of all Units in Phase II	7.767
Total acreage of Common Elements E, F, G & H in Phase II	2.071
Total acreage of Limited Common Elements in Phase II	0

Total acreage of Phase III	9.943
Number of Units in Phase III	12
Total acreage of all Units in Phase III	2.903
Total acreage of Common Elements E, F, G & H in Phase III	0.858
Total acreage of Limited Common Elements in Phase III	0

Total acreage of Phase IV	2.484
Number of Units in Phase IV	18
Total acreage of all Units in Phase IV	1.016
Total acreage of Common Elements L through M in Phase IV	1.469
Total acreage of Limited Common Elements in Phase IV	0

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Phase IV	
Total acreage of Phase V	7.023
Number of Units in Phase V	16
Total acreage of all Units in Phase V	4.263
Total acreage of Common Elements N through Q in Phase V	1.891
Total acreage of Limited Common Elements in Phase IV	0

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**EXHIBIT D**  
**Allocated Interests**

PHASE	UNITS	Each Unit's Allocated Interest in Common Expenses	Each Unit's Allocated Interest in Phase I Limited Common Expenses*	Each Unit's Allocated Interest in Phase II Limited Common Expenses*	Each Unit's Allocated Interest in Phase III Limited Common Expenses*	Each Unit's Allocated Interest in Phase IV Limited Common Expenses*	Each Unit's Allocated Interest in Phase V Limited Common Expenses*
PHASE I	38	1/114	1/38	0	0	0	0
PHASE II	30	1/114	0	1/30	0	0	0
PHASE III	12	1/114	0	0	1/12	0	0
PHASE IV	18	1/114	0	0	0	1/18	0
PHASE V	16	1/114					1/16
Total	114**						

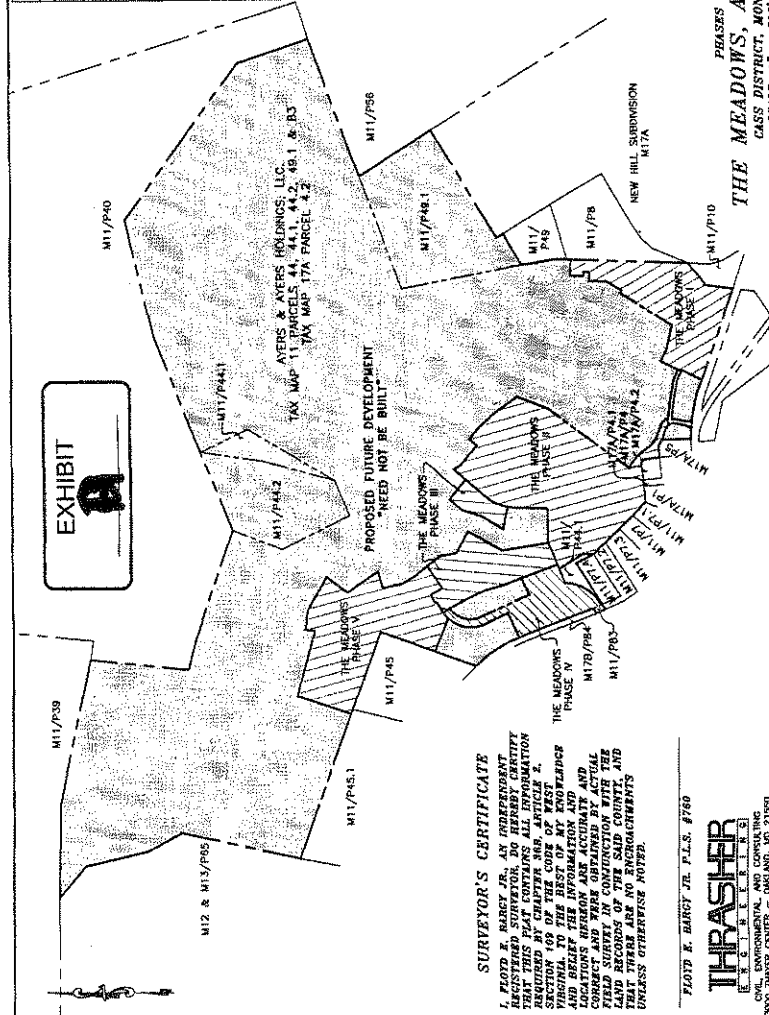
\*= If any.

\*\*=Subject to change in the event additional Units are dedicated or in the event Units are either withdrawn or consolidated.

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CLAY DISTRICT	PARCEL	OWNER	DEED	BOOK	PAGE
17A	1	James G. Jr & Carol L. Perencek	1210	677	
17A	4	James G. Jr & Carol L. Perencek	1210	677	
17A	4.1	James G. Jr & Carol L. Perencek	1210	677	
17A	4.2	Ayres & Ayres	1322	408	
17A	4.3	Shelby V. Jones	1164	10	
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11	10	New Hill Public Service District	1032	31	
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11	40	Joseph P. & Lina Brewer	927	585	
11	44	Ayres & Ayres	1322	408	
11	44.1	Ayres & Ayres	1322	408	
11	44.2	Ayres & Ayres	1322	408	
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11	48.1	Richard A. & Storie	1314	802	
11	56	Richard Glen Shuman	1283	298	
11	83	Ayres & Ayres	1322	408	
17B	84	Heddings, LLC	1089	882	
CLAY DISTRICT					
13	65	Stake Daggers & H.	984	222	



PHASES I, II, III, IV & V OF  
THE MEADOWS, A PLANNED COMMUNITY  
CASS DISTRICT, MONONGALLA COUNTY, WEST VIRGINIA  
SCALE: 1" = 500' DATE: SEPTEMBER 6, 2015

**THRASHER**  
ENGINEERING  
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1451-723

**FIFTH AMENDMENT TO  
 DECLARATION OF COMMON INTEREST COMMUNITY  
 FOR  
 THE MEADOWS  
 a residential Planned Community in  
 Monongalia County, West Virginia**

THIS FIFTH AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 26<sup>th</sup> day of January, 2012, by **AYERS AND AYERS HOLDINGS, L.L.C.**, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714, Second Amendment thereto recorded in Deed Book No. 1405 at Page No. 718, Third Amendment thereto recorded in Deed Book No. 1441 at Page No. 264, and Fourth Amendment thereto recorded in Deed Book No. 1445 at Page No. 288 (collectively together with all amendments thereto including this instrument, "Declaration"); and

**WHEREAS**, Phase I of the Meadows is depicted and shown on those certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 35A and 73B ("Phase I Plats"); and

**WHEREAS**, Phase II of the Meadows is depicted and shown on that certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 46A, and 74A ("Phase II Plats"); and

**WHEREAS**, Phase III of the Meadows is depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 74B ("Phase III Plat"); and

**WHEREAS**, Phase IV of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 75A, but said map or plat was rescinded and replaced in its entirety by that certain revised map or plat recorded Map Cabinet No. 5, Envelope 108B; and

**WHEREAS**, Phase V of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 115A; and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date

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of the original Declaration; and

**WHEREAS**, Declarant desires to dedicate Phase VI of the Subdivision containing 9 Units, numbered 117 through 125, and certain Common Elements, as depicted, set forth and shown on that certain Map or Plat entitled Revised Phase VI of The Meadows, A Planned Community, dated January 23, 2012, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument; and

**WHEREAS**, as a result of this dedication of Phase VI, the Subdivision now contains 123 Units (39 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, 18 Units in Phase IV, 16 Units in Phase V, and 9 Units in Phase VI) leaving 677 Units which Declarant may elect to dedicate hereafter in future Phases.

**I. PHASE V PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III, IV and V of the Subdivision are shown on that certain drawing entitled Phases I, II, III, IV, V and VI of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated January 23, 2012, and which is attached hereto as **Exhibit A**. All Units in all Phases of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane, Watson Drive, and Eagle Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision. Common Elements A through Q as depicted and shown on the Plats are dedicated as Common Elements of the Association.

**II. SUBMISSION OF PHASE V TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase VI of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Community Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase VI of the Subdivision are Units 117 through 125, and the roadways and Common Elements as depicted and shown on the map or plat attached hereto and entitled Revised Phase VI of The Meadows, A Planned Community, dated January 23, 2012, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument, which said plat is made a part hereof by reference as **Exhibit B**, and is recorded in the Office of said Clerk in Map Cabinet \_\_\_, Envelope No. \_\_\_ ("Phase VI Plat").

**III. FUTURE DEVELOPMENT AND USE LIMITATIONS.**

Phase VI constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phases I, II, III, IV, V and VI.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phase VI in the same manner as were reserved to Declarant in the Declaration with regard to Phases I, II, III, IV and V.

**All Units and Common Elements in Phase VI are restricted exclusively to use for single family**

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ATTACHED dwellings, subject to all, and the same, covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phases I and 4.

The current table of acreage and Units dedicated is set forth on **Exhibit C**.

**IV. ALLOCATIONS IN PHASE VI:**

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on **Exhibit D**.

There are no *express* Limited Common Elements in Phase VI, however, the **Exhibit D** allocations shall apply to *implied* Limited Common Elements, if any exist by operation of law.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

**V. SPECIFIC PHASE VI EASEMENTS:**

In addition to those rights-of-way and easements excepted and reserved in the Declaration or by the Phase VI Plat, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **16' Drainage and Access Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified with a specified width on the Phase VI Plat. Said easements are in addition to all other easements reserved in the Declaration and affect all Units in Phase VI. Each of said easements is reserved to the width shown on the Phase VI Plat. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority

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reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and stormwater from Units and Common Elements throughout the Subdivision in accordance with the stormwater management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VI without the consent of the Association.

(2) **Drainage Easement:** A right-of-way or easement along the front of all Phase VI Units which is non-exclusive and reserved to the same parties for the same drainage related purposes as set forth above. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VI without the consent of the Association.

(3) **10' Access Easement:** A non-exclusive right-of-way or easement is reserved over and across Units 117 125 and 117 extending from Eagle Drive to the perimeter of said two (2) Units, all as shown on the plat for access to and between the Eagle Drive and the Drainage and Access Easement and Drainage Easement. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VI without the consent of the Association.

(4) NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE VI.

(5) All other easements reserved in the Declaration or depicted on the plat are dedicated and reserved in like fashion as if Phase VI was expressly made subject thereto.

#### VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:

This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 100% of all Units in Phase VI of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

**VII. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

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**VIII. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**IX. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**X. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**XI. GOLF COURSE PROVISIONS:**

All covenants, conditions, limitations, restrictions, requirements, agreements, duties, rights, privileges and other provisions of the Declaration relating to the golf course, specifically including those related to assumption of risk with regard to ownership and occupancy of land in proximity to a public golf course, are incorporated herein by reference and applicable to Phase VI and all Units and Common Elements therein.

Witness this 26<sup>th</sup> day of January, 2012:

GRANTOR,

Ayers and Ayers Holdings, L.L.C., a West Virginia  
limited liability company,  
acting by through its duly authorized Attorney-in-Fact,  
Peter A. Hayes,

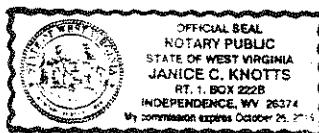
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By: Peter A. Hayes  
Peter A. HayesITS: Attorney-in-Fact by Limited Power of Attorney  
recorded in POA Book 26 at Page No. 602.STATE OF WEST VIRGINIA,  
COUNTY OF Monongalia, TO-WIT:

The foregoing instrument, bearing date of the 26th day of January, 2012, was acknowledged before me this 26th day of January, 2012, by Peter A. Hayes, the duly authorized Attorney-in-Fact for Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company, for and on behalf of said limited liability company by exercise of authority duly given.

My commission expires 10/26/15.Janice C. Knotts  
NOTARY PUBLIC

This instrument prepared by Steven M. Prunty  
Bowles Rice McDavid Graff & Love, LLP  
7000 Hampton Center, Suite K  
Morgantown, WV 26505

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**EXHIBIT C**  
**Dedicated Acreages**

Total acreage of parent tracts	173.6714
Total acreage dedicated as Phase I	4.854*
Total acreage dedicated as Phase II	9.843
Total acreage dedicated as Phase III	3.7611
Total acreage dedicated as Phase IV	2.484
Total acreage dedicated as Phase V	7.023
Total acreage dedicated as Phase VI	0.447
Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units	145.6159

Total acreage of Phase I	4.854*
Number of Units in Phase I	38
Total acreage of all Units in Phase I	3.104
Total acreage of Common Elements A, B & C in Phase I	1.75
Total acreage of Limited Common Elements in Phase I	0

(\* =excluding Common Element D which is an easement)

Total acreage of Phase II	9.843
Number of Units in Phase II	30
Total acreage of all Units in Phase II	7.767
Total acreage of Common Elements E, F, G & H in Phase II	2.071
Total acreage of Limited Common Elements in Phase II	0

Total acreage of Phase III	9.943
Number of Units in Phase III	12
Total acreage of all Units in Phase III	2.903
Total acreage of Common Elements E, F, G & H in Phase III	0.858
Total acreage of Limited Common Elements in Phase III	0

Total acreage of Phase IV	2.484
Number of Units in Phase IV	18
Total acreage of all Units in Phase IV	1.016
Total acreage of Common Elements L through M in Phase IV	1.469

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Total acreage of Limited Common Elements in Phase IV	0
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Total acreage of Phase V	7.023
Number of Units in Phase V	16
Total acreage of all Units in Phase V	4.263
Total acreage of Common Elements N through Q in Phase V	1.891
Total acreage of Limited Common Elements in Phase V	0

Total acreage of Phase VI	0.447
Number of Units in Phase VI	9
Total acreage of all Units in Phase VI	0.447
Total acreage of Common Elements in Phase VI	0.00**
Total acreage of Limited Common Elements in Phase VI	0

Eagle Drive having been previously dedicated as Common Element L.

## EXHIBIT D

## Allocated Interests

PHASE	UNITS	Each Unit's Allocated Interest in Common Expenses	Each Unit's Allocated Interest in Phase I Limited Common Expenses*	Each Unit's Allocated Interest in Phase II Limited Common Expenses*	Each Unit's Allocated Interest in Phase III Limited Common Expenses*	Each Unit's Allocated Interest in Phase IV Limited Common Expenses*	Each Unit's Allocated Interest in Phase V Limited Common Expenses*	Each Unit's Allocated Interest in Phase VI Limited Common Expenses
PHASE I	38	1/123	1/38	0	0	0	0	0
PHASE II	30	1/123	0	1/30	0	0	0	0
PHASE III	12	1/123	0	0	1/12	0	0	0
PHASE IV	18	1/123	0	0	0	1/18	0	0
PHASE V	16	1/123	0	0	0	0	1/16	0
PHASE VI	9	1/123	0	0	0	0	0	1/9
Total	123**							

\* = If any.

\*\* = Subject to change in the event additional Units are dedicated or in the event Units are either withdrawn or consolidated.

