

**KA-KAPON HEIGHTS
DEDICATION OF PLAT AND
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Donald G. Turner and Marilyn A. Turner, his wife, hereinafter referred to as "Declarants", do hereby dedicate the plat of a subdivision known as KA-KAPON HEIGHTS, lying and being situate in Capon District, Hampshire County, West Virginia, and being more fully described on the plat and survey of Kennis F. Snyder, L.L.S., dated January 22, 1990, revised January 29, 1990, and made a part hereof, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, prior to recording of this instrument in Map Book 6, at Page 3, to which reference is hereby made, and said real estate is all of that certain tract of real estate, conveyed to Donald G. Turner and Marilyn A. Turner, his wife, by deed from Perry Newton, dated January 31, 1989, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 307 at Page 205.

Declarants hereby claim an exemption from the W.Va. Uniform Common Interest Ownership Act, Ch. 36B, pursuant to W.Va. Code Ch. 36B-1-202, because the assessment for maintenance of the roads and common elements of all lots may not exceed \$100.00 per year, except as set forth herein.

All lots in the KA-KAPON HEIGHTS Subdivision shall be subject to the following protective covenants, conditions, restrictions and easements which shall run with the land and be binding upon all subsequent owners of the lots:

**ARTICLE I
DEFINITIONS**

1. "ASSOCIATION" shall mean and refer to KA-KAPON HEIGHTS Property Owners Association, its successors, and assigns.
2. "OWNER" shall mean and refer to the owner of record, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.
3. "PROPERTY" shall mean and refer to that certain real property described above.
4. "LOT" shall mean and refer to any numbered or lettered parcel of land shown upon the above recorded plat of the property.
5. "DECLARANTS" shall mean and refer to Donald G. Turner and Marilyn A. Turner, his wife, their heirs or assigns.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

2. When fifty percent (50%) of the lots have been sold, a Property Owners Association shall be established with membership consisting of the owners (and only the owners) of each lot in KA-KAPON HEIGHTS SUBDIVISION who shall have one (1) vote per lot owned. The Association may act on any matter upon the vote of two-thirds (2/3) of the lot owners present at a duly constituted meeting with seasonable notice to the owners. A Board of Directors of three (3) to five (5) members shall be elected by said lot owners. Day to day business shall be conducted by the Board of Directors.

3. The initial Board of Directors of the Association consisting of one (1) to five (5) members shall be appointed by the Declarants, their heirs or assigns, and thereafter the Board of Directors shall be elected by the lot owners. The initial Board of Directors shall be responsible for calling the first meeting of the Property Owners Association. The Declarants shall provide a list of the names and addresses of the lot owners to the initial Board of Directors, and it shall provide seasonable notice of the organizational meeting to the owners at the address provided by the Declarants. After the first meeting, each owner shall be responsible to see that a current address is provided to the Board of Directors so that all notices of meetings and elections may be mailed to the owner.

4. The Directors shall mail the written notice of lot assessment which is due and payable on January 1 of each year, commencing January 1, 2004. Pending formation of the Property Owners Association, the Declarants shall make such assessments. See Article III below.

5. All meetings of the Property Owners Association and/or Board of Directors shall be held in Hampshire County, West Virginia, at a suitable place to be designated by the Board of Directors.

6. At the organizational meeting, after due notice has been provided to the owners, the owners attending said meeting shall be by two-thirds (2/3) majority vote, form the said Association's legal entity as they deem advisable and shall elect a Board of Directors and/or officers of said Association.

7. The Board of Directors shall administer these covenants and enforce same from time to time as they see fit upon two-thirds (2/3) vote of the membership of the Board of Directors.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENT

1.1 The Declarants and/or the Property Owners Association shall assess initially, for each lot, ONE HUNDRED DOLLARS and no/100 (\$100.00) per year for the use, upkeep, and maintenance of the rights-of-ways within KA-KAPON HEIGHTS SUBDIVISION. If a lot or part of a lot is merged by Declarants with another lot, thence, the owners of the merged lot(s) shall be assessed as one lot. The monies collected by this assessment may also be used by the Board of Directors as reasonably necessary to administer the affairs of the Property Owners Association. The monies collected by this assessment may not be used for any other purpose.

1.2 The One Hundred Dollars and no/100 (\$100.00) assessment shall be annually adjusted according to and only to the extent of change in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All items, 2004=100% compiled by the Bureau of Labor Statistics, United States Department of Labor (the Index). The Index for December, 2004, is the Reference Base Index. See 36B-1-114 of W.Va. Code for more information as to the procedure for implementing adjustment of the assessment.

