

**EVANS ACRES SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EVANS
ACRES AS SAID TERM IS HEREIN DESCRIBED

1. **APPLICABILITY TO REAL ESTATE** This Declaration of Covenants, Conditions and Restrictions for Evans Acres is applicable to those certain seven lots as shown on the Plat of Evans Acres by Straight Line Surveys dated January 7, 2009, and recorded in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Plat Book _____, at page _____, and including Lot 1 and 2 depicted thereon but which descriptions shall be filed upon sale. This Declaration of Covenants, Conditions and Restrictions may also be applicable to such other real estate as may be added and made applicable by virtue of an additional document adding additional real estate to said subdivision as the developer, the Declarant herein, JDM Excavating & Construction, LLC from time to time to add to said subdivision. There is, however, no obligation of the developer to include, as being restricted by this Declaration, any of the adjoining land of the Declarant which is now owned or which may be hereafter acquired by the Declarant. The Declarant may, however, add additional real estate to be encumbered by these Declarations of Covenants, Conditions and Restrictions whether said real estate is owned by the Declarant or otherwise. Such additional lots or real estate may be subject to modified covenants, conditions and restrictions so long as the additional real estate is subject to equivalent obligations of financial support for the Owner's Association herein described.
2. **USE OF LAND** The land hereby conveyed is restricted to residential use only, and no commercial, industrial, or manufacturing business, building or enterprise shall be constructed, maintained, or operated upon said land.
3. **COMMON AREA PROPERTY RIGHTS** Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot.
4. **RULES** The Association shall have the right to prescribe reasonable rules and regulations governing the use of the Common Areas.
5. **ASSOCIATION MANAGEMENT** The association may improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore and maintain the Common Areas, including, by way of illustration, and not limitation, streets, roadways, sidewalks and parking areas, and all trees, shrubbery and other plants and landscaping together with any items of personal property placed or installed thereon, at the cost and expense of the Association.

Such costs shall be assessed and applied equally to each lot owned in the Subdivision. Assessments shall be determined from time to time by the Board of Directors in such manner as shall be set forth in the bylaws. Written notice of the amount of assessments

and the due dates shall be provided to the owners not less than 30 days prior to the due date if payable annually or not less than 10 days prior to the due date if payable monthly. Failure to provide such notice shall not relieve any owner from the obligation to pay such assessment. The first assessment period shall not commence earlier than the day of conveyance of the first lot or residence to an owner, other than Declarant. Original lots and tract owned by Declarant, its successor or assigns, that have never been conveyed a third party, shall not be subject to assessment by the Association. Upon demand and for a reasonable charge, the Board of Directors shall furnish to any owners certificates setting forth whether the assessments and charges on their residences are paid and, if unpaid, the amount unpaid. The certificate when signed by an officer or director shall be binding upon the Association as of the date of issuance.

6. **STRUCTURES** Except as otherwise permitted the provisions of this Declaration, no Structure shall be erected, placed or maintained on an Common Area except: (i) Structures designed exclusively for the common use of Owners; ad (ii) drainage, storm and utility systems. The Common Areas may be graded, planted with trees and shrubs and other plants placed and maintained thereon for the use, comfort and enjoyment of the Owners or for the establishment, retention of preservation of the natural growth or topography of the Common Areas.

The roads and rights of way constructed and to be constructed by the Grantors shall be for the use and benefit of all owners of the property whose source of title is derived from the Grantors. The Owners of various parcels of land in the Subdivision shall organize a property owners' association in accordance with Chapter 36B of the West Virginia State Code, which shall thence forth be responsible for the maintenance of said road and rights of way and the roads and rights of way shall be kept in good condition for the use and convenience of all such owners. The road maintenance fee shall not exceed that as permitted by law (WV Code §36B-1-203) for an exempt community, and is set initially as Six Hundred (\$600.00) Dollars per year.

7. **RESERVE FUND** The annual assessments shall include an amount adequate to establish a reserve fund for replacement of capital improvements in the Common Areas. A proportionate amount of each assessment payment received by the Association applicable to the reserve fund shall be received and held by the Association in trust, and shall be held separate and apart from other general maintenance Association funds. Such trust funds shall be retained by the Association and used only for capital improvements and/or replacement of Common Areas facilities of the Association upon the approval of a majority of Owners.
8. **ANNUAL ASSESSMENT** The Board of Directors may fix the amount of the annual assessment. The annual assessment may be increased more than ten percent of the annual assessment for the previous fiscal except by an affirmative vote of two-thirds of each class of Members who are voting in person or by proxy at a meeting duly called for

this purpose.

