

**LAKEWOOD DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**  
(Reproduced from recorded version found in Book 267, Pages 664-692)

Book 267, Page 664

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** ("Declaration") is made this 2<sup>nd</sup> day of January 1992, by Lakewood Enterprises, Inc., a West Virginia corporation qualified to do business in West Virginia, (hereinafter referred to as the Developer or the Declarant):

**WHEREAS**, Developer is the owner of the real property described in Exhibit A, Attached hereto and incorporated herein by reference. Developer intends by this Declaration to create thereon the Sections 1, 2, and 3 of the community of Lakewood Located in the Frankfort District, Mineral County, West Virginia as a planned community, such community to have a planned mix of land uses, including various housing types, permanent parks, open spaces and community facilities for the benefit of said community, and

**WHEREAS**, Developer desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety and welfare of property owners and residents and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described in Exhibit A together with such additions as may hereafter be charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, to provide a means for meeting the purposes and intents set forth, the Developer has incorporated under the laws of the State of West Virginia the Lakewood Property Owners Association, Inc;

**NOW, THEREFORE**, the Developer declares that the real property described in Exhibit A, and such additional property as may by subsequent amendment be added pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth;

**AND FURTHER**, the Developer hereby delegates and assigns to the Lakewood Property Owners Association, Inc. the powers of owning, maintaining, and administering The common area including roads, administering and enforcing the covenants, conditions, and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents.

**ARTICLE I  
DEFINITIONS**

**Section 1. Additional Property.** Additional property shall mean additional real property subject to Developer's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit B, attached to and incorporated throughout this Declaration by reference.

**Section 2. Association.** Association shall mean Lakewood Property Owners Association, Inc., a West Virginia corporation, its successors, and assigns.

**Section 3. Bylaws.** Bylaws shall mean the Bylaws of Lakewood Property Owners Association, Inc., and are incorporated herein by this reference.

**Section 4. Common Area.** Common Area shall mean all real and personal property identified as such on Exhibit A including without limitation roads and dam now in existence, and any other property hereafter owned or leased by the Association in accordance with the terms of this Declaration for the use and enjoyment of the Members.

**Section 5. Developer.** Developer shall mean Lakewood Enterprises, Inc., its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law.

**Section 6. Development Plan.** Development Plan shall mean the Conceptual Development Plan of intended uses of the Properties as illustrated in Exhibit B hereof, as may be amended from time to time, and as further defined in Article II.

**Section 7. Eligible Votes.** Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

**Section 8. Lot.** Lot shall mean any portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats and survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot shall include any structure on the lot.

**Section 9. Majority.** Majority shall mean those Eligible Votes, Owners, or other groups as the content may indicate totaling more than fifty (50%) percent of the total eligible number.

**Section 10. Member.** Member shall mean a person or entity entitled to membership in the association, as provided in this Declaration.

**Section 11. Notice.** Notice shall mean (a) written notice delivered personally or mailed to the last known address of the intended recipient, or (b) notice published at least once a week for two consecutive weeks in a newspaper having general circulation in Mineral County, or (c) newsletter of the Association delivered personally or mailed to each Member.

**Section 12. Occupant.** Occupant shall mean an occupant of a Lot who is the Owner or contract purchaser or lessee or sublessee who holds a written lease having an initial term of at least twelve (12) months.

**Section 13. Owner.** Owner shall mean the record owner, whether one or more Persons or entities, of the fee simple title to any Lot which is part of the Properties, but excluding any party holding merely as a security for the performance of an obligation. Owner shall include the Developer.

**Section 14. Person.** Person shall mean any natural person, corporation, partnership, trustee, or other legal entity.

**Section 15. Properties.** Property or Properties shall mean all real property which is hereby subjected to the Declaration, together with such other real property as may from time to time be added in accordance with the provisions of Article II.

**Section 16. Quorum of Members.** Quorum of Members shall mean the representation by presence or proxy of Members who hold fifty (50%) percent of the outstanding eligible votes.

**Section 17. Registered Notice.** Registered Notice shall mean any Notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by two other people.