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MORGANTOWN, WV 26505-1720Carve L. Blaney  
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**SIXTH AMENDMENT TO**  
**DECLARATION OF COMMON INTEREST COMMUNITY**  
**FOR**  
**THE MEADOWS**  
**a residential Planned Community in**  
**Monongalia County, West Virginia**

1468-563

THIS SIXTH AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 31st day of October, 2012, by **AYERS AND AYERS HOLDINGS, L.L.C.**, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714, Second Amendment thereto recorded in Deed Book No. 1405 at Page No. 718, Third Amendment thereto recorded in Deed Book No. 1441 at Page No. 264, and Fourth Amendment thereto recorded in Deed Book No. 1445 at Page No. 288, and Fifth Amendment thereto recorded in Deed Book No. 1451, at Page No. 723, together with this document all amendments thereto including this instrument, "Declaration"; and

**WHEREAS**, Phase I of the Meadows is depicted and shown on those certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 35A and 73B ("Phase I Plats"); and

**WHEREAS**, Phase II of the Meadows is depicted and shown on that certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 46A, and 74A ("Phase II Plats"); and

**WHEREAS**, Phase III of the Meadows is depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 74B ("Phase III Plat"); and

**WHEREAS**, Phase IV of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 75A, but said map or plat was rescinded and replaced in its entirety by that certain revised map or plat recorded Map Cabinet No. 5, Envelope 108B; and

**WHEREAS**, Phase V of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 115A; and

**WHEREAS**, Phase VI of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 120B; and

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**WHEREAS**, Phase VII of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 133A; and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the original Declaration; and

**WHEREAS**, Declarant desires to dedicate Phase VII of the Subdivision containing 10 Units, numbered 73 through 82, and certain Common Elements, as depicted, set forth and shown on that certain Map or Plat entitled Revised Phase VI of The Meadows, A Planned Community, dated April 23, 2012, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument; and

**WHEREAS**, as a result of this dedication of Phase VII, the Subdivision now contains 133 Units (39 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, 18 Units in Phase IV, 16 Units in Phase V, 9 Units in Phase VI, and 10 Units in Phase VII) leaving 667 Units which Declarant may elect to dedicate hereafter in future Phases.

**I. PHASE V PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III, IV, V, VI and VII of the Subdivision are shown on that certain drawing entitled Phases I, II, III, IV, V, VI and VII, of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated April 23, 2012, and which is attached hereto as **Exhibit A**. All Units in all Phases of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane, Watson Drive, and Eagle Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision. Common Elements A through Q as depicted and shown on the Plats are dedicated as Common Elements of the Association.

**II. SUBMISSION OF PHASE V TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase VII of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Community Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase VII of the Subdivision are Units 73 through 82, and the roadways and Common Elements as depicted and shown on the map or plat attached hereto and entitled Revised Phase VII of The Meadows, A Planned Community, dated April 23, 2012, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument, which said plat is made a part hereof by reference as **Exhibit B**, and is recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 133A ("Phase VII Plat").

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**III. FUTURE DEVELOPMENT AND USE LIMITATIONS.**

Phase VII constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phases I, II, III, IV, V, VI and VII.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phase VII in the same manner as were reserved to Declarant in the Declaration with regard to Phases I, II, III, IV, V, VI and VII.

**All Units and Common Elements in Phase VII are restricted exclusively to use for single family ATTACHED dwellings, subject to all, and the same, covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phases 1 and 4.**

The current table of acreage and Units dedicated is set forth on **Exhibit C**.

**IV. ALLOCATIONS IN PHASE VI:**

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on **Exhibit D**.

There are no *express* Limited Common Elements in Phase VII, however, the **Exhibit D** allocations shall apply to *implied* Limited Common Elements, if any exist by operation of law.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

**V. SPECIFIC PHASE VII EASEMENTS:**

In addition to those rights-of-way and easements excepted and reserved in the Declaration or by the Phase VII Plat, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **16' Drainage and Access Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified with a specified width on the Phase VII Plat. Said easements are in addition to all other easements reserved in the Declaration and affect all Units in Phase VII. Each of said easements is reserved to the width shown on the Phase VII Plat. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater

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Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and stormwater from Units and Common Elements throughout the Subdivision in accordance with the stormwater management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VI without the consent of the Association.

(2) **Drainage Easement:** A right-of-way or easement along the front of all Phase VII Units which is non-exclusive and reserved to the same parties for the same drainage related purposes as set forth above. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VII without the consent of the Association.

(3) **Access Easement:** A non-exclusive right-of-way or easement is reserved over and across Units 73 through 82 extending, all as shown on the plat for access to and between the Eagle Drive and the Drainage and Access Easement and Drainage Easement. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VII without the consent of the Association.

**(4) NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE VII.**

(5) All other easements reserved in the Declaration or depicted on the plat are dedicated and reserved in like fashion as if Phase VII was expressly made subject thereto.

#### **VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 100% of all Units in Phase VII of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

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**VII. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**VIII. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**IX. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**X. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**XI. GOLF COURSE PROVISIONS:**

All covenants, conditions, limitations, restrictions, requirements, agreements, duties, rights, privileges and other provisions of the Declaration relating to the golf course, specifically including those related to assumption of risk with regard to ownership and occupancy of land in proximity to a public golf course, are incorporated herein by reference and applicable to Phase VI and all Units and Common Elements therein.

VR 1468 PAGE 568

Witness this 31<sup>st</sup> day of October, 2012:

GRANTOR,

Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company, acting by through its duly authorized Attorney-in-Fact, Peter A. Hayes,

Peter A. Hayes  
Peter A. Hayes

ITS: Attorney-in-Fact by Limited Power of Attorney  
recorded in POA Book 26 at Page No. 602.

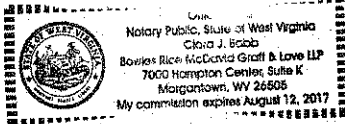
STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument, bearing date of the 31<sup>st</sup> day of October, 2012, was acknowledged before me this 31<sup>st</sup> day of October, 2012, by Peter A. Hayes, the duly authorized Attorney-in-Fact for Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company, for and on behalf of said limited liability company by exercise of authority duly given.

My commission expires 8-12-2017

Clara J. Babb  
NOTARY PUBLIC



This instrument prepared by Steven M. Prunty  
Bowles Rice LLP  
7000 Hampton Center  
Morgantown, WV 26505

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## EXHIBIT C- Dedicated Acreages

Total acreage of parent tracts	173.6714
Total acreage dedicated as Phase I	4.854*
Total acreage dedicated as Phase II	9.843
Total acreage dedicated as Phase III	3.7611
Total acreage dedicated as Phase IV	2.484
Total acreage dedicated as Phase V	7.023
Total acreage dedicated as Phase VI	0.447
Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units	145.6159
Total acreage of Phase I	4.854*
Number of Units in Phase I	38
Total acreage of all Units in Phase I	3.104
Total acreage of Common Elements A, B & C in Phase I	1.75
Total acreage of Limited Common Elements in Phase I	0

(\* =excluding Common Element D which is an easement)

Total acreage of Phase II	9.843
Number of Units in Phase II	30
Total acreage of all Units in Phase II	7.767
Total acreage of Common Elements E, F, G & H in Phase II	2.071
Total acreage of Limited Common Elements in Phase II	0
Total acreage of Phase III	9.943
Number of Units in Phase III	12
Total acreage of all Units in Phase III	2.903
Total acreage of Common Elements E, F, G & H in Phase III	0.858
Total acreage of Limited Common Elements in Phase III	0
Total acreage of Phase IV	2.484
Number of Units in Phase IV	18
Total acreage of all Units in Phase IV	1.016
Total acreage of Common Elements L through M in Phase IV	1.469
Total acreage of Limited Common Elements in Phase IV	0
Total acreage of Phase V	7.023
Number of Units in Phase V	16
Total acreage of all Units in Phase V	4.263
Total acreage of Common Elements N through Q in Phase V	1.891

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Total acreage of Limited Common Elements in Phase V	0
Total acreage of Phase VI	0.447
Number of Units in Phase VI	9
Total acreage of all Units in Phase VI	0.447
Total acreage of Common Elements in Phase VI	0.00**
Total acreage of Limited Common Elements in Phase VI	0
Total acreage of Phase VII	0.752
Number of Units in Phase VII	10
Total acreage of all Units in Phase VII	0.752
Total acreage of Common Elements in Phase VII	0.00**
Total acreage of Limited Common Elements in Phase VII	0

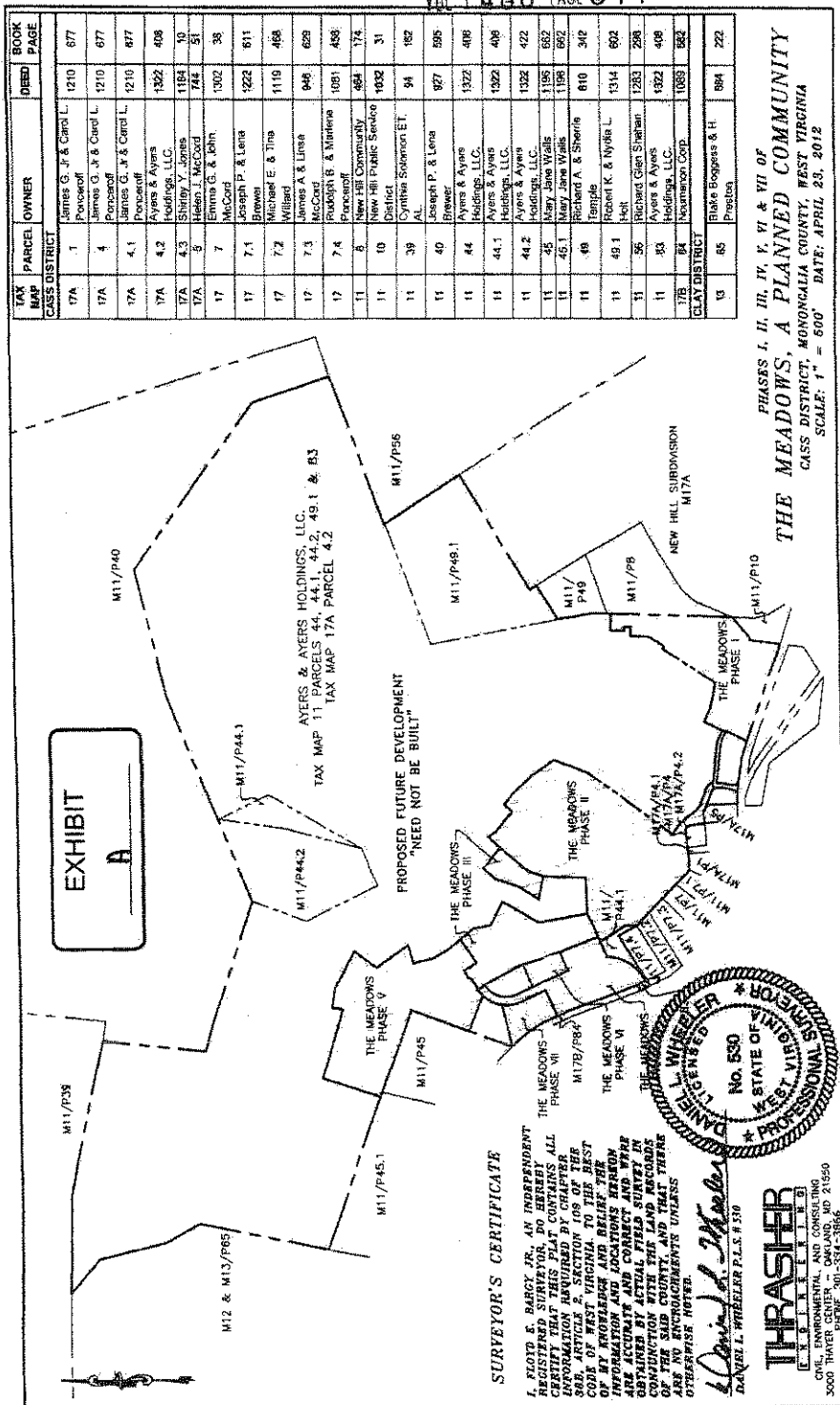
## EXHIBIT D-Allocated Interests

PHASE	UNITS	Each Unit's Allocated Interest in Common Expenses	Each Unit's Allocated Interest in Phase I Limited Common Expenses	Each Unit's Allocated Interest in Phase II Limited Common Expenses	Each Unit's Allocated Interest in Phase III Limited Common Expenses	Each Unit's Allocated Interest in Phase IV Limited Common Expenses	Each Unit's Allocated Interest in Phase V Limited Common Expenses	Each Unit's Allocated Interest in Phase VI Limited Common Expenses	Each Unit's Allocated Interest in Phase VI Limited Common Expenses*
PHASE	38	1/133	1/38	0	0	0	0	0	0
PHASE II	30	1/133	0	1/30	0	0	0	0	0
PHASE III	12	1/133	0	0	1/12	0	0	0	0
PHASE IV	18	1/133	0	0	0	1/18	0	0	0
PHASE V	16	1/133	0	0	0	0	1/16	0	0
PHASE VI	9	1/133	0	0	0	0	0	1/9	0
PHASE VII	10	1/133	0	0	0	0	0	0	1/10
Total	123**								

\*= If any. \*\*=Subject to change in the event additional Units are dedicated or in the event Units are either withdrawn or consolidated.

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JEFFREY L. ARNETT  
711 GREENBAG RD  
MORGANTOWN, WV 26508-1589

Carve L. Blaney  
MONONGALIA County 11:02:16 AM  
Instrument No 526247  
Date Recorded 11/19/2013  
Document Type COV  
Pages Recorded 10  
Recording Fee \$10.00  
Additional \$7.00

**SEVENTH AMENDMENT TO  
DECLARATION OF COMMON INTEREST COMMUNITY  
FOR  
THE MEADOWS  
a residential Planned Community in  
Monongalia County, West Virginia**

1488-364

THIS SEVENTH AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 18th day of September, 2013, by **AYERS AND AYERS HOLDINGS, L.L.C.**, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

**WHEREAS**, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714, Second Amendment thereto recorded in Deed Book No. 1405 at Page No. 718, Third Amendment thereto recorded in Deed Book No. 1441 at Page No. 264, and Fourth Amendment thereto recorded in Deed Book No. 1445 at Page No. 288, and Fifth Amendment thereto recorded in Deed Book No. 1451, at Page No. 723, Sixth Amendment thereto recorded in Deed Book 1468 at Page 563, together with this document all amendments thereto including this instrument, "Declaration"; and

**WHEREAS**, Phase I of the Meadows is depicted and shown on those certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 35A and 73B ("Phase I Plats"); and

**WHEREAS**, Phase II of the Meadows is depicted and shown on that certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 46A, and 74A ("Phase II Plats"); and

**WHEREAS**, Phase III of the Meadows is depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 74B ("Phase III Plat"); and

**WHEREAS**, Phase IV of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 75A, but said map or plat was rescinded and replaced in its entirety by that certain revised map or plat recorded Map Cabinet No. 5, Envelope 108B; and

**WHEREAS**, Phase V of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 115A; and

**WHEREAS**, Phase VI of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 120B; and

**WHEREAS**, Phase VII of the Meadows was depicted and shown on that certain map or plat of survey

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recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 133A; and

**WHEREAS**, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

**WHEREAS**, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the original Declaration; and

**WHEREAS**, Declarant desires to dedicate Phase VIII of the Subdivision containing five (5) Units, numbered 126 through 130, and certain Common Elements, as depicted, set forth and shown on that certain Map or Plat entitled Phase VII of The Meadows, A Planned Community, dated August 25, 2013 prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet 5, Envelope No. 145-B; and

**WHEREAS**, as a result of this dedication of Phase VIII, the Subdivision now contains 138 Units (39 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, 18 Units in Phase IV, 16 Units in Phase V, 9 Units in Phase VI, 10 Units in Phase VII and 5 Units in Phase VIII) leaving 662 Units which Declarant may elect to dedicate hereafter in future Phases.