9. **SPECIAL ASSESSMENT** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, and/or to meet any other emergency or unforeseen expenses of the Association provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. No such Special Assessment shall be permitted which would cause a violation of the intended exemptions from the fees penalty by WV Code §36B-1-203.

10. **EASEMENTS AND ACCESS** The authority of the Association with respect to Common Areas is subject to easements for utilities and other purposes as described on the Subdivision Plat.

The Association is granted the right of access in and upon all of the tracts in the Subdivision for the purpose of carrying out its lawful duties and responsibilities, including providing necessary utilities, services and similar purposes, as well as administrative responsibilities; provided, however that the Association, its officers or agents, shall limit entry or access to established easements shown on the Plat wherever possible, and shall not unreasonably interfere with the Owner's improvements or use and enjoyment.

11. **ACCESS TO LOTS** There shall be no access to any lot on the perimeter of the Development except from designated roads within the Development.
12. **LICENSED CONTRACTORS** All Evans Acres residences shall be constructed by licensed contractors.
13. **BUILDING RESTRICTIONS** Any structure to be used as a residence must have a minimum of 2,400 finished square feet of living space, excluding the basement and garage. Single story (excluding basement) homes are permitted and must have more than three (3) separate roof lines in order to maintain a consistent and appealing look throughout the property. No Structure shall be commenced, erected or maintained on any Lot nor shall the exterior appearance of any Structure on any Lot be changed or altered, nor shall the natural state of any area of any Lot be disturbed or altered after completion of construction of the improvements thereon, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any such Structure, until the plans and specifications showing the nature, kind, shape, dimensions, materials, floor plans, color scheme, location exterior plans and details, paving plans and location, landscaping details, proposed topographical changes, together with a designation of the

party or parties to perform the work have been submitted to and approved in writing by the Architectural Control Committee. Upon approval of the Architectural Control Committee, once construction commences, completion of the exterior of any structure must occur within a twelve (12) month time period. In the event the Architectural Control Committee fails to approve or disapproves such design and location in writing within thirty (30) days after said plans and specifications have been received by it, approval will not be required and this Article will be deemed to have been fully complied with.

Modular homes ("Homes constructed in a similar construction fashion and technique as on site built homes which are not subject to Department of Motor Vehicle Title Certificated and which are not designed for future mobility with steel frame supports as in double wide mobile home construction") shall be permitted, provided that they have wood, masonry, vinyl or masonite siding, asphalt shingle roofs, tile roofs, or slate roofs and are installed on a permanent foundation and with all apparatus used for transportation removed therefrom and otherwise complying with this Section 13 Building Restrictions.

14. **FOUNDATIONS** Any exposed foundation must be stone, brick, or split-faced decorative block in order to keep the appearance and aesthetics of the homes in a consistent and pleasing manner. A sample of these must be submitted to the Architectural Control Committee, along with other required items, before construction commences, and must have the approval of the Architectural Control Committee.

All conventional buildings and structures erected upon said land shall be upon a solid foundation, (poured concrete, concrete block, solid stone, or "floating foundation" technology) and shall be construed of good finished materials and constructed in a good and workmanship like manner. Tarpaper, rolled siding, plywood, particleboard, and concrete are especially agreed not to be considered as finished materials nor any other material which may cause a public nuisance. Every building erected upon said premises and the exteriors of the same.

15. **UTILITIES** Exterior utility lines of every kind shall be placed and kept underground up to the walls of the buildings they serve.
16. **SEWAGE** No dwelling shall be occupied on any lot unless there is constructed with it a septic system for the disposal of sewage, which septic system must be approved by the West Virginia Department of Health.
17. **RESTRICTIONS ON LOTS** The land hereby conveyed is restricted to residential use only, and no commercial, industrial, or manufacturing business, building or enterprise shall be constructed, maintained, or operated upon said land.

No sign of any kind shall be displayed to the public view on any lot except used by an

owner, a builder or a Realtor to advertise the property during the construction and/or sale period.

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, and other wastes shall not be kept except in sanitary containers and removed every seven (7) days. Trash and refuse shall not be allowed to accumulate on the lands covered by these Restrictions and no junk, junked vehicles, or parts thereof, or vehicles not in current use shall be kept or stored thereon. All normally licensed vehicles must display current license tags. No motor oils or toxic materials can be used for dust control on roads.