**Section 18. Single Family.** Single Family shall mean a single housekeeping unit which includes not more than three (3) adults who are legally unrelated.

**Section 19. Special Assessment.** Special Assessment shall mean any assessment levied in accordance with the provisions for special assessments in Article IV of this Declaration.

**Section 20. Subsequent Amentment.** Subsequent Amendment shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to impose, expressly

Or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

**Section 21. Supplementary Declaration.** Supplementary Declaration shall mean any declaration of covenants, conditions, and restrictions which may be recorded by the Developer which extends the provisions of this Declaration to Additional Property or which contains such complementary provisions as are deemed appropriate by the Developer and as are herein required for such Additional Properties.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

**Section 1. The Properties.** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Mineral, State of West Virginia, and is more particularly described in Exhibit A.

**Section 2. Additions to the Properties.** Additions to the Properties may become subject to this Declaration in the following manner:

(a) **Additions by the Developer.** The developer shall have the right to subject to this Declaration any Additional Property which lies within the land area represented by the Development Plan, subject to the following restrictions:

1. Additional Property annexed unilaterally by the Developer, with the exception of property identified as Tract 4 on Exhibit B, shall be annexed subject to either this Declaration of Covenants, Conditions, and Restrictions or a Supplementary Declaration which contains all Use Restrictions set forth in Article VIII of this Declaration.
2. Additional Property identified as Tract 4 on Exhibit B may be developed for multi-family residences and annexed unilaterally by the developer subject to the following restrictions:
  - a. Such Additional Property, if developed for multi-family residences, shall be subject to a Supplementary Declaration containing substantially similar provisions as this Declaration, including all Use Restrictions as set forth in Article VIII of this Declaration with the exception of Article VIII, Section 1© concerning proximity to lot lines.
  - b. Any structures and/or common areas provided solely for the benefit of multi-family residences, including without limitation parking facilities or common recreational areas, shall be supported solely from assessments to Member Owners of multi-family residences, and in no event shall such structures and/or common areas become the responsibility of the General Association.

3. No business enterprise shall be unilaterally annexed by the Developer.

(b) Other Additions. Additional land, other than that described above, may be annexed to the properties upon approval of seventy-five (75%) percent of the Eligible Votes of a Quorum of Members.

The additions authorized under subsections (a) and (b) shall be made by filing of record one or more Supplementary Declarations of Covenants, Conditions, and Restrictions with respect to the additional property and by filing with the Association the preliminary plat for such additions.

### **Section 3. The Development Plan.**

(a) Purpose. The Development Plan, illustrated in Exhibit B, is the dynamic design for the staged development of the Properties as a planned community, which may be regularly modified and amended, as provided herein, during the time required to build the community. Because the Development Plan is a temporary design, it shall not bind the Developer to make any of the additions to the Properties which are shown on the Development Plan, or to improve any portion of such lands in accordance with the development plan, unless and until a Supplementary Declaration is filed by the Developer for such property which subjects it to this Declaration. Thereupon, the Developer shall then be obligated to complete development of such area in accordance with the Development Plan currently in effect, unless seventy-five (75%) percent of the Eligible Votes of a Quorum of Members approve a requested change.

(b) Amendments. The Developer hereby reserves the right to add land or to amend the Development Plan for lands which have not been made subject to this Declaration, in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the Properties or to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by giving notice of the proposed changes to the Association.

**Section 4. Merger.** In accordance with its Articles of Incorporation, the property, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the property, rights, and obligations of an association similar in corporate nature and purposes may by operation of law be added to the property, rights, and obligations of the Association as a surviving operation pursuant to a merger. No such merger or consolidations, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Properties except as hereinafter provided. Such merger or consolidation shall require the assent of seventy-five (75%) percent of the Eligible Votes of a Quorum of Members.

**ARTICLE III**  
**LAKEWOOD PROPERTY OWNERS ASSOCIATION**

**Section 1. Organization.**

(a) **The Association.** The association is a nonprofit non-stock corporation organized and existing under the laws of the State of West Virginia, charged with the duties and vested with the powers prescribed by law and set forth in the governing documents, as such may be amended from time to time, provided no governing documents than this Declaration shall for any reason be amended or otherwise changed or interpreted to be inconsistent with this Declaration.