**I. PHASE V PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III, IV, V, VI and VII of the Subdivision are shown on that certain drawing entitled Phases I, II, III, IV, V, VI and VII of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated August 25, 2013, and which is attached hereto as **Exhibit A**. All Units in all Phases of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane, Watson Drive, and Eagle Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision. Common Elements A through Q as depicted and shown on the Plats are dedicated as Common Elements of the Association.

**II. SUBMISSION OF PHASE V TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase VII of The Meadows together with all roadways, improvements and other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Community Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase VII of the Subdivision are Units 126 through 130, and the roadways and Common Elements as depicted and shown on the map or plat attached hereto and entitled Phase VIII of The Meadows, A Planned Community, dated August 25, 2013, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument, which said plat is made a part hereof by reference as **Exhibit B**, and is recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 145-B ("Phase VIII Plat").

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**III. FUTURE DEVELOPMENT AND USE LIMITATIONS.**

Phase VIII constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to this Declaration except for Phases I, II, III, IV, V, VI, VII and VIII.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phase VIII in the same manner as were reserved to Declarant in the Declaration with regard to Phases I, II, III, IV, V, VI, VII and VIII.

All Units and Common Elements in Phase VIII are restricted exclusively to use for single family ATTACHED dwellings, subject to all, and the same, covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in Phases I and 7 and in particular those Phases designated for attached dwellings to the extent that substantive limitations applicable to detached dwelling Units differ.

The current table of acreage and Units dedicated is set forth on Exhibit C.

**IV. ALLOCATIONS IN PHASE VIII:**

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on Exhibit D.

There are no express Limited Common Elements in Phase VIII, however, the Exhibit D allocations shall apply to implied Limited Common Elements, if any exist by operation of law.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

**V. SPECIFIC PHASE VIII EASEMENTS:**

In addition to those rights-of-way and easements excepted and reserved in the Declaration or by the Phase VIII Plat, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

- (1) **16' Drainage and Access Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified with a specified width on the Phase VIII Plat. Said easements are in addition to all other easements reserved in the Declaration and affect all Units in Phase VII. Each of said easements is reserved to the width shown on the Phase VIII Plat. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring

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of lines, mains, drain ways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and storm water from Units and Common Elements throughout the Subdivision in accordance with the storm water management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VIII without the consent of the Association.

All purchasers and Unit Owners are notified that this easement and the improvements therein were designed by Thrasher Engineering to accommodate storm water and surface water. During periods of significant precipitation or soil saturation, water may stand in this easement. The easement may at times be a containment facility for the purpose of allowing controlled dissipation of water over time. Final surface water conditions will not be established or addressable until completion or substantial completion of all dwellings in all Phases.

(2) **Drainage Easement:** A right-of-way or easement along the front of all Phase VIII Units which is non-exclusive and reserved to the same parties for the same drainage related purposes as set forth above. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VIII without the consent of the Association.

(3) **Access Easement:** A non-exclusive right-of-way or easement is reserved over and across Units 126 through 130 extending, all as shown on the plat for access to and between the Eagle Drive and the Drainage and Access Easement and Drainage Easement. This easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase VIII without the consent of the Association.

(4) **NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE VIII.**

(5) All other easements reserved in the Declaration or depicted on the plat are dedicated and reserved in like fashion as if Phase VII was expressly made subject thereto.

**VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

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This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 100% of all Units in Phase VIII of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

**VII. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**VIII. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**IX. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**X. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**XI. GOLF COURSE PROVISIONS:**

All covenants, conditions, limitations, restrictions, requirements, agreements, duties, rights, privileges and other provisions of the Declaration relating to the golf course, specifically including those related to assumption of risk with regard to ownership and occupancy of land in proximity to a public golf course, are incorporated herein by reference and applicable to Phase VIII and all Units and Common Elements therein.

Witness this 18 day of September 2013:

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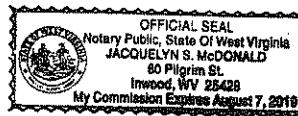
## GRANTOR/DECLARANT,

Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company,

ITS:

MemberSTATE OF WEST VIRGINIA,  
COUNTY OF Berkeley, TO-WIT:

The foregoing instrument, bearing date of the 18th day of September, 2013, was acknowledged before me this 18<sup>th</sup> day of September, 2013, by Roger Ayers the Member for Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company, for and on behalf of said limited liability company by exercise of authority duly given.

My commission expires August 7, 2019Jacquelyn S. McDonald  
NOTARY PUBLIC

This instrument prepared by Steven M. Prunty  
Bowles Rice, LLP  
7000 Hampton Center, Suite K  
Morgantown, WV 26505

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## EXHIBIT C- Dedicated Acreages

Total acreage of parent tracts	173.6714
Total acreage dedicated as Phase I	4.854*
Total acreage dedicated as Phase II	9.843
Total acreage dedicated as Phase III	3.7611
Total acreage dedicated as Phase IV	2.484
Total acreage dedicated as Phase V	7.023
Total acreage dedicated as Phase VI	0.447
Total acreage dedicated as Phase VII	0.752
Total acreage dedicated as Phase VIII	0.297
Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units	144.110
Total acreage of Phase I	4.854*
Number of Units in Phase I	38
Total acreage of all Units in Phase I	3,104
Total acreage of Common Elements A, B & C in Phase I	1.75
Total acreage of Limited Common Elements in Phase I	0

(\* =excluding Common Element D which is an easement)

Total acreage of Phase II	9.843
Number of Units in Phase II	30
Total acreage of all Units in Phase II	7,767
Total acreage of Common Elements E, F, G & H in Phase II	2.071
Total acreage of Limited Common Elements in Phase II	0
Total acreage of Phase III	9.943
Number of Units in Phase III	12
Total acreage of all Units in Phase III	2,903
Total acreage of Common Elements E, F, G & H in Phase III	0.858
Total acreage of Limited Common Elements in Phase III	0
Total acreage of Phase IV	2.484
Number of Units in Phase IV	18
Total acreage of all Units in Phase IV	1,016
Total acreage of Common Elements L through M in Phase IV	1.469
Total acreage of Limited Common Elements in Phase IV	0
Total acreage of Phase V	7.023
Number of Units in Phase V	16

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Total acreage of all Units in Phase V	4.263
Total acreage of Common Elements N through Q in Phase V	1.891
Total acreage of Limited Common Elements in Phase V	0
Total acreage of Phase VI	0.447
Number of Units in Phase VI	9
Total acreage of all Units in Phase VI	0.447
Total acreage of Common Elements in Phase VI	0.00**
Total acreage of Limited Common Elements in Phase VI	0
Total acreage of Phase VII	0.752
Number of Units in Phase VII	10
Total acreage of all Units in Phase VII	0.752
Total acreage of Common Elements in Phase VII	0.00**
Total acreage of Limited Common Elements in Phase VII	0
Total acreage of Phase VIII	0.297
Number of Units in Phase VIII	5
Total acreage of all Units in Phase VIII	0.297
Total acreage of Common Elements in Phase VIII	0.00**
Total acreage of Limited Common Elements in Phase VIII	0

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## EXHIBIT D-Allocated Interests

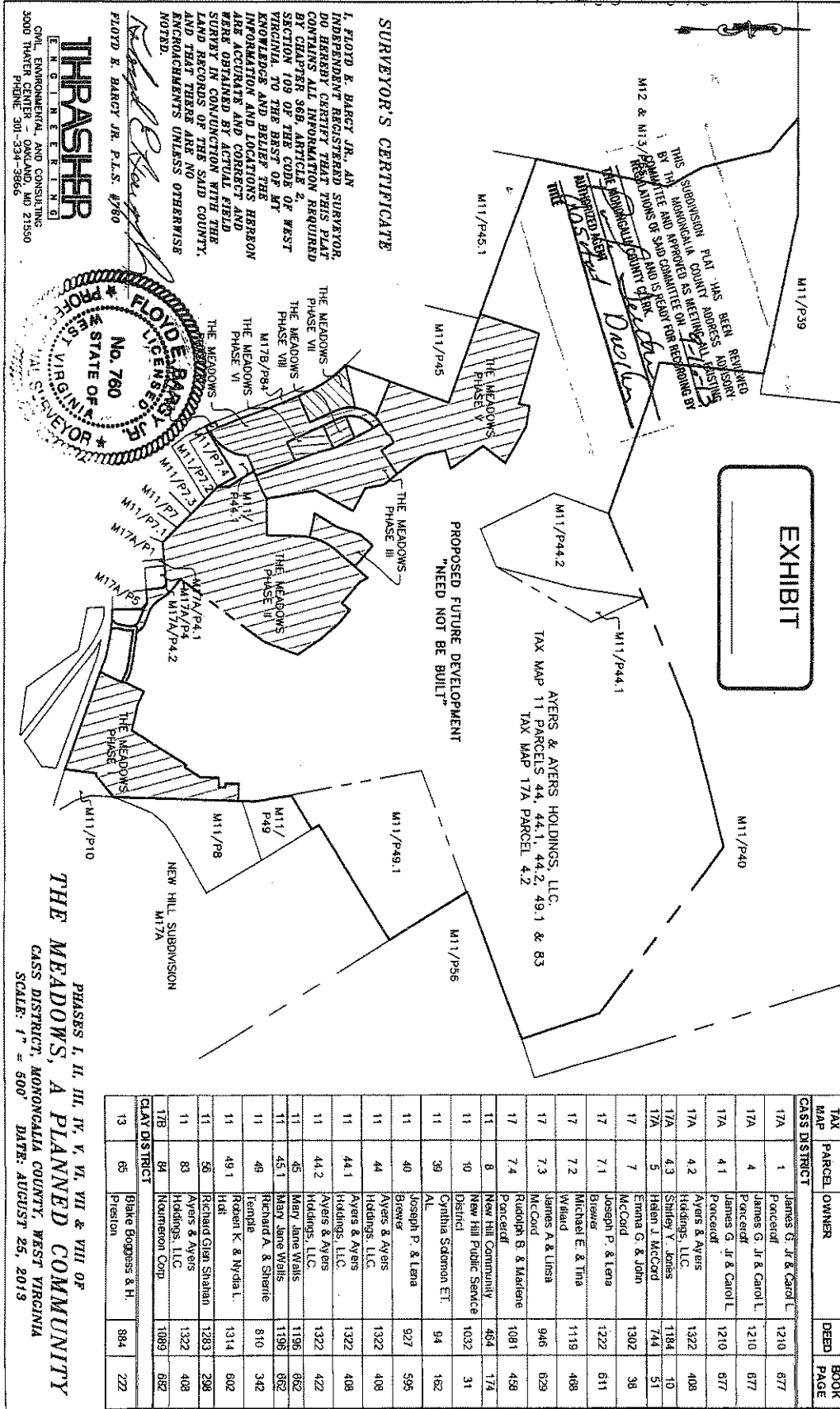
Phase		Each Unit's Allocated Interest								
		Common Expenses	Limited Common Expenses, if any*							
	UNITS	All Phases	Phase I	Phase II	Phase III	Phase IV	Phase V	Phase VI	Phase VII	Phase VIII
I	38	1/138	1/38	0	0	0	0	0	0	0
II	30	1/138	0	1/30	0	0	0	0	0	0
III	12	1/138	0	0	1/12	0	0	0	0	0
IV	18	1/138	0	0	0	1/18	0	0	0	0
V	16	1/138	0	0	0	0	1/16	0	0	0
VI	9	1/138	0	0	0	0	0	1/9	0	0
VII	10	1/138	0	0	0	0	0	0	1/10	0
VIII	5	1/138	0	0	0	0	0	0	0	1/5
Total	138**									

\*= If any, acknowledges the potential for implied Limited Common Elements which are not expressly dedicated but may arise by operation of law.

\*\*=Subject to change in the event additional Units are dedicated or in the event Units are either withdrawn or consolidated.

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VOL 1490 REC 530

BOWLES RICE LLP  
7000 HAMPTON CENTER STE K  
MORGANTOWN, WV 26505-1720

Carve L. Blaney  
MONONGALIA County 01:48:00 PM  
Instrument No 530381  
Date Recorded 01/02/2014  
Document Type COV  
Pages Recorded 11  
Recording Fee \$11.00  
Additional \$7.00

**EIGHTH AMENDMENT TO**  
**DECLARATION OF COMMON INTEREST COMMUNITY**  
**FOR**  
**THE MEADOWS**  
**a residential Planned Community in**  
**Monongalia County, West Virginia**

1490-530

THIS EIGHTH AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR THE MEADOWS, effective the 18th day of December, 2013, by AYERS AND AYERS HOLDINGS, L.L.C., a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

WHEREAS, The Meadows is a Common Interest Community ("Subdivision") situate in the Cass District of Monongalia County, West Virginia, which was created by dedication by operation of the recordation of the Declaration of Common Interest Community for the Meadows, dated March 19, 2008, and which is recorded in the Office of said the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1361 at Page No. 713, and First Amendment thereto recorded in Deed Book No. 1371 at Page No. 714, Second Amendment thereto recorded in Deed Book No. 1405 at Page No. 718, Third Amendment thereto recorded in Deed Book No. 1441 at Page No. 264, and Fourth Amendment thereto recorded in Deed Book No. 1445 at Page No. 288, and Fifth Amendment thereto recorded in Deed Book No. 1451, at Page No. 723, Sixth Amendment thereto recorded in Deed Book 1468 at Page 563, Seventh Amendment thereto recorded in Deed Book No. 1488 at Page No. 364, together with this document all amendments thereto including this instrument, "Declaration"; and

WHEREAS, Phase I of the Meadows is depicted and shown on those certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 35A and 73B ("Phase I Plats"); and

WHEREAS, Phase II of the Meadows is depicted and shown on that certain maps or plats of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope Nos. 46A, and 74A ("Phase II Plats"); and

WHEREAS, Phase III of the Meadows is depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 74B ("Phase III Plat"); and

WHEREAS, Phase IV of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 75A, but said map or plat was rescinded and replaced in its entirety by that certain revised map or plat recorded Map Cabinet No. 5, Envelope 108B; and

WHEREAS, Phase V of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 115A; and

WHEREAS, Phase VI of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 120B; and

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WHEREAS, Phase VII of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 133A; and

WHEREAS, Phase VIII of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 145-B; and

WHEREAS, Phase IX of the Meadows was depicted and shown on that certain map or plat of survey recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 151A; and

WHEREAS, Declarant reserved in the Declaration, all Development Rights and Special Declarant Rights (as defined in the West Virginia Uniform Common Interest Ownership Act), including the rights to add land to the Subdivision and to create up to 800 total Units, and Common Elements and Limited Common Elements in the Subdivision; and

WHEREAS, Declarant reserved the right to exercise such rights for a period of 20 years from the date of the original Declaration; and

WHEREAS, Declarant desires to dedicate Phase IX of the Subdivision containing thirteen (13) Units, numbered 37 through 43, inclusive, 48, and 55 through 59, inclusive, and certain Common Elements, as depicted, set forth and shown on that certain Map or Plat entitled Phase IX of The Meadows, A Planned Community, dated November 12, 2013 prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet 5, Envelope No. 151-A; and

WHEREAS, as a result of this dedication of Phase VIII, the Subdivision now contains 138 Units (39 Units in Phase I, 29 Units in Phase II, 12 Units in Phase III, 18 Units in Phase IV, 16 Units in Phase V, 9 Units in Phase VI, 10 Units in Phase VII and 5 Units in Phase VIII) leaving 662 Units which Declarant may elect to dedicate hereafter in future Phases.