There shall be no trailers, buses, mobile homes, pre-fabricated all-metal homes, or any derivative of the foregoing, situate on any lot as a residence or for storage, either temporarily or permanently. All residences must comply with Section B hereof (Building Restrictions).

18. **FENCES** No fence, wall or hedge shall be placed or permitted to remain on any lot on the street line or which said lot fronts to the limits of the front set back line. Only fences in aesthetic harmony the exterior design of the residential development shall be constructed, and no fence shall exceed 6 feet (72") in height. Fencing located along the roadways must be of wood construction while metal fencing may be used along the side lot lines and rear lot lines.
19. **LAWN CARE** The use of motorized lawn mowers, lawn tractors, grass trimmers, garden tiller and other motorized (including but not limited to: electric and gasoline powered engines) lawn and garden maintenance equipment shall be prohibited before 9:30 a.m. on Sundays, nor after 9:30 p.m. and before 7:00 a.m. on any day.
20. **PETS** Single family residents consisting of five acres or less may not have more than two dogs and cats may be kept by each lot owner in the existing Development. No other animals of any kind (other than indoor pets such as fish and birds) shall be kept in this section of the Development. Animal pens and outside dog houses are strictly prohibited.

No animals, fowl or reptiles of any kind shall be raised, bred or kept on any lot or tract or in any building or common area, except that two (2) of dogs, cats or other common household-pets may be kept in lots or in buildings, subject to rules and regulations adopted by the Association, provided that such pets are not kept, bred or maintained for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property upon three days written notice from the Board of Directors of the Association.

21. **ROOF STRUCTURE** Antennas may extend only eight feet (8') above any roof line unless otherwise specifically permitted by the Architectural Control Committee. Roof-mounted mechanical and solar heating and cooling devices must be screened from the

view of adjacent houses, streets, and roadways and are subject to the height limitations. Roofs with combustible wood shakes or shingles are prohibited, as is flashing and other materials that are bright or reflect light onto neighboring properties, Tin is prohibited, and standing seam would need to be reviewed and approved by the Architectural Control Committee before allowed.

22. **ANTENNAS AND DISHES** Exterior antennas and satellite dishes shall not be permitted on any Lot except for digital satellite system, eighteen inches (18") in diameter or smaller, with Architectural Control Committee approval in writing.

A restriction contained in this Rule shall be deemed to impair the user's ability to receive signals from a Provider in compliance with the restriction would unreasonably delay or prevent installation, maintenance, or use an Antenna System, unreasonable increase the cost of installation, maintenance or use of an Antenna System or preclude reception of an acceptable quality signal.

23. **LIGHTS** Outside security lights and spot or flood lights shall be directed downward so that they do not significantly illuminate any ground surfaces outside of the subject property line. Direct view fixtures with obscure lenses shall have maximum 60 watt frosted incandescent source (or equivalent output). Direct view fixtures with clear or tinted lenses shall have maximum 40 watt decorative incandescent source.

24. **NOXIOUS OR OFFENSIVE THINGS/NOISE AND NUISANCES** No noxious activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals or devices or thing of any sort whose normal activity or existence is, in the opinion of the Association, in any way noxious dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the value of other property in the neighborhood by the owners thereof. No offensive trade or activity shall be carried on upon any Lot nor anything be done thereon which may be or become an annoyance or nuisance. Without limiting the generality of the foregoing, there shall be no outside wood burners, electrically amplified speakers, horns, whistles, sirens, bells, amplifier, or sound device, except devices as maybe used exclusively for security purposes, shall be located, installed, maintained upon the exterior of any dwelling or upon the exterior of any improvements constructed upon any Lot.

25. **PROPERTY MAINTENANCE** It shall be the obligation of each lot Owner to maintain said Lot and all improvements thereon. Upon the failure to do so, the Association may in the interest of the general welfare of all the Owners of the Property, provide such and assess the cost thereof against the Lot Owner, the non-payment of which shall constitute and create a lien against the property. Such maintenance shall include, but not be limited to, periodic painting of exterior building surfaces and trim, repair and maintenance of gutters, downspouts, roofs, shrubs, lawns, walks, driveways and other exterior

improvements. The Association shall not undertake such maintenance without resolution by the Board of Directors of the Association or by the Environmental Control Committee and not without reasonable notice to the Owners of any Lot or Improvement proposed to be so maintained. The failure of any Owner to re-paint or re-stain the exterior building surface and trim of his living Unit within five (5) years of its original painting or stain or most recent re-painting or re-staining shall create the conclusive presumption that such re-painting or re-staining is in the interest of the general welfare of all Owners of the Property.