(b) **Subsidiary Corporations.** The Association shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority of the Board of Directors. Without limiting the generality of the foregoing, one or more subsidiary corporations may be formed for the operation and maintenance of any specific area or to perform any function within the Properties; however, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

**Section 2. Membership and Voting Rights.**

(a) **Membership.** Every Person or entity who is Owner of record of any Lot subject to this Declaration shall be deemed to be a Member of the Association. Membership shall be appurtenant to such Lot ownership and shall not be assigned, transferred, conveyed, or separated from ownership in any way. The foregoing is not intended to include Persons, who hold an interest merely as security for the performance of an obligation, including without limitation a mortgage and the giving of a mortgage or other security interest shall not terminate the Owner's membership rights or obligations.

Each Member eligible to vote shall be entitled to one (1) vote for each matter submitted to a vote; however, no Owner, whether one or more Persons or entities, shall have more than (1) membership per Lot owned. In the event a Lot is owned jointly by more than one Person or entity, votes and rights of use and enjoyment shall be as provided herein.

(b) **Voting Rights.** The vote for any membership which is held by more than one Person or entity may be exercised as follows:

(i) The vote of any eligible Member which is a corporation shall be made by such officer, agent, or proxy as the bylaws of the corporation have set forth, or, in the absence of such provision in the corporation's bylaws, the vote shall be made in accordance with the determination of the corporation's Board of Directors.

(ii) The vote of any eligible Member which is any association, other than a corporation, of two or more Persons or entities, including without limitation a husband and wife, may be made by any one of the association members, unless objection or protest

By any holder of such membership is made prior to the completion of a vote, in which case the vote for said membership shall not be counted.

(iii) The vote of any deceased eligible Member may be made by the administrator or executor of the deceased's estate, either in person or by proxy.

(iv) The vote of a fiduciary, including without limitation a guardian or trustee, may be made, either in person or by proxy, only if title to the Lot according membership in the Association is held in the name of the fiduciary.

**Section 3. Developer Control.** The Developer shall have the right to appoint and remove, with or without cause, any members of the Board of Directors of the Association until the first of the following occurs:

(a) The expiration of five (5) years after the date upon which this Declaration is recorded in the public records, or

(b) unless there is an unexpired option to expand the Properties subject to this Declaration, the date as of which seventy-five (75%) percent of the Lots shall have been conveyed by the Developer to Lot Owners other than a Person or Persons constituting the Developer; or

© the date on which the Developer voluntarily relinquished such right by executing and recording a written declaration of intent, which shall become effective as specified in such declaration.

**Section 4. Developer Right of Appointment:** The Developer shall have the right to appoint and remove, with or without cause one (1) member of the Board of Directors after such time as the Developer relinquishes control of the Board as provided in this Article until the first of the following occurs:

(a) unless there is an expired option to expand the properties subject to this Declaration, the date of which ninety-five (95%) percent of the lots shall have been conveyed by the Developer to Lot Owners other than a person or persons constituting the Developer; of

(b) the date on which the Developer voluntarily relinquished such right by executing and recording a written declaration of intent, which shall become effective as specified in such declaration.

**Section 5. Design Review Board.** The Design Review Board shall consist of three or more members, all but one of which are appointed by the Board of Directors, one (1) of which is appointed by the Developer until such time as described in this Article that the Developer relinquished the right of appointment, who shall regulate the external design, appearance, and location of any and all improvements to or on any Lot, in such a manner.

As to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

In furtherance of its powers and duties, the Design Review Board shall:

(a) Review and approve, modify, or disapprove written applications of Owners and of the Association, for improvements or additions to Lots or the Common Areas:

(b) Monitor Lots compliance with design review standards and approved plans for improvements or alterations;

© Adopt design review standards, and adopt and publish procedures for the exercise of its duties, subject to confirmation of the Board of Directors.

(d) The Board of Directors may override an interpretation and decision by the Design Review Committee concerning the adopted and Board of Directors approved Design Review Standards by a minimum of 2/3 vote by the Board of Directors.