NOTE: In the event that the Property Owners Association has not been formed by January 1, 2004, the Declarants may invoice the owners for the road maintenance fee that is due and payable on January 1, 2004, and collect the monies. Pending the formation of the Property Owners Association, the Declarants shall manage the monies in an escrow account for the benefit of the owners and may oversee road maintenance pending formation of the Property Owners Association as follows: Declarants shall appoint a committee of 3-5 owners from diverse section of the subdivision to survey the needed maintenance to the roadways, if any, and if the committee believes that it is desirable to have maintenance done on the roads before formation of the Property Owners Association has been completed, the committee shall obtain estimates from two or more disinterested, local contractors. The committee shall choose which of the bids is acceptable, and Declarants shall be authorized to pay the contractor once the work is performed to the satisfaction of the committee. Once the Property Owners Association is formed, the Declarants shall account to the Property Owners Association and turn all monies over to it. Once the Property Owners Association is formed, the committee shall be dissolved and have no further powers. All further assessments will be made by the Property Owners Association.

2. Any assessment made pursuant to this Article, shall bear interest at the rate of TEN PERCENT (10%) per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, and shall constitute a lien on the lot until paid. The lien is expressly inferior and subordinate to any mortgage lien presently or hereafter encumbering the property affected by these protective covenants. The owner of each lot, by acceptance of a deed thereto, automatically becomes a member of the Property Owners Association, to be created as herein set forth. In the event of a resale or transfer of one or more parcels in said subdivision,

this obligation shall run with the land and become the obligation of the new owner(s) even though it may have been assessed to a prior owner. In the event of a transfer by judicial sale or sale under a Deed of Trust, any past due and unpaid road maintenance fees shall be paid by the party forcing the sale of the lot. This section does not apply to the Declarants should they reacquire title through judicial sale, Deed of Trust sale or by voluntary sale from owner. See paragraph number 4 below.

3. If the owner of any lot is in default in the payment of any assessments, including interest and cost of collection, in addition to any other means of collection, the Property Owners Association may bring an action at law against the owner personally obligated to pay same and may also sell the lot involved at public auction after advertisement once a week for two (2) consecutive weeks, in a newspaper having general circulation in Hampshire County, West Virginia, and after written notice has been mailed, by certified mail, to the owner at the last known address of said owner, thirty (30) days prior to the sale of the lot. Cost of sale, including reasonable and necessary attorney fees, advertising cost, auctioneering fees, recording fees, and other necessary cost shall be paid from the proceeds of the sale before the payment of amount involved. Or, if the owner chooses to pay the assessment before sale of the property, the cost incurred to date of owner's payment of the assessment shall be collected from the owner as a condition precedent to cancellation of the sale.

4. In exchange for Declarants' agreement to install said roadways and rights-of-ways, the Declarants shall be forever exempt from the payment of said annual assessments and maintenance fees and assessment fees as to all lots presently owned by or later reacquired by the Declarants. In the event Declarants should reacquire real estate through purchase at a foreclosure sale or through settlement of owner's default in any contract, note, or deed of trust that owner should be obligated to pay the assessment, Declarants shall not be required to pay any past due assessments that the previous owner may have owed the Association, nor shall Declarants be required in the future to contribute to the maintenance of the roadways.

5. If any one owner owns two or more lots, a separate assessment shall be payable for each lot owned, even though the lots are adjoining lots.

ARTICLE IV USE RESTRICTIONS

1. No signs for advertising of any nature shall be erected or maintained on any lot, except for sale or rental of the property signs, and for directional or informational signs of Declarants.

2. No further subdivision of any lot shall be permitted. However, Declarant reserves the right to subdivide a lot and merge it with another lot(s).

3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot. Consequently, in the construction of a driveway into any lot, a culvert shall be used where necessary in order to alleviate blockage of natural drainage in the construction of said driveway.

Any culvert used in the construction of said driveway shall be, constructed of steel, concrete or corrugated metal, of sufficient diameter to prevent the blockage of water flow but not less than twelve (12) inch minimum diameter and have a minimum length of thirty (30) feet. No parking is permitted upon the subdivision roads within the subdivision at any time. As part of the development of any lot, the owner shall provide adequate off-road parking for owner and his guest(s).

4. Due to the unsightliness of junk vehicles on lots, no motor vehicle which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any lot.

5. Each lot shall be used for residential purposes only and any garage or out building must conform generally in appearance and material with any dwelling on said lot. Use of any lot for commercial purposes, agricultural use or use for any camping activities is prohibited. Household pets, such as dogs and cats are permitted, provided that no owner shall have more than a total of three (3) such animals per household. All such pets must be restrained within the boundaries of the owner's lot, and owner shall not permit his pets to trespass on another owner's lot.

Notwithstanding the prior paragraph, the following uses are permitted, subject to all applicable state and local laws:

- (a) Home occupations conducted by occupant.
- (b) Home gardening by occupant.

6. Not more than one (1) single family residence shall be permitted on any lot. A single wide mobile home (house trailer) shall not be used as a residence on any lot. All residences shall contain a minimum of 1040 square feet of living area on the ground floor, excluding basement, garage, porch, carport, deck or overhanging eaves. All construction must have a masonry foundation. All exterior construction must be completed and closed in within two (2) years after the commencement of construction. All construction within the subdivision must be of good quality, utilizing skilled workmen and good quality materials that are compatible with other materials used in construction on the lot.