No lot owner shall relocate and/or divert any stream bed nor construct any stream crossing without approval of the appropriate governmental body exercising in jurisdiction over the such matters, and the grantors herein. No driveway may be constructed on any lot without installation of appropriate and required culverts. Repair of roadway drainage caused by failure to do so shall be the sole responsibility of the owner of the lot causing improper drainage.

26. **REPLACEMENT OF DESTROYED BUILDINGS** Any dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided however, that in no event shall such debris remain longer than six (6) months.
27. **INSECT, WEED AND FIRE CONTROL** Clean Lots. In order to implement effective insect, weed and fire control, or remove nuisances, the Association shall have the right to enter upon any Lot upon which a building has not been constructed and personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association detracts from the overall beauty, setting and safety of the existing development. Such entrance for the purpose of moving, cutting, clearing or pruning shall not be construed as a trespass. The Association and/or its agents may likewise enter upon such land to remove any trash which is collected on such Lot without such entrance and removal being deemed a trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to mow, clear, cut or prune any Lot not to provide garbage or trash removal services. The cost of carrying out the provisions of this paragraph shall be assessed against the Lot Owners and said bill shall be paid in full within thirty (30) days of assessment. Unpaid assessments shall be a lien against the property.
28. **RESERVE FUND** The Declarant may establish or the Homeowner's Association may establish a Reserve Fund over and above the annual costs or maintenance and repair of the roads and upkeep of the common areas, to be used for the black topping of the surface of the roads, if and when applicable. Said fund shall be established at the discretion of the Declarant or the Homeowner's Association and which fund may not be used for the

purposes of general maintenance of the road ways.

29. **ARCHITECTURAL REVIEW** The Architectural Review Committee shall initially be the Declarant so long as the Declarant has the majority votes and the Homeowner's Association or would have the majority votes in the Homeowner's Association if such association had been established. The primary purpose of the Architectural Control Committee shall be to determine that any structure built upon the real estate subject to this Declaration shall be in conformity with the building requirements and which shall generally conform to subdivision standards for appearance. This would include prohibiting structures which are painted with exotic colors or which had architectural features which were in disconformity with the other structures and residences constructed upon the lots of Evans Acres.
30. **COMMITTEE CRITERIA** The Architectural Review Committee shall consider such plans and specifications for approval upon the basis of, among other things, the harmony of external design and location in relation to surrounding Structures and topography, the nature and durability of the materials, quality of workmanship, choice of colors and materials, grade elevations and/or drainage, the ability of the party or parties designated by the Owner(s) to complete the work proposed in accordance with the plans and specifications submitted, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability, etc. In reviewing the plans, the Architectural Review Committee may also consider factors of public health and safety, the effect the proposed work will have on the use, enjoyment and value of surrounding properties, and/or the outlook or view of neighboring properties and the suitability of the proposed improvements or alterations with the general aesthetic values of the surrounding area.
31. **DISAPPROVAL OF PLANS** In any case where the Architectural Review Committee shall disapprove the plans and specifications submitted hereunder, or shall approve the same only as modified or upon specific conditions, such disapproval or qualified approval shall be accompanied by a statement in writing of the grounds upon which such action was based. In any such case, the Architectural Review Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. However, the final decision of the Architectural Review Committee is binding.
32. **APPROVAL OF PLANS** The applicant shall submit for approval two sets of plans and specifications. Upon approval by the Architectural Review Committee: one copy of such plans and specifications shall be retained by the Committee, and the other bearing the approval of the Committee in writing shall be returned to the applicant.
33. **NON-APPROVED STRUCTURES** If any structure shall be altered, erected, placed or maintained upon any Lot, or any new used commenced on any Lot, in violation of the

provisions hereof, such structure or new use shall be removed or discontinued, said such use shall be terminated so as to extinguish such violation. If within fifteen (15) days after notice from the Board of Directors of such violation, the Owner(s) of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same the Association, through its agents and employees, shall have the right to enter upon the Lot and to take such steps as it deems necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of the Owner(s) of the Lot, and an additional assessment upon the Lot.