## ARTICLE IV COVENANT FOR ASSESSMENTS

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance and operation of the Common Areas and other real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

### **Section 2. Creation of Assessments.**

(a) **Covenant to Pay.** Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association all such annual and special assessments or charges, and any specific assessments against any particular Lot, as are established herein, and which shall be collected in the manner hereinafter provided.

(b) **Property Lien.** Each such assessment, together with interests, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, and shall also be the personal obligation of the person who was the Owner of the Lot at the time of the assessment, and his grantee shall be jointly and severally liable for the portion of the assessment due and payable at the time of conveyance to the extent expressly assumed.

(c) **Manner of payment.** Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents. Unless the Board provides otherwise, the assessments shall be paid in monthly installments.

(d) **Non-waiverable liability.** No Owner may waive or otherwise escape liability for the assessments provided for herein, including, without limitation, by non-use of the Common Area or abandonment of his Lot.

**Section 3. Annual Assessment.** The annual assessment shall be assessed against all Lots, and shall be in an amount appropriate to and used exclusively to carry out the purposes of the Association, and shall include funding of appropriate reserves for future repair and replacement.

**Section 4. Special Assessment.** The Board of Directors may levy special assessments to cover unforeseen or emergency situations in any fiscal year. Provided the total special assessment allocable to any Lot will not exceed three hundred (\$300) dollars in any one fiscal year the special assessment may be imposed by the Board of Directors. Any special assessment which could cause the amount allocable to any Lot to exceed three hundred dollars (\$300) in any one fiscal year may be vetoed by a majority vote of two-thirds.

Of a Quorum, Special assessments shall be paid as determined by the Board, which may permit payment in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 5. Developer's Paving Assessment.** The developer shall be responsible for the initial construction and paving of the common streets and roadways in compliance with recognized standards for design and construction of public roadways paving shall be as recommended by State of West Virginia Department of Highways. Developer shall not be responsible for subsequent repairs and/or improvements. The Owner shall pay to the Developer one thousand eight hundred dollars (\$1,800) for the Owners share of paving expense at such time as street or roadway abutting the street shall be paved by the Developer. A property lien shall be reserved in Developer to secure the payment of said paving fee together with interest, costs, and reasonable attorney's fees. Each shall be a charge on the land and shall be a continuing lien upon the property against which all subsequent costs are made in accordance with Section 9 of this article.

**Section 6. Computation of Assessments.** It shall be the duty of the Board of Directors to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution establishing a reserve in accordance with a capital budget separately prepared. The Board shall cause a copy of the budget and the assessments to be levied against each Lot for the following year to be delivered to each Owner at his last known permanent address at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessments shall become effective unless disapproved at a meeting by a vote of a majority of the Eligible Votes of a Quorum disapproved or if the Board should for any reason fail to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, the budget in effect for the then current year shall continue for the succeeding year.

**Section 7. Basis for Assessment.** For general assessment purposes there shall be two classes of assessable Lots, all of which shall be assessed at a uniform rate within each class.

Class I: All Lots which have an Owner other than the Developer shall be assessed at the rate of one hundred (100%) percent of the assessment rate.

Class II: All Lots which are owned by the Developer shall be assessed at the rate of ten (10%) percent of the assessment rate.

**Section 8. Lien for Assessments.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees Actually incurred shall be secured by a lien on such Lot in favor of the Association. Such Lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of ad valorem taxes, or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Developer duly recorded in the land records of Mineral County, West Virginia. All other persons acquiring liens or encumbrances on any Lot after this declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein,

Whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.**

a) Delinquent Payments. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than fifteen (15) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall provide Notice of Delinquency to any Lot Owner who has an assessment delinquent for a period of more than fifteen (15) days and may take any or all of the following actions:

(i) declare the entire balance of such annual or special assessment due and payable in full;

(ii) charge interest from the due date at a percentage rate no greater than the statutory maximum, such rate to be set by the Board for each assessment period;

(iii) give Registered Notice to the Lot Owner that in the event payment with late charge and accrued interest is not paid within fifteen (15) days from the date of such notice, then the expressed contractual lien provided for herein shall attach, and shall include the late charge, accrued interest, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law;

(iv) upon Registered Notice to the Owner, suspend the right to vote or to use the recreational facilities until the assessment and accrued charges is paid in full.