#### **I. PHASE V PROXIMITY MAP:**

The location of, and proximity between, Phases I, II, III, IV, V, VI, VII, VIII and IX of the Subdivision are shown on that certain drawing entitled Phases I, II, III, IV, V, VI, VII, VIII and IX of The Meadows a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., which said plat is dated November 12, 2013, and which is attached hereto as **Exhibit A**. All Units in all Phases of the Subdivision are dedicated for single family detached dwellings subject to the covenants and restrictions set forth in the Declaration as modified and amended herein. The roadways known as Oakmont Court, Birdie Court, Meadow Ponds Lane, Watson Drive, and Eagle Drive are dedicated as Common Elements allocated to all Units in all Phases of the Subdivision. The Common Elements as depicted and shown on the Plats are dedicated as Common Elements of the Association.

#### **II. SUBMISSION OF PHASE V TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby dedicate Phase IX of The Meadows together with all roadways, improvements and

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other permanent fixtures now and later situated thereon and all rights and privileges pertaining thereto to the Planned Community Common Interest Community form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). The land, Units and Common Elements hereby dedicated as Phase VII of the Subdivision are Units 126 through 130, and the roadways and Common Elements as depicted and shown on the map or plat attached hereto and entitled Phase IX of The Meadows, A Planned Community, dated November 12, 2013, prepared by Floyd E. Bargy, Jr., P.L.S. # 760, of Thrasher Engineering, to be recorded immediately preceding the recordation of this instrument, which said plat is made a part hereof by reference as Exhibit B, and is recorded in the Office of said Clerk in Map Cabinet 5, Envelope No. 151-A ("Phase IX Plat").

### III. FUTURE DEVELOPMENT AND USE LIMITATIONS.

Phase IX constitutes only a portion of the Declarant's real estate and no portion of such retained real estate is dedicated to the CIC form of ownership or subjected to the Declaration except for Phases I, II, III, IV, V, VI, VII, VIII and IX.

Declarant reserves all rights, powers, authority, easements, rights-of-way, benefits, privileges, Development Rights and Special Declarant Rights with regard to Phase IX in the same manner as were reserved to Declarant in the Declaration with regard to Phases I, II, III, IV, V, VI, VII and VIII.

All Units and Common Elements in Phase IX are restricted exclusively to use for single family DETACHED DWELLINGS ONLY, subject to all, and the same, covenants, restrictions, rights, benefits, easements, rights-of-way, limitations and privileges as Units in existing Phases wherein DETACHED DWELLINGS ARE PERMITTED to the extent that substantive limitations applicable to DETACHED DWELLINGS differ from substantive limitations applicable to Attached Dwellings, which are not permitted in Phase IX. All covenants, restrictions, rights, easements, rights-of-way, limitations and privileges which apply to all Units in all Phases and do not specifically related to the variety of Dwelling and the permitted Unit Improvements which may be constructed shall apply to all Units in Phase IX.

The current table of acreage and Units dedicated is set forth on Exhibit C.

### IV. ALLOCATIONS IN PHASE IX:

Each Unit is apportioned a fractional equitable beneficial interest in the Common Elements in all Phases of the Subdivision and fractional liability for the costs of ownership, maintenance, upkeep and operation of such Common Elements by Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below. The Common Expense Liability and voting rights of all Units are hereby re-allocated as set forth on Exhibit D.

There are no *express* Limited Common Elements in Phase IX, however, the Exhibit D allocations shall apply to *implied* Limited Common Elements, if any exist by operation of law.

To the extent that voting rights, Common Expense Liability and Limited Common Expense Liability are allocated by this Amendment, the same may be re-allocated by subsequent Amendment creating additional Units in the Subdivision or withdrawing Units from the Subdivision or creating or withdrawing Common Elements or Limited Common Elements.

### V. SPECIFIC PHASE IX EASEMENTS:

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In addition to those rights-of-way and easements excepted and reserved in the Declaration or by the Phase IX Plat, Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way as follows:

(1) **15' Water and 20' Sewer Easements:** There is a 15' Utility Easement along all waterlines and a 20' utility easement along all sewer lines, as measured perpendicular to said "lines" as measured perpendicular thereto 7.5' on each side of the line with regard to water, and 10' on each side of the line with regard to sewer. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, pipes, and other reasonable means of transporting, collecting and discharging water and sewerage within the Subdivision; (b) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (c) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The easements are intended to permit the collection, transmission, transportation and distribution of water and sewerage to and from Units and Common Elements throughout the Subdivision. These easements are dedicated as Common Elements for Association and for the benefit of public utility providers and Declarant.

(2) **16' Drainage and Access Easement:** Rights-of-way or easements for surface water control and drainage control which are each identified with a specified width on the Phase IX Plat. Said easements are in addition to all other easements reserved in the Declaration and affect all Units in Phase IX. Each of said easements is reserved to the width shown on the Phase IX Plat. Such reserved easements are for the purpose of: (a) installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of lines, mains, drain ways, ditches, pipes, culverts and other reasonable means of transporting, collecting and discharging surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; (b) cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance; (c) inspecting, maintaining, repairing and replacing the foregoing and other infrastructure and other improvements to the Subdivision; and (d) exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein. The drainage easements are intended to permit the collection, transmission, transportation and distribution of surface water and storm water from Units and Common Elements throughout the Subdivision in accordance with the storm water management plans of the Declarant and Association, as the same may be amended from time to time. No Unit Owner may modify the drainage systems or reduce the capacity or effectiveness of any ditch, culvert, catch-basin or swale constructed in such easements without the prior written consent of the Association or Declarant. The easements is sixteen (16) feet in total width (as measured eight (8) feet along each side of all drainage improvements as shown on the plat) and otherwise sixteen (16) feet in width. This access easement is a Common Element for Association use but shall not be enjoyed by the Owners of Units outside of Phase IX without the consent of the Association.

All purchasers and Unit Owners are notified that this easement and the improvements therein were designed by Thrasher Engineering to accommodate storm water and surface water. During periods of

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significant precipitation or soil saturation, water may stand in this easement. The easement may at times be a containment facility for the purpose of allowing controlled dissipation of water over time. Final surface water conditions will not be established or addressable until completion or substantial completion of all dwellings in all Phases.

(3) NOTWITHSTANDING THE FOREGOING, DECLARANT AND ASSOCIATION ARE EACH VESTED WITH AUTHORITY TO GRANT REASONABLE VARIANCES FROM SAID EASEMENTS AS NECESSARY TO PERMIT THE CONSTRUCTION OF DWELLINGS ON ALL UNITS IN PHASE IX.

(5) All other easements reserved in the Declaration or depicted on the plat are dedicated and reserved in like fashion as if Phase IX was expressly made subject thereto.

**VI. MODIFICATION AND AMENDMENT TO ORIGINAL DECLARATION:**

This Amendment is made by exercise of Declarant's reserved rights both in its capacity as statutory Declarant and as Declarant under the Declaration, and also as Owner of 100% of all Units in Phase IX of the Subdivision. The original Declaration is amended so far, and so far only, as expressly set forth herein. All provisions of the original Declaration shall remain in full force and effect except to the extent modified herein.

**VII. HEADINGS:** The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**VIII. DESCRIPTION INCLUSIONS BY REFERENCE:** The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**IX. SUBMISSION TO LAW:** The Declarant, as the legal title holder in fee simple of the parcels added to the Subdivision hereby or subdivided hereby, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**X. STATUTE OF LIMITATIONS:**

All Units are offered for sale by Declarant conditioned that all Purchasers of Units from Declarant shall execute a separate instrument attached to the Public Offering Statement prepared by Declarant and marked as "Agreement and Waiver." This Agreement and Waiver, between Developer and Purchasers, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for

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more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver. Any waiver by a Unit Purchaser by separate "Agreement and Waiver" or similar provisions in a deed, shall be binding on all subsequent owners of the Unit.

**XI. GOLF COURSE PROVISIONS:**

All covenants, conditions, limitations, restrictions, requirements, agreements, duties, rights, privileges and other provisions of the Declaration relating to the golf course, specifically including those related to assumption of risk with regard to ownership and occupancy of land in proximity to a public golf course, are incorporated herein by reference and applicable to Phase IX and all Units and Common Elements therein.

Witness this 19<sup>th</sup> day of December, 2013:

**GRANTOR/DECLARANT,**

Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company,

ITS: *Roger Ayers*  
*member*

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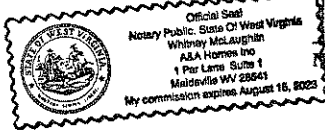
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STATE OF WEST VIRGINIA,  
COUNTY OF Monongalia, TO-WIT:

The foregoing instrument, bearing date of the 18th day of December, 2013, was acknowledged before me this 19 day of December, 2013, by Roger Ayers the member for Ayers and Ayers Holdings, L.L.C., a West Virginia limited liability company, for and on behalf of said limited liability company by exercise of authority duly given.

My commission expires

Aug 15, 2023

NOTARY PUBLIC

Ret  
This instrument prepared by Steven M. Prunty  
Bowles Rice, LLP  
7000 Hampton Center, Suite K  
Morgantown, WV 26505

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## EXHIBIT C- Dedicated Acreages

Total acreage of parent tracts	173.6714
Total acreage dedicated as Phase I	4.854*
Total acreage dedicated as Phase II	9.843
Total acreage dedicated as Phase III	3.7611
Total acreage dedicated as Phase IV	2.484
Total acreage dedicated as Phase V	7.023
Total acreage dedicated as Phase VI	0.447
Total acreage dedicated as Phase VII	0.752
Total acreage dedicated as Phase VIII	0.297
Total acreage dedicated as Phase IX	3.376
Remaining acreage of parent tracts not dedicated as The Meadows Subdivision but which may be dedicated as future Units	140.735
Total acreage of Phase I	4.854*
Number of Units in Phase I	38
Total acreage of all Units in Phase I	3.104
Total acreage of Common Elements A, B & C in Phase I	1.75
Total acreage of Limited Common Elements in Phase I	0

(\* =excluding Common Element D which is an easement)

Total acreage of Phase II	9.843
Number of Units in Phase II	30
Total acreage of all Units in Phase II	7.767
Total acreage of Common Elements E, F, G & H in Phase II	2.071
Total acreage of Limited Common Elements in Phase II	0
Total acreage of Phase III	9.943
Number of Units in Phase III	12
Total acreage of all Units in Phase III	2.903
Total acreage of Common Elements E, F, G & H in Phase III	0.858
Total acreage of Limited Common Elements in Phase III	0
Total acreage of Phase IV	2.484
Number of Units in Phase IV	18
Total acreage of all Units in Phase IV	1.016
Total acreage of Common Elements L through M in Phase IV	1.469
Total acreage of Limited Common Elements in Phase IV	0
Total acreage of Phase V	7.023

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Number of Units in Phase V	16
Total acreage of all Units in Phase V	4.263
Total acreage of Common Elements N through Q in Phase V	1.891
Total acreage of Limited Common Elements in Phase V	0
Total acreage of Phase VI	0.447
Number of Units in Phase VI	9
Total acreage of all Units in Phase VI	0.447
Total acreage of Common Elements in Phase VI	0.00**
Total acreage of Limited Common Elements in Phase VI	0
Total acreage of Phase VII	0.752
Number of Units in Phase VII	10
Total acreage of all Units in Phase VII	0.752
Total acreage of Common Elements in Phase VII	0.00**
Total acreage of Limited Common Elements in Phase VII	0
Total acreage of Phase VIII	0.297
Number of Units in Phase VIII	5
Total acreage of all Units in Phase VIII	0.297
Total acreage of Common Elements in Phase VIII	0.00**
Total acreage of Limited Common Elements in Phase VIII	0
Total acreage of Phase IX	3.376
Number of Units in Phase IX	13
Total acreage of all Units in Phase IX	2.961
Total acreage of Common Elements in Phase IX	0.415**
Total acreage of Limited Common Elements in Phase IX	0

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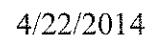
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## EXHIBIT D-Allocated Interests

Phase	Each Unit's Allocated Interest										
	UNITS	Common Expenses	Limited Common Expenses, if any*								
		All Phases	Phase I	Phase I	Phase III	Phase IV	Phase V	Phase VI	Phase VI	Phase VIII	Phase IX
I	38	1/151	1/38	0	0	0	0	0	0	0	
II	30	1/151	0	1/30	0	0	0	0	0	0	
III	12	1/151	0	0	1/12	0	0	0	0	0	
IV	18	1/151	0	0	0	1/18	0	0	0	0	
V	16	1/151	0	0	0	0	1/16	0	0	0	
VI	9	1/151	0	0	0	0	0	1/9	0	0	
VII	10	1/151	0	0	0	0	0	0	1/10	0	
VIII	5	1/151	0	0	0	0	0	0	0	1/5	
IX	13	1/151	0	0	0	0	0	0	0	0	1/13
Total	151**										

\*= If any, acknowledges the potential for implied Limited Common Elements which are not expressly dedicated but may arise by operation of law.

\*\*=Subject to change in the event additional Units are dedicated or in the event Units are either withdrawn or consolidated.





EXHIBIT



M11/P45

M11/P49.1

# SURVEYOR'S CERTIFICATE

A map of the Meadows Phase II area. The area is labeled 'THE MEADOWS PHASE II' and is shaded with diagonal lines. Three specific locations are marked with arrows and labels: 'M11/P83' at the top left, 'M11/P44.1' in the center, and 'M17B/P84' at the top right. A road or boundary line runs along the top edge of the area.