34. **COMPLETION OF CONSTRUCTION** Upon completion of construction of any structure in accordance with the provisions hereof, the Architectural Review Committee, upon request of the applicant shall issue a Certificate of Compliance in form suitable for recordation among the Land Records of Mineral County aforesaid, identifying such structure and the Lot on which such structure is placed and stating the structure has been completed pursuant to the terms hereof. Preparation and recording of such Certificate shall be at the expense of the applicant. An Certificate of Completion issued pursuant hereto shall be *prima facie* evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith, and for value, or as to any title insurer, such Certificate shall be inclusive evidence that all structures on the Lot noted in such certificate comply with the provisions hereof.

THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

35. **DEFINITIONS** "Association" shall mean Evans Acres Association, Inc., a West Virginia corporation incorporated by Declarant as a nonprofit corporation, and that Association's successors and assigns.

"Declaration" shall mean this "Declaration of Covenants, Conditions and Restrictions" for "Evans Acres Subdivision.

"Articles of Incorporation" shall mean the articles of incorporation of the Association, as the same may be amended from time to time.

"Member" shall mean any person or legal entity who, by right of purchase, is a member of the Association.

"Owner" shall mean the record owner (excluding the Declarant or its successors or assigns as Developer), whether one or more persons or entities, of equitable or beneficial title (and legal title) to a lot or "residence". "Residence" as used herein, shall include "lot". Owner shall not include the purchaser of a lot under an agreement for sale, installment contract or other executory contract for the sale of real property; shall not include persons or entities having an interest in a lot only as a security for the performance of an obligation; and shall not include a lessee or tenant of a lot or dwelling.

The owner may, however grant the person living on the lot, or purchasing the lot under an agreement or contract, the right to act in every capacity on his behalf.

36. **ORGANIZATION** The Association is to a nonprofit corporation under the laws of the State of West Virginia and is charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, and this Declaration. Neither the articles of incorporation nor bylaws shall for any reason be amended or otherwise changed or interpreted to be inconsistent with this Declaration. In the event of an inconsistency between the articles of incorporation or bylaws and this Declaration, this Declaration shall govern.
37. **BOARD OF DIRECTORS AND OFFICERS** The affairs of the Association shall be conducted by the Board of Directors, duly elected by the members, and such officers as the directors may elect or appoint, in accordance with the Articles of Incorporation and Bylaws, as same may be amended from time to time.
38. **POWERS AND DUTIES OF THE ASSOCIATION** It is the intention of the Declarant that the Association own, repair, manage, operate, and maintain the common areas and open space and improvements thereon in the development known as Evans Acres (all Units), according to the plat or plats thereof to be placed in the Office of the Clerk of the County Commission of Mineral County West Virginia, and it is the intention of the Declarant to have the Association supervise the performance of such duties, to maintain and create active and passive facilities, to supply, basic services such as, but not limited to, grounds keeping, and any other community facilities which the Association deems necessary or advisable; and it is the intention to give the Association the greatest possible flexibility in management so that as much as possible of the assessments collected pursuant to Sections 6 through 9, inclusive, of this Declaration will be used for these purposes and as little as possible be expended in administrative costs.
39. **THE ASSOCIATION RULES** By a majority vote of the Board of Directors, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of any area by any owner, by the family of such owner; or by any invitee, licensee or (unless there is determined to be a logical and reasonable necessity for distinguishing the rights, duties, obligations and benefits of owners) and shall not be inconsistent with this Declaration, the Articles of Incorporation or the Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner and may be recorded. Upon such recordation or delivery, said Rules shall have the same force and effect as if they were set forth in and were part of the Declaration.
40. **PERSONAL LIABILITY** No member of the Board of Directors, or any committee of the Association, or an officer of the Association, or any agent of the Board of Association

shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission error, or negligence of the Association, the Board, its agents or any other representatives or employees of the Association or any other committee, or any officer of the Association, provided that such person, committee, or agent has, upon the basis of such information as may be possessed, acted in good faith without willful or intentional misconduct.