(b) Authority to Bring Action. Each Lot Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agent the right and power to bring all actions against him, personally, for the collection of such charges as a debt, or to foreclose the aforesaid lien.

© Application of Delinquent Payments. All payments of delinquent assessments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessment which are not the subject of suit in order of their coming due, and then to any unpaid installments or special assessments which are the subject matter of suit in the order of their coming due.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 11. Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas to the Association.

**ARTICLE V**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**Section 1. Common Area.** The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management of the Common Area including without limitation roads and dam and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

**Section 2. Services.** The association may obtain and pay for the services of any person to manage its affairs or any part thereof, to the extent it deems advisable, as well as any other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished to or are employed directly by the Association or by any other Person with whom it contracts. The association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish common services, including, without limitation, trash collection, and cable television services.

**Section 3. Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible property and real property. The Board shall accept any roads, bodies of water and appurtenances, beaches, and undeveloped common grounds located within the Properties described in this Declaration that may be conveyed to it by the Developer, subject to the following restrictions:

(a) The Board shall not be required to accept conveyance of any road until the earlier of such time as

1. the amount of assessment to be collected from Members utilizing such roads shall be at least equal to the amount required for maintenance of said roads or

2. at least fifty (50%) percent of the Lots utilizing said roads shall be conveyed by the Developer.

Until such time as any road is conveyed, the Developer shall be entitled to receive from the Association, in order to offset Developer's cost of maintenance, the amount of regular monthly assessments collected from those Members who utilize said road.

(b) The conveyance of any property or real property other than roads, bodies of water and appurtenances, beaches, and undeveloped common ground, may be refused acceptance by the Board upon an affirmative vote of two-thirds. In the event the Developer shall attempt to convey any property or real property other than property as defined in this section, the conveyance may be refused by a vote of two thirds of a majority of a Quorum of voters.

**Section 4. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein, or reasonably to be implied in order to effectively carry out its obligations and duties.

**ARTICLE VI  
PROPERTY RIGHTS AND EASEMENTS**

**Section I. Owner's Easement of Enjoyment.**

(a) Property Subject to Easement. Every Owner shall have a right and easement of enjoyment in and to his Lot and to the Common Area subject to this Declaration and to any restrictions or limitations contained in any Deed or amendment to this Declaration conveying to the Association or subjecting to this Declaration such property.

(b) Extent of Easement. The Owner's easement of enjoyment created hereby shall be subject to the following:

(i) The right of the Association to establish reasonable admission and other fees for the use of Common Areas;

(ii) The right of the Association to suspend the right of an Owner to use the recreational facilities for any period during which any assessment against his Lot remains unpaid for more than fifteen (15) days after notice of delinquency until such default has been remedied;

(iii) The right of the Association to suspend the right of an Owner to use the recreational facilities for a period of not more than ninety (90) days for any other infraction of the governing documents;

(iv) The right of the Association to mortgage any or all of the Common Area with the assent of seventy-five (75%) percent of the Eligible Votes of a Quorum of Members. In the event of a default upon any mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge reasonable admission and other fees as a condition for continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(v) The right of the Association to convey, or transfer all or any part of the Common Area, subject to the prior assent of seventy-five (75%) percent of the Eligible Votes of a Quorum of Members;

(vi) The right of the Association to license portions of the Common Area to Owners on a uniform, non-preferential basis;

(vii) The right of the Association to regulate the use of the Common Area for the benefit of Members.

Telephone. This easement shall include, without limitation, the right to lay, install, and maintain pipe, pipeline, drains, tile, and cable.

(d) Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction or initial sale of Lots shall continue, it shall be expressly permissible for Developer to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole discretion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including without limitation, the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices, and business offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots or residences or other structures on Lots owned by the Developer or its shareholders and the clubhouse complex, if any, which may be owned by the Association, as a sales office.