P44.1

M11/P7.  
M17A/P1

M17A/F

THE MEADOWS  
PHASE 1

M17A

TAX MAP	PARCEL	OWNER	DEED	BOOK PAGE
CASS DISTRICT				
17A	1	James G. Jr & Carol L. Porceroff	1210	677
17A	4	James G. Jr & Carol L. Porceroff	1210	677
17A	4.1	James G. Jr & Carol L. Porceroff	1210	677
17A	4.2	Ayers & Ayers Holdings, LLC	1322	408
17A	4.3	Shirley Y. Jones	1184	10
17A	5	Helen J. McCord	744	51
17	7	Emma G. & John McCord	1302	38
17	7.1	Joseph P. & Lena Brewer	1222	611
17	7.2	Michael E. & Tina Willard	1119	468
17	7.3	James A & Lisa McCord	946	629
17	7.4	Rudolph B. & Marlene Porceroff	1081	458
11	8	New Hill Community	464	174
11	10	New Hill Public Service District	1032	31
11	39	Cynthia Solomon E.T. AL.	94	162
11	40	Joseph P. & Lena Brewer	927	595
11	44	Ayers & Ayers Holdings, LLC	1322	408
11	44.1	Ayers & Ayers Holdings, LLC	1322	408
11	44.1	Rudolph B. & Marlene Porceroff (OUT PARCEL)	1366	482
11	44.2	Ayers & Ayers Holdings, LLC	1322	422
11	45	Mary Jane Walls	1196	662
11	45.1	Mary Jane Walls	1196	662
11	49	Richard A. & Sherrie Temple	810	342
11	49.1	Robert K. & Nydia L. Holt	1314	602
11	56	Richard Glen Shahan	1283	296
11	83	Ayers & Ayers Holdings, LLC	1322	408
17B	84	Noumnon Corp.	1089	682
CLAY DISTRICT				
12 & 13	65	Blake Boggett & H. Preston	884	222

# THPAA/STHER

CIVIL, ENVIRONMENTAL, AND CONSULTING  
3000 THAYER CENTER - OAKLAND, MD 21550  
PHONE 301-334-3866

# THE MEADOWS, A PLANNED COMMUNITY

SCALE: 1" = 500'      DATE: JULY 29, 2008

**DECLARANT SCHEDULE FOR COMPLETION OF IMPROVEMENTS**

**DISCLAIMER:** The following is the list of improvements Declarant intends to complete in Phases I and II. The intended completion date is offered merely and conditionally as a statement of Declarant's intention. The intended completion date may vary due to various unforeseen circumstances including, but not limited to, governmental action, weather conditions, unavailability of labor and materials, unknown and undiscovered geological and other conditions, and provision of services by public utility providers and contractors. The intended completion date further indicates that date by which Declarant intends substantial completion of the improvement. To the extent that Declarant has no obligation to dedicate Phase II or any subsequent Phase or Phases of the Subdivision, there are no assurances or guarantees that such Phases nor any improvement therein will be created, completed or dedicated and the same "Need Not Be Built".

Phase	Improvement	Note	Intended Completion Date
<b>Phase I</b>	Entryway and Par Lane graded	Widening of existing road, grading, and distribution of gravel	Done
<b>Phase I</b>	Entryway and Par Lane Base Course, Type II Aggregate	Initial Paving	Done
<b>Phase I</b>	Entryway and Par Lane Top Coat/Wearing Course, Type II Aggregate Asphalt	Final Paving Note: Declarant has reserved the right to pay the Association the cost of final paving so that Association may complete same when it decides.	Within 10 years after sale of Declarant's final Unit.
<b>Phase I</b>	Electrical service to Units		Done
<b>Phase I</b>	Cable Television service to Units	Developer installation completed. Public Utility Activation Pending	Done
<b>Phase I</b>	Natural Gas service to Units	WILL NOT BE PROVIDED	WILL NOT BE PROVIDED

<b>Phase I</b>	Public Water service to Units	All distribution lines within the Subdivision are installed to all Units. Meters and Taps to be procured by Unit purchaser when dwelling constructed.	Done
<b>Phase I</b>	Public Sewage service to Units	All distribution lines within the Subdivision are installed to all Units. Meters and Taps to be procured by Unit purchaser when dwelling constructed.	Done
<b>Phase I</b>	Telephone service to Units	Developer installation completed. Public Utility Activation Pending	Done
<b>Phase I</b>	Drainage systems		December, 2008
<b>Phase II</b>	Final landscaping and appurtenances		December, 2008
<b>Phase II</b>	Meadow Ponds Lane, Oakmont Court, and Birdie Court graded	Widening of existing road, grading, and distribution of gravel	Done
<b>Phase II</b>	Meadow Ponds Lane, Oakmont Court, and Birdie Court Base Course, Type II Aggregate	Initial Paving	December, 2008
<b>Phase II</b>	Entryway and Par Lane Top Coat/Wearing Course, Type II Aggregate Asphalt	Final Paving Note: Declarant has reserved the right to pay the Association the cost of final paving so that Association may complete same when it decides.	Within 10 years after sale of Declarant's final Unit.
<b>Phase II</b>	Electrical service to Units		Done
<b>Phase II</b>	Cable Television service to Units	Developer installation completed. Public Utility Activation Pending	December 2008

<b>Phase II</b>	Natural Gas service to Units	WILL NOT BE PROVIDED	WILL NOT BE PROVIDED
<b>Phase II</b>	Public Water service to Units	All distribution lines within the Subdivision are installed to all Units. Meters and Taps to be procured by Unit purchaser when dwelling constructed.	Done
<b>Phase II</b>	Public Sewage service to Units	All distribution lines within the Subdivision are installed to all Units. Meters and Taps to be procured by Unit purchaser when dwelling constructed.	Done
<b>Phase II</b>	Telephone service to Units	Developer installation completed. Public Utility Activation Pending	December 2008
<b>Phase II</b>	Drainage systems		December, 2008
<b>Phase II</b>	Final landscaping and appurtenances		December, 2008
<b>Phase III and all subsequent Phases, if dedicated</b>	Units, Common Elements, and Limited Common Elements, Units may be for detached dwellings or patio-homes.	Contingent and will depend on market conditions and Developer concerns including profitability of the Subdivision.	Contingent

**ARTICLES OF INCORPORATION**  
**OF**  
**THE MEADOWS PROPERTY OWNERS ASSOCIATION, INC.**  
**a West Virginia non-profit corporation.**

The undersigned, acting as incorporator of a corporation under W. Va. Code, Chapter 31E, Article 1, Section 202, as amended, adopts the following Articles of Incorporation for such corporation, filed in duplicate:

- (1) Name: In compliance with W. Va. Code Chapter 31E, Article 4, Section 401, the name of the corporation is: THE MEADOWS PROPERTY OWNERS ASSOCIATION, INC ("Corporation").
- (2) Non-Profit Purpose: The Corporation is nonprofit and that the Corporation may not have or issue shares of stock or make distributions.
- (3) Address of Corporation: The initial address of the principal office of said Corporation will be located at PO Box 1310 Inwood, WV 25428 1128 Grafton Road, Morgantown, WV 26508-9209.
- (4) Purpose: The Corporation has been established for the purpose of administering and promoting community welfare of The Meadows Subdivision, a residential common interest community located in the Clinton District of Monongalia County, West Virginia ("Subdivision").
- (5) Corporation Duties: The Corporation is charged with maintaining the collective interests of the owners of the majority of lots ("Units") in the Subdivision rather than the individual rights of any one or more Unit owners to the extent same are contrary to the community's interests. The responsibilities of the Corporation include, but are not limited to:
  - A. maintenance, upkeep and administration of the Common Elements and Limited Common Elements as defined by West Virginia Code Chapter 36B;
  - B. interpretation and enforcement of the Governing Documents, as defined in the Declaration of

Common Interest Community for The Meadows Subdivision ("Declaration");

- C. upholding the community standards within the Subdivision; and
- D. upon delegation or termination of Declarant's control of the Corporation, and/or the Corporation's Building Control Committee, administration of the Building Control Committee.
- E. maintenance and management of Corporation funds; and
- F. all other purposes for which Unit Owner Associations are formed.

(6) Membership: The Corporation is to have members and pursuant to W.Va. Code, Chapter 31E, Article 6, Section 601, membership shall be as follows:

- A. The Corporation has one class of members designated as Class A members;
- B. Every person or legal entity who is an owner of a full or fractional fee interest in any Unit in the Subdivision, by reason of ownership, automatically be a Member of the The Meadows Property Owners Association, Inc. and be subject to these Articles of Incorporation, the Declaration, and also the Rules and Regulations, Building Control Standards, and By-Laws of the Corporation. Ownership of a Unit is the sole qualification for membership in the Corporation. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation.
- C. Members shall be subject to the rules, regulations, covenants and restrictions of these Articles of Incorporation, and also the Declaration of Common Interest Community and the Articles of Incorporation of the Corporation, the By-Laws of the Corporation, and further subject to all rules and regulations promulgated or adopted by the Corporation in accordance with the Declaration. Ownership of a Unit is the sole qualification for membership in the Corporation. Regardless of the foregoing, there is excluded from membership any person or

entity having an interest in such a Unit merely as security for performance of any obligation.

Following a termination of the Subdivision, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder as provided by the West Virginia Uniform Common Interest Ownership Act.

- D. All members of the Corporation are entitled to vote on all Corporation business except at such times as membership privileges are suspended by the Corporation's Board of Directors.
- E. The Corporation's Board of Directors may suspend a member's membership privileges at any time that the member's financial obligations to the Corporation are delinquent or past due or at any time that member's Unit is in violation of the provisions of the Declaration. Provided, however, that the Corporation shall give all such delinquent members not less than ten (10) days advance written notice of such suspension of privileges.
- F. The Corporation may issue articles evidencing membership.
- G. Membership in said Corporation shall automatically lapse and terminate when any member shall cease to be an owner of any interest in a Unit in the Subdivision.

(7) Powers of the Corporation: The Corporation has all powers vested in West Virginia non-profit corporations pursuant to West Virginia Code Chapter 31E, and all powers vested in Common Interest Community Property Owner's Association pursuant to West Virginia Code 36B. The Corporation's powers include, but are not limited to, the following powers and authority to:

- A. Adopt and amend By-Laws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expense from Unit Owners;
- C. Hire and discharge managing agents and other employees, agents and independent contractors;

- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Subdivision;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- G. Cause additional improvements to be made as a part of the Common Elements;
- H. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the Subdivision may be conveyed or subjected to a security interest only pursuant to the provisions of the Declaration;
- I. Grant easements, leases, licenses and concessions through or over the Common Elements;
- J. Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;
- K. Cause to be placed or kept in effect liability insurance on Common Elements;
- L. Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Corporation;
- M. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration or statements of unpaid Assessments;
- N. Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
- O. Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent the Declaration expressly so provides;
- P. Exercise any other powers conferred by the Governing Documents executed and delivered by the Declarant;



- Q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Corporation;
- R. Exercise any other powers necessary and proper for the governance and operation of the Corporation, and;
- S. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.
- T. The Association also has a mandatory duty to maintain the Fitness Center Memberships and enforce all Golf Course Covenants as defined and set forth in the Declaration of Common Interest Community for the Subdivision.

- (8) The mailing address of the Corporation's initial registered office, if any, and the name of its initial registered agent at that office, if any;

The Meadows Property Owners Association, Inc.  
c/o Ayers & Ayers Holdings, LLC  
PO Box 1310 Inwood, WV 25428

- (9) The name and address of each incorporator.

Ayers & Ayers Holdings, LLC  
PO Box 1310 Inwood, WV 25428

- (10) The initial number of directors of the Corporation is three (3) and the initial directors of the Corporation are;

- (11) The Corporation shall indemnify any director, officer, or incorporator against expenses actually and reasonably incurred by him in connection with the defense of any claim, action, suit or proceeding against him by reason of being or having been such director, officer or incorporator, except in relation to matters

as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence of misconduct in the performance of duty, and to compensate such Director or officer for actual expenses incurred by him in carrying out his duties and obligations as an officer and/or Director.

- (12) None of the provisions of these Articles of Incorporation may be altered or amended in whole or in part in such a way as to bring them into conflict with the Declaration. With the foregoing exception, these Articles may be freely amended by unanimous action of the Board of Directors or by two-thirds majority vote of all members of the Corporation.

The undersigned, for the purpose of forming a Corporation under the laws of the State of West Virginia, does make and file this Articles of Incorporation, and has accordingly hereunto set his hand this \_\_\_\_ day of \_\_\_\_\_, 2007.

Ayers and Ayers Holdings, LLC,  
a West Virginia limited liability company, Incorporator

By: \_\_\_\_\_ Its: \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, hereby certify that \_\_\_\_\_, \_\_\_\_\_ of Ayers and Ayers Holdings, LLC, a West Virginia limited liability company, the Incorporator of The Meadows Property Owners Association, Inc., whose name is signed to the foregoing Articles of Incorporation, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 2007, this day personally appeared before me in my said County and acknowledged his signature to be the same, given in behalf of said incorporator as the official act thereof by exercise of authority duly given.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

My commission expires \_\_\_\_\_.

(NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

**AMENDMENT TO**  
**ARTICLES OF INCORPORATION**  
**OF**  
**THE MEADOWS PROPERTY OWNERS ASSOCIATION, INC.**  
**a West Virginia non-profit corporation.**

The undersigned, incorporator of The Meadows Property Owners Association, Inc., a West Virginia corporation, hereby adopts the following amendment to the Articles of Incorporation for such corporation, filed in duplicate:

- (3) Address of Corporation: The initial address of the principal office of said Corporation will be located at PO Box 1310 Inwood, WV 25428.

Witness this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Ayers and Ayers Holdings, LLC, LLC,  
a West Virginia limited liability company, Incorporator

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, hereby certify that \_\_\_\_\_, Managing Member of Ayers and Ayers Holdings, LLC, a West Virginia limited liability company, the Incorporator of The Meadows Property Owners Association, Inc., whose name is signed to the foregoing Amendment to Articles of Incorporation, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 2007, this day personally appeared before me in my said County and acknowledged his signature to be the same, given in behalf of said incorporator as the official act thereof by exercise of authority duly given.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

My commission expires \_\_\_\_\_.

(NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

**Known Liens and Encumbrances Affecting The Meadows Subdivision**

Note: The land dedicated as Phases I and II of the Subdivision is comprised of two tracts and various rights-of-way or easements which were conveyed to

The following is an itemized list of the known liens, rights-of-way, easements and encumbrances affecting, or which could affect, the Subdivision and are of public record at the execution of the Public Offering Statement.

Document	Grantee	Book
Deed of Trust	Centra Bank, Inc.	1568/681
Pipeline Right-of-Way	Carnegie Natural Gas Co. Assigned to Equitable Resources, Inc	1200/125
Electric Rights-of-Way	Monongahela Power Company	1108/682, 680/285, 775/82, 822/356, 842/68, 855/440.

Additional easements will probably be granted during development and subsequent to the preparation hereof. It should also be noted that the Grantor reserved certain non-exclusive easements in the Declaration and Declarant is granting easements for utilities as part of Development. All matters of mineral ownership are otherwise disclaimed, except that, to the extent Declarant is the owner of any minerals underlying the Subdivision, Declarant covenants and agrees that no portion of the surface of the Subdivision will be utilized for extraction or realization of same..