41. **MEMBERSHIP** Every owner of a lot within the development shall automatically be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. A membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of a lot to a new owner, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer of membership shall be void and shall not be reflected upon the books and records of the Association. The Association shall record the proper transfer of ownership upon the books of the Association, thus effecting the issuance of a new membership to a new owner. It is the responsibility of the new owner to notify the Association in writing of the purchase of a lot, prior to such notification, the Association is entitled to rely on its books and records showing the true owner of a lot.
42. **VOTING RIGHTS** The owner or owners of a residential lot shall be entitled to one (1) vote in Association meetings. The Declarant shall have two votes per lot owned, whether initially described in Section 1 above, or added in accordance therewith, or a lot sold and reacquired by the Declarant. It shall also include future lots added to the addition by a writing permitted to be added in accordance with Section 1 above. When more than one person holds an interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast for any lot. Any notice for Association purposes need only be furnished to the first named owner on the recorded document evidencing ownership, or to such other persons as that owner may direct in writing to the Association. A single notice sent to a person owning more than one lot shall be sufficient.
43. **VETO RIGHTS** Whenever the Declarant shall own at least four lots currently owned or in the future added subject to this Declaration, including lots subsequently added or reacquired, Declarant shall have the right to veto finally or provisionally the decisions of the Association and may thus cause the Association to reconsider its acts or proposed actions.
44. **REMEDIES OF THE ASSOCIATION** Each owner covenants and agrees to pay to the Association the assessment provided for herein on or before the due date thereof as established by the Board of Directors and agrees to pay interest at 12% per annum on

unpaid amounts after the due date and to the enforcement of the assessments in the manner herein specified. In the event the Association employs attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declarant, each owner shall pay reasonable attorneys' fees and costs thereby incurred in addition to any other sums due or any other relief or remedy obtained against such owner. In the event of a default in payment of any assessment when due, the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or equity.

45. **SUIT** The Board of Directors may cause a lawsuit to be commenced and maintained in the name of the Association against an owner to enforce the payment of any delinquent assessment. Any judgment rendered in any such action shall include, without limitation, the amount of the delinquency, interest, court costs, and reasonable attorneys' fees fixed by the court.
46. **LIEN** There is hereby created a lien against the lot and improvements of each lot owner for the amount of any and all assessments, levied by the Association, together with interest, reasonable attorney's fees and costs of collection. The lien shall be in favor of the Association. The lien shall be imposed upon the lot or lots of each lot owner subject to an assessment, together with any improvements thereon.

The lien in favor of the Association shall be created by the filing of a "Notice of Lien" describing the Lot, naming the owner and the amount of the lien and by a suit in the same manner as a vendor's lien, and may be enforced or such other law as may exist hereafter for the enforcement of such liens.

Sale or transfer of any lot or residence shall not affect the assessment lien or relieve such owner or property from liability for any assessments prior to or thereafter becoming due or from the lien thereof, nor shall sale or other conveyance relieve the previous owner from personal liability for assessments that became due prior to such sale or other conveyance.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his/her lot.

The Association agrees to keep books of account for the performance of its functions as outlined in this Declarant and its bylaws and to allow each lot owner to inspect such books at all reasonable times.

An assessment lien shall be junior and subordinate to the lien of any institutional lender's mortgage or deed of trust lien against an owner's lot, and foreclosure of an assessment lien shall not affect or impair the lien of any such institutional realty mortgage or deed of

trust. Any institutional mortgage foreclosure purchaser or grantee taking by deed in lieu of foreclosure shall take the lot free of the assessment lien and charges that have accrued to the date of issuance of a trustee's deed or deed in lieu of foreclosure, but shall become subject to the assessment lien and all assessments and charges accruing subsequent to the issuance of a trustee's deed or deed given in lieu of foreclosure. An institutional lender's deed of trust under this section shall be deemed to have, to the extent permitted under West Virginia law, rights and remedies equivalent to those granted above to an institutional mortgagee.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunder set its hand and seal the day and year first above written.

JDM EXCAVATING & CONSTRUCTION
LLC

By Richard Dale Evans Jr.
Officer

STATE OF WEST VIRGINIA,

COUNTY OF MINERAL, to-wit:

The foregoing instrument was acknowledged before me this 15th day of May,
2009, by R. Dale Evans Jr., President

 of JDM Excavating & Construction LLC, a limited liability company, on
behalf of the limited liability company.

My Commission expires:

August 28, 2015
(Affix Notarial Seal)

Doris J. Shreve
Notary Public

C:\Documents and Settings\Bonnie L. Bean\My Documents\My Files\Realest\Evans Acres\deed\evans and