**Section 5. Release of Developer's Easement.** No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, property conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Developer releasing such right, privilege, or easement by express reference thereto.

**Section 6. Association's Reserved Easements.** There is hereby reserved to the Association blanket easements upon, across, above, and under all property subject to this Declaration for the following purposes:

(a) For access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving any Member of the Association, including without limitation, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, without limitation, cable television, master television antenna system, or security system which the Association might decide to have installed to serve the Members. It shall be expressly permissible for the Association or its designates, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service, provided that the Association or its designee shall be required to restore any affected property to its original condition as near as practicable. The Association or its assign shall give reasonable notice of intent to take such action to all affected Members, unless in the opinion of the Board an emergency exists which precludes such notice. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement;

(b) For the enforcement of any provisions contained in or established pursuant to this declaration.

**Section 7. Association's Right of Entry.** The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter onto any Lot and improvements thereon for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officials or officers, firefighters, ambulance personnel, and similar other emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be after registered notice to the Owner or Occupant of such Lot and shall occur during reasonable hours.

**Section 8. Association's Right to Self-Help.** In addition to any other remedies provided herein, the Association or its duly authorized agents shall have the power to enter upon a Lot and/or any improvements thereon, with the exception of any personal residence, or on any portion of the Common Area to abate or remove, using such force as may reasonably be necessary, any erection, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions.

**Section 9. Amendment.** This article shall not be amended without the express written consent of the Developer; provided, however, the rights contained in Section 4, Developer's Reserved Easement, shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Developer's recording a written statement that all sales activity has ceased.

## **ARTICLE VII BOATING AND LAKE USE RIGHTS, PRIVILEGES, RESTRICTIONS AND REGULATIONS**

**Section 1. Reservation to Developer.** Membership in the Association conveys no boating rights and privileges on or to the lake located on the Properties. All boating rights and privileges are hereby reserved to the Developer and its assigns, to be conveyed in accordance with and subject to the provisions of this Article. The Developer also retains the right to extract water from the lake for irrigation.

**Section 2. Restrictions.** Developer and its assigns may hold, transfer, sell, or otherwise convey boating rights and privileges as it shall in its sole discretion determine appropriate for the benefit, welfare, and enjoyment of Members, subject to the following restrictions:

(a) Lakefront property owners only shall have non-motor (excluding electric trolling motor) boat privileges which shall convey appurtenant to ownership of a lakefront lot; however, only one boat shall be allowed upon the lake per lot at any one time.



(b) All motor boating rights and privileges are specifically reserved to Developer and its assigns. Developer shall issue no more than fifteen (15) permits for motorized boating on the lake in accordance with the rules and regulations established by Developer from time to time.

© The Developer or the Association assumes no liability for accidents or injuries on the lake and are under no obligation to provide life guards for the lake.

**Section 3. Transfer of Lake Use and Boating Rights.** Lake use rights are granted only to lakefront lots, and the lakefront lot is provided with an easement for lake access at the lakefront. A joint easement for both the Lot Owner, Developer, and the Association shall be provided to provide access to the lake for the Owner and to accommodate high water as necessary based on the rise and fall of the lake. Developer, its successors and assigns, may hold, transfer, sell or otherwise issue motorized boating rights and privileges as it shall, in its sole discretion determine, appropriate limited only by the following covenants and restrictions:

(a) Developer may not issue more than a total of fifteen (15) permits for motorized boating.

(b) Motorized boating rights or permits for inboard, inboard/outboard or four-cycle outboard motorized boats may be sold or transferred to lakefront lot owners only, subject to Developer's first right of refusal to purchase on any subsequent sales or conveyances; and, further subject to the reservation by Developer of seven (7) of such fifteen (15) boat permits to be issued to third parties, including Developer's principals.

© No lot owner, other than Developer, shall hold more than one motorized boating permit.

(d) Motorized boating permits may not be shared leased or loaned.

(e) Purchase of a motorized boating permit shall entitle the holder to operate only one motorized boat at a time in addition to the right to operate one non-motor boat conveyed to all lakefront property owners.