# Westfield Companies

One Park Circle PO Box 5001  
Westfield Center OH 44251-5001

NEW  
GENERAL LIABILITY DECLARATIONS  
(Continued)

33

## COMPANY PROVIDING COVERAGE

## WESTFIELD INSURANCE COMPANY

### NAMED INSURED AND MAILING ADDRESS

### AGENCY

47-05085

### PROD.

000

THE MEADOWS PROPERTY OWNERS  
ASSOCIATION, INC.  
CPO PO BOX 1310  
INWOOD WV 25428

SMITH-NADENBOUSCH INS INC  
P. O. BOX 1598  
MARTINSBURG WV 25402-1598  
TELEPHONE 304-263-3388

Policy Number: CWP 4 071 196

|03|

WIC Account Number : 4770028823

A

Policy  
Period

From  
To

08/14/07  
08/14/08

at 12:01 A.M. standard Time at your  
mailing address shown above.

Location Of All Premises Owned By, Rented To Or Controlled By The Named Insured  
Are The Same As The Mailing Address Of The Policy Declarations Unless Otherwise  
Indicated.

## GENERAL LIABILITY SCHEDULE

### PREMIUM BASIS LEGEND -

S = GROSS PER \$1,000

SALES

P = PAYROLL PER \$1,000

O = OTHERS PER \$1,000

A = AREA PER 1,000 SQ. FT.

C = TOTAL COST PER \$1,000

M = ADMISSIONS PER 1,000

U = UNITS PER UNIT

T = SEE CLASSIFICATION  
NOTES

### RATE LEGEND -

PREM/OP = PREMISES AND OPERATIONS

PROD = PRODUCTS AND COMPLETED OPERATIONS

CHPOPS = COMPOSITE PREMISES AND OPERATIONS

CMPPRO = COMPOSITE PRODUCTS AND COMPLETED OPERATIONS

CMPCBN = COMPOSITE PREMISES/PRODUCTS COMPLETED OPERATIONS

MP = MINIMUM PREMIUM

CLASSIFICATION  
WEST VIRGINIA

CODE

PREMIUM  
BASIS

RATE

PREMIUM

RT. 7  
CASSVILLE WV 26527  
PRODUCTS/COMPLETED OPERATIONS 44444

IF ANY

PROD.

STREETS, ROADS, HIGHWAYS OR  
BRIDGES - EXISTENCE AND  
MAINTENANCE HAZARDS ONLY -  
INCLUDING PRODUCTS AND/OR  
COMPLETED OPERATIONS.  
PRODUCTS-COMPLETED OPERATIONS  
INCLUDED IN THIS  
CLASSIFICATION ARE SUBJECT TO  
THE GENERAL AGGREGATE LIMIT.

T

1

PREM/OP 41.860 \$42

PREM/OP MP \$161

### TOTAL

TOTAL PREMIUM - PREMISES AND OPERATIONS

\$161

TOTAL ADVANCE ANNUAL GENERAL LIABILITY PREMIUM

\$161



# Westfield Companies

One Park Circle PO Box 5001  
Westfield Center OH 44251-5001

33

## NEW GENERAL LIABILITY DECLARATIONS

### COMPANY PROVIDING COVERAGE

### WESTFIELD INSURANCE COMPANY

#### NAMED INSURED AND MAILING ADDRESS

#### AGENCY

47-05085

#### PROD.

000

THE MEADOWS PROPERTY OWNERS  
ASSOCIATION, INC.  
CPO PO BOX 1310  
INWOOD WV 25428

SMITH-NADENBOUSCH INS INC  
P. O. BOX 1598  
MARTINSBURG WV 25402-1598  
TELEPHONE 304-263-3388

Policy Number: CWP 4 071 196

| 03 |

WIC Account Number : 4770028823

A

Policy  
Period

From  
To

08/14/07  
08/14/08

at 12:01 A.M. Standard Time at your  
mailing address shown above.

### LIMITS OF INSURANCE -

General Aggregate Limit (Other Than Products/Completed Operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal & Advertising Injury Limit (Per Person Or Organization)	\$1,000,000
Each Occurrence Limit	\$1,000,000
Damage to Premises Rented to You Limit (Any One Premises)	\$100,000
Medical Expense Limit (Any One Person)	\$5,000

TOTAL ADVANCE ANNUAL GENERAL LIABILITY PREMIUM \$161.00

### Forms And Endorsements Applicable To This Coverage Part:

CG0001 1204\*, IL0021 0702\*, CG7003 1204\*, CG7000 1298\*, CG2503 0397\*,  
CG2504A 0397\*, CG2147 0798\*, CG2662 1204\*, CG0067 0305\*, CG2426 0704\*,  
CG2170 1102\*, CG7017 1298\*.



**PROPOSED ASSOCIATION BALANCE SHEET 2008**

ASSUMPTIONS: This Budget assumes that for the year 2008:

- (a) the Subdivision contains only the 38 Units in Phase I and the 30 Units in Phase II (declarant may create a greater or lesser number of Units) and no other Phases are dedicated during 2008;
- (b) the roadways in Phase I were paved with a base coat of asphalt during 2007, and the Phase II roads will be gravel during 2008;
- (c) Phases I and II contain roadways and the entryway, Common Elements and no express Limited Common Elements;
- (d) No more than 15 dwellings will be completed or occupied in Phases I or II during 2008;
- (e) No Annual Assessment will be made during 2008 and all operational costs will be borne by Declarant except for special assessment Golf Course Memberships; and
- (f) 15 Units will be sold by Declarant to third parties prior to the end of 2008.

**Operating Account:**

Beginning Balance:			\$0
Plus:	Initial account funding by Declarant	Cost to open account which Declarant may elect to have credited on Declarant's behalf at a later date.	+\$500.00
Plus:	Annual Assessments for Common Expenses	No annual assessment during 2007 When Declarant elects to no longer subsidize costs of operation and Association begins to levy Annual Assessments minimum of \$300 per Unit per year	+\$0.00
Plus:	Annual Limited Common Expense Assessment	As with Annual Assessment, no special assessment during 2007.	+\$0.00
Plus:	Special Assessments	As with Annual Assessment, no special assessment during 2007.	+\$0.00
Less:	Operational Expenses	Per Proposed Budget, Declarant will subsidize all costs during 2007 and until initial assessments to Unit Owners are made by Association.	-\$0.00
ENDING BALANCE			\$500.00

**Capital Account:**

Beginning Balance:		\$0
Plus:	Initial account funding by Declarant	+\$500.00
Plus:	Initial Membership Deposits of \$300.00 per Unit sold by Declarant during 2007 and 2008 and payable by Unit purchasers at time of sale*	+\$1,200.00
ENDING BALANCE		\$1,700.00

\* = Contingent on Assumptions (a) through (f) which are speculation for the purpose of providing this Exhibit.

**PROPOSED ANNUAL POST COMPLETION BUDGET**

ASSUMPTIONS: This Budget assumes that:

- (a) the Subdivision contains 68 Units (38 Units in Phase I and 30 Units in Phase II) but Declarant desires to create a total not more than 500 Units after the addition of future Phases;
- (b) the Subdivision contains the same lineal feet of paved roadways shown on the Declarant's plans;
- © the Subdivision contains various Common Elements and no Limited Common Elements;
- (d) the dollar values are based on estimates and calculated in 2008 dollars. The accuracy of the budget figures will be expressly contingent upon the accuracy of the estimates.

**NOTE: The actual costs will vary depending on numerous factors including, but not limited to: (a) the number of Units and Phases actually developed; (b) the rate at which Units are developed, Units are sold, and dwellings are constructed; (c) the number and character of Common Elements, Limited Common Elements and improvements to same actually completed; (d) change of law; and (e) intangible economic factors such as cost of living increases, availability of labor and materials, prevailing wage rates, and changes in interest rates. As a result, the foregoing are estimates based on various limited assumptions including those assumptions specifically set forth above.**

In the event that Declarant acquires additional contiguous lands and dedicates the same as additional Units, the fixed annual costs will be reduced and reallocated with additional Units bearing a portion fo said costs.

Category	Explanation	Total Cost	Cost Per Unit Based on 68 Units	Cost Per Unit Based on 500 Units
Property Taxes	Phase I and II Common Elements	\$200.00	\$2.94	Will Vary****
Annual Licensing Fees	Corporate licensing and business registrations, reports and returns	\$250.00	\$3.67	\$0.50
Snow Removal *		\$6000	\$88.23	Will Vary****
Grass and Lawncare of Phase I Common Elements **	Phase 1 only, assumes 24 cuttings per year at \$20 per townhome	\$18,240*****	\$480.00 (38 Units Only)	Will Vary****
Grass and Lawncare of non-Phase I Common Elements **	Phase 2 and entryway only	\$4,000	\$58.82 (68 Units)	Will Vary****
Electricity for Entry Lighting		\$600	\$8.83	\$1.20
Roadway Repairs (annual)	All repairs other than comprehensive repaving	\$6,000	\$88.23	Will Vary****
Roadway Repairs (long term)***	\$10000 pv cost for Phase 1 paving (Repaving anticipated 10 years from final paving) or \$900 per year	\$1,800.00	\$26.47	Will Vary****

Insurance	Assumes \$1 million in general liability coverage and E&O coverage for the Officers and Directors (per year)	1500	\$22.05	\$3.00
Mailings/Publications and Website	Assumes 12 mailings per home per year	200	\$2.91	Will Vary****
Annual Drainage System Inspections, Cleaning and Maintenance	Inspection, sediment removal, repair	400	\$5.88	Will Vary****
Preventative Maintenance to Common Element Improvements		1,000.00	\$14.70	Will Vary****
Facility Center Memberships payable to Meadows Ponds, LLC	Annual memberships for all Units at \$400 per Unit	27,200.00	\$400.00	\$400.00
TOTAL FOR PHASE I UNITS		67390	1202.73	
TOTAL FOR PHASE II UNITS	Excludes Phase I lawncare (*****)		722.73	

\*= Snow removal estimate is based on actual roadway cost per foot of local subdivision during the 2006-2007 winter. Costs will vary depending on the amount of precipitation and whether the Association elects to apply salt or cinders to the roadways. Wearing course repaving expense estimated based on third party local contractor projection.

\*\*= Based on estimate from local contractor and may vary depending on seasonal conditions, the Association's standards, and any future improvements to the Common Elements.

\*\*\*= Long Term Roadway Repairs are calculated based on the assumption that the roadways will require additional paving 10 years after completion of initial paving. The 2008 estimated cost of paving was factored over a period of 10 years with an average CPI increase of 3% per year and then divided into each of the ten years. The estimated cost for Phase I and Phase II type I aggregate asphalt is \$18,000, present value.

Will Vary\*\*\*\* = These costs are dependent on the total number of Units and also the improvements made to future Phases and how the cost of those Units are allocated. Generally, fixed total Subdivision costs will be reduced and as additional costs are created the same will be allocated to either specific new Units or generally to a larger number of Units.

\*\*\*\*\* = This cost will be assessed as a Limited Common Expense to only the Units in Phase I because it is the cost of lawncare of the Units and Common Areas in Phase I.

NOTE: The actual costs per Unit will vary depending on the cost of services and materials and also the final number of Units in the Subdivision. If no more than 68 Units are dedicated, the cost per Unit will be greater.

*Sample* **DEED**

THIS DEED, Made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between **AYERS AND AYERS HOLDINGS, LLC, a West Virginia limited liability company**, party of the first part, GRANTOR, and \_\_\_\_\_, parties of the second part, GRANTEES.

WITNESSETH: That, for and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said **GRANTOR, AYERS AND AYERS HOLDINGS, LLC, a West Virginia limited liability company**, does hereby **GRANT AND CONVEY, with covenants of GENERAL WARRANTY**, unto the said GRANTEES, \_\_\_\_\_, and at their request as joint tenants with right of survivorship, all of the following described lot or parcel of real estate, situate, lying and being in **Cass** District, Monongalia County, West Virginia, including all appurtenances thereunto belonging and all improvement thereon:

**IF PHASE I**

**UNIT \_\_\_\_, PHASE I, THE MEADOWS SUBDIVISION**, located in the Cass Tax District of Monongalia County, West Virginia, as more particularly described on that certain map or plat of survey entitled Phase 1 Plat of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 2008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A, which said map or plat is incorporated herein by reference for descriptive and all other pertinent purposes (hereinafter the "Property").

**IF PHASE II**

**UNIT \_\_\_\_, PHASE II, THE MEADOWS SUBDIVISION**, located in the Cass Tax District of Monongalia County, West Virginia, as more particularly described on that certain map or plat of survey entitled Phase II of The Meadows, a Planned Community, prepared by Floyd E. Bargy, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated July 31, 2008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 46A, which said map or plat is incorporated herein by reference for descriptive and all other pertinent purposes (hereinafter the "Property").

The Property is subdivided from the property conveyed to the Grantor by those certain deeds which are recorded in the Office of the said Clerk in Deed Book No. 1322 at Pages 408 and 422.

This conveyance is specifically made subject to the terms, conditions, provisions, restrictions, protective covenants, rights, powers, duties, rights-of-way, easements, and limitations, pertaining to The Meadows Subdivision as more particularly set forth in the Declaration of Common Interest Community for The Meadows Subdivision, the recorded plats or maps of survey of The Meadows Subdivision, and the Articles of Incorporation, By-Laws, Rules and Regulations and Building Construction Guidelines (hereinafter

“Governing Documents”) of The Meadows Property Owners Association, Inc., a West Virginia non-profit corporation, and as, all of which may from time to time may be amended.

The foregoing declaration and maps and plats are recorded in the aforesaid County Clerk's Office as follows:

DECLARATION:

Original	DEED BOOK NO. 1361 at PAGE NO. 713
First Amendment	DEED BOOK NO. ____ at PAGE NO. ____

PLAT OF SURVEY:

Phase I	MAP CABINET 5, ENVELOPE 35A
Phase II	MAP CABINET 5, ENVELOPE 46A

The Grantees herein, by acceptance of this deed, acknowledge and hereby declare that a copy of the Public Offering Statement for The Meadows Subdivision was actually physically received by the Grantees prior to the time Grantees executed a written agreement for the Units herein conveyed and further that the same were received more than fifteen (15) days in advance of the delivery of this Deed to the Grantees.

The Grantees herein, by acceptance of this deed, also agrees: (a) to comply with and abide by all of the provisions of the Governing Documents as now in effect or hereafter modified and amended; (b) to pay when due and acknowledge continuing liability to pay all dues, fees costs and assessments properly levied against the Unit herein conveyed by The Meadows Property Owners Association, Inc.; and (c) to comply with and abide with all provisions of the Governing Documents pertaining to the Meadow Ponds Golf Course, including the duty to purchase a Fitness Center Membership each year that the same is offered by the owner or operator of the Golf Course.

The Grantor reserves the right to be the exclusive builder of all dwellings constructed on the Units herein conveyed for a period of ten (10) years from the date of this instrument.