7. No building of a temporary nature shall be erected or placed on any lot except those customarily used in connection with building operations. No such building shall be erected or placed upon any lot more than sixty (60) days prior to the start of construction and must be removed from the lot not more than sixty (60) days after the completion of exterior construction.

8. The owner shall maintain, repair and restore, as necessary the exterior of any building or other improvements erected on any lot owned by him. All lots improved or unimproved must be maintained by the lot owner in a neat and orderly condition at all times. No garbage, trash, or inoperative vehicle, or other debris shall be permitted to accumulate or remain on any lot.

9. No building shall be erected closer than fifty (50) feet from the center of the roadway nor closer than fifty (50) feet to the side or rear property lines, with the

exception that where two or more tracts are used together for the construction of one dwelling, then said fifty (50) foot setback shall apply only to the outside lines.

10. All dwellings within the subdivision shall have septic systems that comply with the regulations of the West Virginia Health Department. No free standing toilets, or so called "privies" are permitted within the subdivision.

11. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers and periodically removed from the lot, in accordance with all applicable state and local laws. All trash, garbage, fuel storage tanks, garden equipment, supplies, and stored raw materials shall be kept from the view of the public. Property owners must maintain their property in an attractive condition, the grass, and shrubbery must be kept trimmed.

12. The Declarants reserve unto themselves, their heirs, or assigns and the Property Owners Association, easements for the installation, erection, maintenance, operation and replacement of telephone, and electric power poles, conducts and related equipment, and/or sewer, gas, telephone, cable TV, electric and water lines, and/or the right to grant easements or rights-of-ways therefore on, over and under a strip of land fifteen (15) feet wide along all rights-of ways and along all side or rear boundary lines of any lot, plus sufficient room for guying purposes in addition to easements reserved by any other instruments duly recorded. Nothing herein shall be construed as creating any duty on Declarants to install or maintain any utility services however, as it is contemplated the actual installation will be made at the expense of the utility and/or the owners.

13. Each lot owner shall have an unobstructed and the nonexclusive right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown upon the subdivision plat, the roads have been completed and have not been widened to the full width shown on the plat of survey. The Property Owners Association by 2/3 vote of the Owners attending a duly constituted meeting, may, at its own expense, widen said roads or maintain same as it sees fit so long as the road construction, drainage ditches, culverts, etc., are located within the area designated for the roads rights-of-ways as shown on the plat of survey. The Property Owners Association shall be responsible for maintenance of the subdivision roads. The rights-of-ways shall be subject to the common usage of the Declarants, their heirs or assigns. Travel across all rights-of-ways shall not exceed the speed limit of fifteen (15) miles per hour. No owner shall place or discard trash, garbage, rubbish, debris, or other waste upon the rights-of-ways, roadways, or lands of others, nor shall an owner permit any other person(s) under his control to do so.

14. The use of any snowmobile, dirt bike, all terrain vehicle, or other similar motorized conveyance within the subdivision is prohibited including unlicensed motorcycles.

15. No timber shall be cut upon any lot until the lot is fully paid for, excepting for sufficient area to erect a dwelling house, garage or storage shed,

driveway, or utilities. This covenant is not designed to prevent selective clearing of under brush, dead, or diseased trees.

16. If any lot owner shall violate any of these covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him or them from so doing or to recover damages or other dues for such violation. The Board of Directors, upon a favorable 2/3 vote of its members may act to enforce any violation of a covenant or other term of these covenants. Failure to enforce any provision herein contained shall in no way be deemed a waiver of the right to do so hereafter.

17. The Property Owners Association, by vote of ninety percent (90%) of its members, may make additional rules, covenants and restrictions for the use of the Property, which together with the above, may be enforced by fines or other penalties. By laws may be established by the Association upon 2/3 vote of the owners.

ARTICLE V GENERAL PROVISIONS

1. The Association through its Board of Directors by 2/3 favorable vote, or by 2/3 favorable vote of the Owners attending an annual meeting or a special meeting called for that purpose or any individual Owner, shall have the right to enforce by any proceedings, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarants or Association or by any Owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants, restrictions, and other provisions of this Declaration shall run with and bind the land. This Declaration may be amended by an instrument signed by not less than ninety percent (90%) of the lot owners.

3. Invalidity of any of the covenants, restrictions, or other provisions of this Declaration by judgment or Court Order shall in no wise affect any other provisions, which shall remain in full force and effect.

4. Whenever in this Declaration the context so required, the masculine gender includes the feminine and neuter, singular number includes the plural and the plural number includes the singular.

Witness the following signatures and seals this 23rd day of Sept, 2003.

Donald S. Lurney (SEAL)
DECLARANT

Marilyn A. Lurney (SEAL)
DECLARANT