(f) All vessels shall be equipped with a fully functional factory installed exhaust system.

(g) No two-cycle engines shall be permitted.

(h) No personal water craft shall be permitted, including, without limitation, jet skis, wet bikes and wave runners;

(i) Motorized boating permit holders shall obtain and demonstrate proof of insurance in the amount of not less than \$500,000.00 per occurrence in January 1992 dollars and incremented periodically for inflation, and shall schedule Developer, and Lakewood Property Owners Association, Inc as named insured. Any motorized boating permit owner who shall cause his insurance to lapse for any reason, or should same be suspended, his motorized boating permits shall remain suspended until the insurance is in full force and effect and evidence of same by Certificate is provided to Developer's agents and/ or those of Lakewood Property Owners Associates, Inc.

(j) The Developer reserves the right to operate a vessel regardless of the type of motor for the Developer's promotional activities, not to exceed 6 days per year.

(k) A holder of a motorized boating permit no longer has the right to operate a boat once such holder no longer owns a lakefront lot at Lakewood Enterprises Subdivision.

**Section 4. Rules and Regulations.** Developer shall have the sole right and authority; but, may, in its sole discretion assign all or any part of its rights and responsibilities, to establish and enforce reasonable rules and regulations for the operation of all boats on the lake to the Board of Directors, who shall enforce the following rules and regulations:

(a) Each vessel which is operated on the lake shall be registered with the association, but no more than one (1) boat permit shall be operated at any one time except as modified in Section 3 of this Article.

(b) The registration of all vessels on the lake. Registration shall include make, model, length, horsepower, color, including a color photograph of the vessel and license number and state of registration.

© No vessel shall be operated at any speed above 45 miles per hour at any time.

(d) Any vessel operated before 9:00 o'clock a.m. prevailing time, or after 30 minutes after sunset, shall be fully equipped with lights and shall not be operated excess of 5 miles per hour.

(e) No structure (buoy, marker, slalom course, etc.) installed by Developer or its assigns may be removed or damaged. Each lakefront lot owner shall assume total responsibility for replacement of any structure damaged by any operator of any vessel registered to the lakefront lot owner.

(h) No motorized vessel shall be operated by any person under the age of thirteen (13) years. Any motorized vessel operated by a person 13 to 16 years of age shall be operated under the supervision by an adult.

(i) No vessel shall be operated in a manner as to deliberately interfere with or obstruct boating on the lake.

(j) All boaters shall be subject to all rules and regulations for safety set forth by the State of West Virginia, the Coast Guard; and any other applicable state or federal agencies, in addition to all rules and regulations established by Developer and/or its assigns.

(k) Any motorized boating permit holder shall forfeit his boating permit and receive a purchase price refund at the sole discretion of Developer after three notices that any vessel registered to that permit has been operated in an unsafe or reckless manner, and has intentionally or carelessly interfered with the rights of other boaters or swimmers, or has violated any applicable rule or regulation.

(l) All boat operators, power and non-power, must attend and show proof of attendance at a boating safety seminar.

(m) All non-motorized boats shall be equipped with a bright colored "blaze" orange flag with a minimum of ½ square foot area mounted at a minimum of 5 feet above the water while the boat is floating.

(n) In the event that Developer assign its rights or some of them to the Association; and, thereafter Developer believes that the agents of the Board of Directors is not enforcing the rules and regulations herein promulgated, or otherwise has not complied with the reasonable requests of Developer or its assigns, concerning lake operations, then Developer reserves the right, in the sole discretion of Developer, to terminate the Board of Directors ability to enforce the rules and regulations, concerning the use of the lake and boating provisions. However, any forbearance or waiver on the part of Developer, or its assigns, from assuming responsibility for the enforcement of the rules and regulations, shall not be deemed a subsequent waiver or forbearance of any failure by the Board of Directors enforce the rules and regulations.

(o) Developer reserves the right to place construction restrictions on, including without limitation, the distance from shore and size of docks, floats, buoys, swimming areas and all structures which may vary with the area of the lake involved. See Exhibit A which may be changed from time to time by the Developer as provided by this Declaration.