This conveyance is made subject to all rights, rights-of-way, easements, restrictions, exceptions, limitations, conditions, covenants, licenses, severances, uses, estates and servitudes which are either set forth in the Governing Documents or otherwise of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

The real estate described and conveyed is assessed for taxation purposes upon the Land Books of Monongalia County, West Virginia, in Cass District for the year 200 as part of the following entry:

AYERS & AYERS HOLDINGS, LLC

MAP 11, PARCEL 44

## 159.4367 AC SUR SCOTTS RUN

The Grantor and Grantees covenant and agree that: (a) until such time as a separate ad valorem tax ticket shall be levied and assessed with regard to the real estate herein conveyed, and so long as said real estate is assessed as part of one or more larger tracts owned by Grantor, Grantor shall pay such taxes prior to delinquency; and (b) Grantees shall within ten (10) business days after Grantees' receipt of a paid full or half year receipt for said taxes, reimburse to Grantor, that portion of such taxes which were attributable to the land herein conveyed and the improvements thereon.

**Waiver of Statute of Limitations Applicable to Express and Implied Warranties:** The West Virginia Uniform Common Interest Ownership Act, specifically West Virginia Code § 36B-4-116, provides that a judicial proceeding for the breach of an express or implied warranty of quality must be commenced within six (6) years after the cause of action accrues, and further provides that such period of limitation, upon agreement, may be reduced to a period of not less than two (2) years. In light thereof, the Grantor and Grantees, for valuable consideration received, the receipt and sufficiency of all of which is hereby acknowledged, hereby agree to reduce such period of limitation to two (2) years. And, in connection therewith, for such consideration, the Grantees, by acceptance, execution, acknowledgment, and recordation of this deed, hereby waive, release, discharge, and disclaim the maximum six (6) year period of limitation for the commencement of a judicial proceeding for the breach of an express or implied warranty of quality, with the acknowledgment and understanding that the same, together with all other periods of limitation for the breach of an expressed or implied warranty, a warranty of fitness for a particular purpose, a warranty of merchantability, or any other warranty, however arising, whether under the Uniform Commercial Code, statute, common law, or otherwise, have been hereby reduced to a two (2) year period of limitation from the date of accrual of such cause of action. Furthermore, notwithstanding the Grantees' lack or absence of knowledge of a breach of a warranty, the Grantees hereby agree with the Grantor that any such cause of action shall accrue as of the date the Grantees take possession of the property herein described and conveyed. The Grantor and the Grantees hereby covenant and agree that this deed is intended to be a separate instrument evidencing the reduction of such period of limitation as contemplated by and in full satisfaction of the requirements of West Virginia Code § 36B-4-116(a).

**DECLARATION OF CONSIDERATION OR VALUE**

In compliance with Article 22, Chapter 11 of the Code of West Virginia, the undersigned hereby declare that the total consideration paid this conveyance is \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_.00).

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

**GRANTOR,**

**Ayers and Ayers Holdings, LLC, a West Virginia limited liability company,**

By: \_\_\_\_\_

Its: \_\_\_\_\_

The Grantees hereby acknowledge receipt of this Deed and covenant and agree, on behalf of themselves, their successors and assigns, to comply with the covenants, conditions, restrictions and limitations set forth and referenced hereinabove.

**GRANTEES,**

\_\_\_\_\_  
\_\_\_\_\_

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

The foregoing instrument, bearing date of \_\_\_\_\_ was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ of Ayers and Ayers Holdings, LLC, a West Virginia limited liability company, for and on behalf of said limited liability company by exercise of authority duly given.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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

The foregoing instrument, bearing date of \_\_\_\_\_ was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

This document was prepared without benefit of title examination and on behalf of the Grantor by:  
Steven M. Prunty, Attorney-at-Law, The Fusco Legal Group, LC,



2400 Cranberry Square, Morgantown, WV 26508-9209.

**AGREEMENT FOR PURCHASE AND SALE OF UNIT**  
**WHICH DOES NOT CONTAIN A DWELLING**  
**IN**  
**THE MEADOWS**  
**A RESIDENTIAL COMMON INTEREST COMMUNITY**

THIS AGREEMENT made on the Effective Date as hereinafter defined, by and between **Ayers and Ayers Holdings, LLC, a West Virginia limited liability company**, (hereinafter "Seller"), whose principal address is \_\_\_\_\_, and \_\_\_\_\_, husband and wife (hereinafter "Buyer" whether singular or plural), who's address is \_\_\_\_\_.

**NOW THEREFORE WITNESSETH THAT:** For and in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged, Seller and Buyer hereby agree as follows:

1. **PROPERTY TO BE CONVEYED:** Pursuant to the terms and conditions of this Agreement, Buyer shall purchase and Seller shall sell all of :

UNIT \_\_\_\_\_ PHASE I, THE MEADOWS, located in the Cass Tax District of Monongalia County, West Virginia, as more particularly described on that certain map or plat of survey entitled Phase 1 Plat of The Meadows, a Planned Community, prepared by Floyd E. Barge, Jr., P.L.S. #760 of Thrasher Engineering, Inc., dated March 11, 1008, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 5, in Envelope No. 35A, (which said map or plat is incorporated herein by reference, together with all appurtenances thereto and all improvements thereon) (hereinafter the "Property"). This Agreement is a contract of sale for the Unit as depicted on said map or plat of survey rather than as staked or otherwise marked on the land.

The Property is subdivided from the property conveyed to the Grantor by those certain deeds which are recorded in the Office of the said Clerk in Deed Book No. 1322 at Pages 408 and 422.

The Property is part of land being developed as part of and will be part of a Unit in a Planned Common Interest Community (as defined by West Virginia Code Section 36B et seq. pursuant to the terms and conditions of the Declaration of Common Interest Community pertaining to The Meadows, which is recorded in the Office of said Clerk in Deed Book No. 1361 at Page No. 713, and any amendments thereto("Declaration")).

**EXHIBIT K to MEADOWS PUBLIC OFFERING STATEMENT**  
**SAMPLE SALES CONTRACT**

2. **PURCHASE PRICE:** The purchase price for the Property shall be paid to Seller in cash or good funds by certified check or wire transfer as follows:

- |  |                   |
|--|-------------------|
| (a) Earnest money deposit payable on<br>Buyer's execution hereof | \$_____.00        |
| (b) Balance in cash at closing                                   | \$_____.00        |
| <b><u>(c) TOTAL PURCHASE PRICE</u></b>                           | <b>\$_____.00</b> |

**EARNEST MONEY:** The sum set forth in Paragraph 2(a), the receipt of which is hereby acknowledged is an earnest money deposit, which sum shall be credited against the purchase price at closing. No interest shall accrue on the earnest money for Buyer or Seller. This earnest money will be placed in escrow in the non-interest bearing closing account of either:

☐ Seller's realtors KLM Properties, Inc., of Morgantown, West Virginia; or

☐ Seller.

- (a) If Buyer shall default under this Agreement, Seller shall have the option to retain all Earnest Money as liquidated damages in which case this Agreement shall be null and void and neither party shall have any liability to the other.
- (b) In the event that Seller does not accept and enter into this Agreement Seller shall return the Earnest Money to Buyer and neither party shall have further obligations or rights under this Agreement.
- (c) In the event that Buyer should terminate this Agreement in accordance with Paragraphs 4, 5 or 25 hereinbelow, Seller shall return the Earnest Money to Buyer and neither party shall have further obligations or rights under this Agreement.

4. **FINANCING CONTINGENCY:** This Agreement is contingent upon the ability of the Buyer to obtain purchase money financing on the following terms: (a) Principal amount of financing not less than: \_\_\_\_\_; (b) Maximum interest rate not more than: \_\_\_\_\_ per cent per annum; and (c) Maximum Term of years: \_\_\_\_\_. Buyer shall make diligent effort to obtain such financing and agrees to promptly sign all necessary papers and to take all other necessary action to apply for and

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obtain such financing. Buyer shall apply for and procure a loan commitment for such financing no later than ten (10) days after Seller's acceptance of this Agreement.

If Buyer is unable to obtain a commitment for financing on the above terms within twenty (20) business days after Seller's acceptance of this Agreement, Buyer may terminate this Agreement by serving Seller with written notice of termination due to failure of financing contingency not later the 21<sup>st</sup> business day after Seller's acceptance hereof. Any such notice of termination shall be accompanied by a letter from Buyer's lending institution evidencing denial of Buyer's loan application.

5. **MARKETABLE TITLE**: Seller shall convey good and marketable title to Buyer by general warranty deed at closing. Marketable title, for the purposes of this Agreement shall be defined as title which a title insurance company licensed to do business in the State of West Virginia will insure at its regular rates, subject only to its standard exceptions. The following shall not be deemed impediments to marketable title for the purpose of this document: (a) The restrictions contained in or referenced in the Declaration and the Governing Documents (as defined in the Declaration); (b) Liens of Seller to be released at Closing; (c) restrictions, easements, rights-of-way, conditions and limitations set forth on the maps and plats of The Meadows; (c) Any and all governmental ordinances, regulations, and building restrictions applicable to the Property; and (e) The lien of any taxes, governmental assessments, or assessments of the Association not yet due and payable.

If Seller shall be unable to convey title in accordance with the terms of this Agreement, Buyer shall have the option of terminating this Agreement by written notice to Seller or of proceeding with the closing of the sale and accepting such title as Seller is able to convey without any decrease in the purchase price. If Buyer elects to terminate this Agreement, Seller shall refund to Buyer all Earnest Money deposited hereunder and thereafter all rights and obligations of the parties hereto shall cease, and this Agreement shall be null and void. Seller shall not be required to bring any action or proceeding or otherwise to incur any expense to render the title to the Property marketable. Should Buyer elect to accept such title as Seller is able to convey, such acceptance of the deed by Buyer shall be deemed to be a full performance of all agreements and obligations to be performed by Seller pursuant to this Agreement, except those, if any, which are specifically stated to survive the closing.

6. **THE "DECLARATION" AND THE "ASSOCIATION"**: Buyer acknowledges, understands and agrees that:

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(a) the Property is a Unit which is part of a residential development known as The Meadows which may eventually contain up to 500 residential Units which said Subdivision may be developed from various tracts land which are either currently owned by Seller or may be acquired by Seller in the future.

(b) Seller makes no warranty or representation as to the minimum number of Units, Common Element or Limited Common Elements which may be created nor the time period in which the same may occur nor the size of such Units.

(c) all Units in The Meadows shall be restricted exclusively to single family residential uses subject to the Declaration and Governing Documents (as defined in the Declaration) and that there are significant restrictions imposed by the foregoing documents which limit the uses to which the Unit may be made and the improvements which Buyer may make to the Unit.

(d) all owners of all Units must be members of The Meadows Property Owners Association, Inc., a West Virginia non-profit corporation, ("Association") and that the Association can enforce the Declaration and from time to time pass additional Rules and Regulations limiting the permitted uses of the Unit and Common Elements.

(e) the Association is charged with maintenance and regulation of the common elements and management and administration of the Subdivision and each Unit owner is, by virtue of ownership of the Unit, obligated to pay assessments to cover the expenses of the Association pursuant to the allocation of such expenses set forth in the Declaration.

(f) prior to the Closing (as hereinafter defined) contemplated by this Agreement Seller, as the "Declarant" under the Declaration, may create additional Units, Common Elements and Limited Common Elements, and/or make changes or amendments in the Declaration which do not materially affect the rights of Buyer or the value of the Property and that no consent from Buyer is required for same.

7. **IMPROVEMENTS**: The Property consists of acreage and an undivided beneficial interest in the Common Elements which will eventually be dedicated to and owned by the foregoing Association of Unit Owners. The Property does not include any interest in Limited Common Elements unless such allocation of interest is specified in the Declaration or on any map or plat of the Subdivision of public record. The Unit does not contain a

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completed dwelling and Seller is providing no amenities other than as set forth in the Public Offering Statement. Seller will extend utilities, as set forth in the Public Offering Statement, to the easement abutting the Property. Buyer is obligated to extend said utilities to the Unit and any improvements constructed thereon and to pay the costs of same, including tap fees and meter fees.

Seller acknowledges that its obligation to so complete the roads, landscaping, and improvements to Units, limited common elements and common elements is subject only to the existence of circumstances that are sufficient to establish impossibility of performance under West Virginia law. In addition, contingencies or occurrences which are not within Seller's control and which hinder substantially Seller's ability to perform its obligations hereunder such as Acts of God, strikes, or material shortages shall entitle Seller to defer completion of such services and amenities for a reasonable time after such contingencies are removed. Buyer hereby acknowledges and agrees that except as provided in this Paragraph and in the Declaration and Public Offering Statement, no other representation regarding the availability of or completion by Seller of roads, landscaping and improvements or services have been made by Seller or its agents or have been relied upon by Buyer.

8. **CLOSING**: The closing and consummation of the sale and acquisition of the Property shall take place on \_\_\_\_\_, at the offices of Seller or at such other place or earlier time during regular business hours and in \_\_\_\_\_, as the parties hereto shall mutually agree in writing, but the closing contemplated herein shall in no event occur later than \_\_\_\_\_, if extended by Seller as set forth hereinafter. Buyer acknowledges and agrees that Seller has accepted the purchase price on the condition that such closing shall take place on or before said date, and in the event that Buyer fails or refuses to close by said date, then this Agreement shall be void, the Earnest Money shall be forfeit to Seller and Seller may relist the Property on the market at a higher purchase price. Seller shall deliver possession of the Property to Buyer at closing. In the event that Seller shall be unable to deliver possession of a habitable Unit at closing due to strike, war, act of god, unavailability of labor or materials or other unforeseen circumstances not directly attributable to Seller, Seller may unilaterally extend the closing date up to Thirty (30) days.

9. **ASSESSMENTS AND CLOSING COSTS**: Taxes and, if levied by the Association, Assessments shall be apportioned as of the day of Closing. Such apportionment shall be computed by the 360 day method, with each month representing 1/12th of the annual charge and each day

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1/30th of the monthly charge. Apportionments shall be made in accordance with customary residential real property closing practices in Morgantown, Monongalia County, West Virginia.

- (a) Seller shall pay Seller's attorneys' fees, any sum due to any lien holder of Seller plus the cost of recording the release by said secured parties, and transfer taxes required to be paid prior to the recording of the deed.
  - (b) Buyer shall pay all other closing costs incurred by Buyer, including, without limitation, the following: Buyer's attorneys' fees, all loan closing costs and points, the cost of recording the deed and all title insurance premiums, if any.
  - (c) Buyer shall pay to Association an Initial Association Deposit to Association in the amount of **\$300.00**, which said amount shall not be pro-rated or otherwise apportioned due to the date of purchase.
  - (d) Buyer shall reimburse to Seller the cost of sewer and water tap fees advanced by Seller which costs are estimated to be approximately **\$350 for the sewer tap** and **\$350 for the water tap**.
  - (e) If assessed prior to the date of Closing, all Annual and Special Assessments of the Association shall be pro-rated at Closing and due and payable at Closing.
  - (f) Buyer expressly acknowledges that the Association is annually obligated to purchase a Fitness Center membership for the benefit of all Units and the cost to each Unit will be determined by the operator of the Fitness Center. All such costs are assessed by the Association as part of its Annual Assessments to the Unit Owners. The 2008 cost for such memberships is \$450 per Unit, however, the Declarant has elected to pay all Fitness Center membership costs for 2008.
10. **CLOSING DOCUMENTS**: At Closing the following documents shall be exchanged by the parties (to the extent that any such document is an Exhibit to the Declaration of Public Offering Statement, the document shall contain all substantive provisions of such exhibit):

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- (a) Seller shall execute and deliver to Buyer: (1) a deed; (2) a waiver of Seller's right to be exclusive builder of all improvements to the Unit if Buyer's builder has been approved; (3) an Owner's Affidavit; and (4) such 1099 information as may be reasonably required by Buyer's closing agent.
- (b) Buyer shall execute and deliver to Seller: (1) an express written waiver pursuant to West Virginia Code Section 36B-4-116 reducing the statute of limitations for all express or implied warranties imposed by West Virginia Code Chapter 36B to two years from the date of delivery of the deed; (2) an written affidavit that Buyer take the deed in reliance on any verbal or parole representation or warranty contrary to the information set forth in the Declaration; (3) an express acknowledgment that Buyer is in receipt of the Public Offering Statement, the Declaration, the By-Laws, Articles of Incorporation, Rules and Regulations of the Association and that Buyer received same more than fifteen (15) days prior to Closing.
- (c) If the Association's Building Control Committee has approved a builder to complete improvements to the Property, Seller shall deliver evidence of such written approval at Closing.

11. **ASSIGNMENT**: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and permitted assigns. The interest of Buyer in this Agreement shall not be assigned, mortgaged, pledged, or otherwise transferred, in whole or in part, without the prior written consent of Seller, which consent may be withheld at Seller's sole discretion.

12. **AMENDMENT**: Except for the contents of this Agreement and the Public Offering Statement delivered to Buyer, there are no other agreements or representations, written or oral, made by Seller or Buyer. All understandings and agreements heretofore made between the parties hereto are contained in this Agreement which expresses the parties' entire agreement, and no representations, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be altered, enlarged, modified or changed except by an instrument in writing executed by all of the parties hereto. Any change or modifications made to this Agreement must be reduced to writing, signed by all parties hereto and attached hereto and made a part hereof. Except as expressly provided to the contrary herein, the terms of this Purchase Agreement shall merge

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into and not survive the delivery and recordation of the deed of conveyance.

13. **EFFECTIVE DATE**: The date of this Agreement shall be deemed to be the date on which Seller executes this Agreement, as evidenced by the date opposite Seller's signature, and this date shall be inserted in the preamble of Page 1 of this Agreement.

14. **NOTICES**: Any notice or other communication required or permitted hereunder must be in writing and delivered in person or by certified or registered mail, postage prepaid, to the addresses set forth in the preamble of this Agreement, or to such other addresses of which the parties thereto may be from time to time notified in writing.

15. **APPLICABLE LAW**: This Agreement shall be construed and interpreted under the laws of the State of West Virginia.

16. **TITLE**: Title to the subject property is to be held as follows: \_\_\_\_\_ (if multiple owners circle one [Joint Tenancy] or [Tenants in Common]).

17. **EXECUTED IN DUPLICATE**: This Agreement is executed in duplicate, the Seller retaining one true counterpart hereof and the Buyer retaining the other true counterpart hereof. Duly executed photocopies or facsimiles bearing all signatures of Seller and Buyer shall have the same force and effect as an original. Identical counterparts may be executed by one party and then transmitted by Telefacsimile for execution of the facsimile copy by the other party with the same legal force and effect as original signatures of both parties on one document.

18. **WAIVER OF EXPRESS AND IMPLIED WARRANTIES AND LIMITATIONS PERIOD FOR ENFORCEMENT OF SAME**: Pursuant to the provisions of West Virginia Code Chapter 36B, "Uniform Common Interest Ownership Act" (specifically Sections 36B-4-113 and 36B-4-114), Seller is subject to a six-year statute of limitation for both express and implied warranties of quality. The provisions of the Code (specifically Section 36B-4-116) further provide that the parties hereto may agree to reduce the statute of limitation to not less than two (2) years. The undersigned Buyer hereby agrees as follows: (a) Buyer shall take possession of the Unit in an "AS IS" condition, subject to the terms and conditions of the Public Offering Statement, Declaration and Governing Documents as described in the Declaration; and (b) by execution hereof Buyer waives and releases the Seller as Declarant from the maximum time period of the statute of limitation for commencement of a legal action against Seller as Declarant for breach of either implied or expressed warranties of quality; and (c)

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Buyer shall, in accordance with the terms of the Uniform Common Interest Ownership Act, be subject to the reduction of the statute of limitations for the commencement of a judicial proceeding against the Declarant for breach of warranties of quality, either expressed or implied, to two years; and (d) the commencement of a cause of action for breach of warranty of quality, either express or implied, shall accrue to the Buyer beginning at the time the Buyer enters into possession of the Unit.

**Buyer agrees to accept a deed containing the preceding provisions and to execute, acknowledge and deliver at Closing, a separate written instrument setting forth same.**

19. **BROKERAGE COMMISSION:** The parties agree that either:

[ ] no real estate broker or agent or any other individual or entity entitled to a commission from the sale of the Property and that Buyer will hold harmless, indemnify and defend Seller from any claim, loss, injury or damage arising as the result of such individual or entity; or

[ ] the only real estate brokers involved are the parties identified on the attached Agency Addendum and that Seller is not obligated to pay any commission except to Seller's broker KLM Properties, Inc., pursuant to Seller's listing agreement with said broker.

20. **WARNINGS: BEFORE ENTERING INTO THIS AGREEMENT BUYER IS ADVISED:**

(a) to retain the services of an attorney to review this Agreement and the Governing Documents and to render an independent legal opinion to Buyer with regard to the meaning, impact and implications of same, or in the alternative to obtain such services and opinions after receipt of the documents but prior to expiration of the fifteen (15) day cancellation period set forth in Paragraph 25.

(b) to retain the services of qualified and duly licensed experts to perform the following due diligence on behalf of Buyer prior to Closing: (1) examination and certification of title; (2) survey of the Unit and adjoining Units to determine precise physical boundaries of same and the existence of any encroachments; (3) a subsurface or geological inspection to determine the suitability of the Unit for Buyer's intended use.

(a) to submit Buyer's proposed plans for the Unit to the Association's Building Control Committee for pre-approval of the improvements to be made to the Unit and the dwelling to

**EXHIBIT K to MEADOWS PUBLIC OFFERING STATEMENT  
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be constructed thereon. If Buyer fails to obtain such approval prior to purchase, Buyer may not be permitted to improve the Unit as Buyer desires.

- (b) to submit to Association's Building Control Committee for pre-approval the identity of any contractor or builder Buyer desires to retain to construct improvements to the Unit. If Buyer fails to obtain such approval prior to purchase, Buyer may not be permitted to utilize the services of such contractor or builder in the construction of Buyer's home and improvement of the Unit.
- (c) to read each and every provision of this Agreement, the Public Offering Statement and all exhibits thereto including, but not limited to, the Declaration, Articles of Incorporation, By-Laws, Rules & Regulations and Building Control Guidelines of the Association.
- (d) that the initial purchase price of all Units in The Meadows reflects the fact that the Seller as Developer intends to construct certain improvements but not to provide other improvements. The Seller is not obligated to construct or install improvements labeled "Need Not Be Built" on the Plats or otherwise set forth in writing by the Developer. The Declaration provides that so long as Seller owns any Unit in The Meadows, the Association may not levy any assessment which would obligate Developer as a Unit owner to contribute to completion of any amenity, fixture or improvement which Developer did not intend to install or construct when determining the initial sales price of Units in the Subdivision. This matter is set forth with particularity in the Declaration. Declarant is, however, subject to Annual and Special Assessments for those matters included within the Development Plan and customary capital expenses.

21. **FIFTEEN (15) DAY CANCELLATION PERIOD:** By West Virginia Law the Buyer may terminate this Agreement for any reason, with or without cause within fifteen (15) days after Effective Date. Buyer is advised to do all inspections and make all plan submissions and approvals during said fifteen (15) day time period because if Buyer is not satisfied with any such approval, Buyer may receive a full refund of the Earnest Money and terminate this Agreement without further liability hereunder. No termination under this Paragraph 25 is valid or effective unless made in

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writing and delivered to Seller prior to midnight of the fifteenth (15<sup>th</sup>) day after the Effective Date. Buyer's right to cancel is as follows:

(a) AT ANY TIME WITHIN FIFTEEN (15) DAYS AFTER RECEIPT OF A PUBLIC OFFERING STATEMENT, BUT BEFORE THE TIME OF CONVEYANCE, YOU MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT IN A COMMON INTEREST COMMUNITY; and

(b) IF YOU ARE NOT PROVIDED A PUBLIC OFFERING STATEMENT PRIOR TO YOUR PURCHASE OF A UNIT IN A COMMON INTEREST COMMUNITY, YOU MAY RECOVER FROM THE SELLER TEN PERCENT OF THE SALES PRICE OF THE UNIT PLUS TEN PERCENT OF THE SHARE, PROPORTIONATE TO YOUR COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE COMMON INTEREST COMMUNITY; and

(c) IF YOU RECEIVE THE PUBLIC OFFERING STATEMENT MORE THAN FIFTEEN DAYS BEFORE SIGNING A CONTRACT, YOU CANNOT CANCEL THE CONTRACT.

IN WITNESS WHEREOF, Buyer acknowledges that receipt of a complete Public Offering Statement not later than the date Buyer executes this Agreement, and Buyer accepts and agrees to all provisions hereof:

This Offer by Buyer expires unless accepted by Seller not later than \_\_\_\_\_ o'clock \_\_\_\_ on \_\_\_\_\_, 20\_\_.

BUYER: \_\_\_\_\_ OFFER DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ OFFER DATE: \_\_\_\_\_

This Offer by Buyer is accepted by Seller this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date").

SELLER: Ayers and Ayers Holdings, LLC, a West Virginia limited liability company

By: \_\_\_\_\_ ACCEPTANCE DATE: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT K to MEADOWS PUBLIC OFFERING STATEMENT  
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**AGENT CERTIFICATION**  
**AND**  
**RECEIPT EVIDENCING DELIVERY OF PUBLIC OFFERING STATEMENT**

Unit \_\_\_\_\_ Phase \_\_\_\_\_      The Meadows Subdivision

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**PURCHASER CERTIFICATION OF RECEIPT:**

I, the undersigned Unit purchaser, this day received the complete The Meadows Public Offering Statement, with all attachments and exhibits thereto either in hard copy or electronic data format via computer disk. To the extent that I have received a compact disc containing the data in pdf format, or to the extent that I have received printed hard copies I accept the same in satisfaction of Declarant's duty to provide the Public Offering Statement to me.

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Date

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Buyer

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Date

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Buyer

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**AGENT CERTIFICATION OF DELIVERY AGENCY AND REPRESENTATIONS:**

I, the undersigned Real Estate Agent certify that I have made no express or implied representations, warranties, or promises to the person(s) receiving this Public Offering Statement which are contrary to the information contained in said Public Offering Statement and the Exhibits thereto, and that I am the Buyer's agent not representing the Declarant with regard to the contract and potential sale for which this document is delivered. I also witnessed delivery of the Public Offering Statement in accordance with the above representation. I also acknowledge and agree that I am not entitled to any commission or compensation from Declarant as a result of the sale of the above Unit unless the terms thereof are reduced to writing and acknowledged by Declarant, in writing, prior to conveyance from Declarant to purchaser.

Name of Salesperson \_\_\_\_\_

Agency \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**PURCHASER CANCELLATION FORM****APPLICABLE ONLY IF CANCELLATION IS WITHIN FIFTEEN (15) DAYS  
AFTER EXECUTION OF CONTRACT PURSUANT TO PARAGRAPH 25 OF  
PURCHASE CONTRACT**

If you are entitled to cancel your purchase contract and wish to do so, you must cancel by personal notice or in writing. If you cancel in person or by telephone, said cancellation shall not be effective until you confirm the cancellation in writing by certified mail. You may use the form below.

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Name of Subdivision:           The Meadows

Unit Description \_\_\_\_\_

Date of Contract \_\_\_\_\_

This will confirm that I/we: (a) obtained a Public Offering Statement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; (b) executed a contract to purchase a Unit on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and (c) desire to cancel our purchase contract.

Buyer(s) Signature \_\_\_\_\_ Date \_\_\_\_\_

Buyer(s) Signature \_\_\_\_\_ Date \_\_\_\_\_

NOTE: For the purpose of establishing timely compliance with the fifteen day deadline for termination by this form, the same should be dispatched via Federal Express, Fax or Certified Mail.

**THE MEADOWS SUBDIVISION**  
**HOUSE CONSTRUCTION AGREEMENT**

**Pertaining to Unit \_\_\_\_\_**  
**Phase \_\_\_\_\_**  
**The Meadows Subdivision**

**To be Submitted to Building Control Committee  
with all Construction Plans**

NPDES Storm Water Permit Application No. WV \_\_\_\_\_  
Building Permit No. (if applicable): \_\_\_\_\_  
Lot No.: \_\_\_\_\_, Phase No.: \_\_\_\_\_

In lieu of the submission of a Construction Sediment Control Plan for the construction of this single family dwelling and also in consideration of approval of the construction plans submitted by the undersigned to the Building Control Committee of The Meadows Subdivision, *I/We agree to comply with any reasonable requirements determined necessary by the Division of Water and Waste Management (DWWM), the local Planning Commission (if applicable), and the The Meadows Subdivision Declaration, Covenants and Rules and Regulations. Such requirements shall be based on the soil conservation standards contained in the West Virginia Best Management Practice Manual or Erosion and Sediment Control for Developing Areas Handbook, and shall represent the minimum practices necessary to provide adequate control of erosion and sedimentation on or resulting from this project.*

**MINIMUM REQUIREMENTS**

- 1.) As a minimum requirement, all denuded areas on the lot shall be stabilized within 7 days of final grading with permanent vegetation or a temporary protective ground cover suitable for the time of year.
- 2.) All upslope water will be diverted around the construction site. Diverting water onto a adjacent property will not allowed without written permission from the owner.
- 3.) All downslope areas will be protected with appropriate sediment control devices. Diverting water onto adjacent property will not be allowed without written permission from the owner.
- 4.) All storm water drop inlets and other similar structures will be from siltation by the proper drop inlet protection measures.

*I/We further understand that failure to comply with such requirements within three working days following notice by a representative of the DWWM, the local Planning Commission, if applicable, and the The Meadows Property Owners Association could result in citation for violation of the Subdivision Regulations and the NPDES General Storm Water Permit.*

Additional Measures (if required):

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Signature of Landowner or Homebuilder: \_\_\_\_\_

Signature of Landowner or Homebuilder: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

Party Responsible for Erosion and Sediment Control (if different from landowner): \_\_\_\_\_

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Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

This agreement must be forwarded to the appropriate DWWM office to be included in the NPDES General Permit file for the subdivision.

**REMINDER:**

Either a Construction Sediment Control Plan or this agreement must be on file at the appropriate office and a copy must be held on the job site.