(p) The Association or any property owner shall not install any structure including, without limitation, buoys, markers or docks that will interfere with or obstruct boating without written consent of Developer.

### **Section 5. Amendments.**

(a) Developer, and its assigns, reserve the right to expand, refine or amend the boating rights and lake use rights privileges, rules and regulations.

(b) The Board of Directors or the LPOA may not make any amendments or changes to these rights, privileges, rules and regulations without the written consent of Developer, or its assigns;

© Nothing contained herein shall be considered a grant, conveyance or vesting of any rights to the Association or any of its owners and members, unless and until a subsequent deed or other appropriate instrument, is recorded in the Office of the Clerk of the County Commission of Mineral County, West Virginia, reflecting a transfer, conveyance or assignment. Any such assignment, transfer or conveyance shall be with the specific reservation of Developer, and its assigns, of the rights of Developer, as set forth herein.

## **ARTICLE VIII USE RESTRICTIONS**

### **Section 1. Lot Restrictions.**

(a) **Residential restriction.** Each and every Lot is restricted to residential use only, and no commercial, industrial, or manufacturing trade or business, building, or enterprise of any kind shall be constructed, maintained, or operated on any Lot.

(b) **Subdivision of Lots.** No Lot shall be subdivided or its boundary lines changed except that with the prior written approval of the Board of Directors, a Lot may be divided between two Lot Owners to create two larger Lots from the original three, but thereafter may not be used independently or sold, conveyed, or transferred except as an appurtenant to an adjoining Lot. Developer, however, hereby expressly retains the right to replat any Lot prior to conveyance of such Lot by Developer.

© **Proximity to Lot Lines.** No building or structure, and including without limitation covered patio, porch, portico, stoop, eaves, deck, garage, storage shed, or pool, shall be constructed or maintained upon any Lot within thirty (30) feet of the front (abutting the street) or twenty (20) feet of any other line of any Lot other than the property line abutting the lake. No building or structure and including without limitation dwelling, storage shed, or garage, but specifically excluding docks, patios, boathouses, retaining walls, decks and open or covered gazebos shall be constructed or maintained upon any lot within twenty (20) feet of the property line abutting the lake. Dock construction shall also be as defined in Article VII.

(d) Restriction against temporary living facilities. No house trailer, mobile home, basement dwelling, or similar building or structure shall be constructed or maintained on any Lot at any time. No camper, tent, or other recreational vehicle shall be stored, assembled, or parked overnight on any Lot until such time as a residence has been constructed, completed, and permanently occupied.

(e) Lot restriction. No more than one residence shall be constructed on each Lot.

(f) Single family restriction. No residence may be occupied for any period of more than thirty (30) days by more than one single family related by blood, adoption, or marriage, or as defined in Article 1, Section 18.

(g) Leasing. Residences may be leased for residential purposes; provided, however, that all leases shall have a minimum initial term of six (6) months and be in compliance with reasonable rules and regulations as the Board of Directors may promulgate. All leases shall require that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

## **Section 2. Construction and Building Restrictions.**

→ (a) Architectural and Design Standards and Control. No building or structure including without limitation, residence, deck, garage, driveway, gazebo, storage shed, pool, dock, grading, beach or lake access, shall be constructed without the written approval of the Design Review Committee of the Association. Written approval shall be granted only after submission of detailed plans which conform to architectural and design control standards including situation control.

(b) Minimum Standards. Any and all buildings and structures shall equal or exceed Federal Housing Administration Standards (or any other standards determined comparable by the Board) and shall be upon a solid foundation (poured concrete, concrete block, or solid stone) and shall be constructed of good finished materials and in a good and workman-like manner. Tarpaper, rolled siding, and concrete block are specifically agreed not to be considered as finished materials.

© Limits of Construction Period. Every building or other structure (including the exterior) erected upon any Lot shall be completed within fourteen (14) months after the commencement of construction, unless the size of the building or structure exceeds five thousand (5,000) square feet, in which case completion shall occur within twenty-four (24) months after commencement. All construction shall be in accordance with Architectural Standards as set forth in this Declaration and/or by the Design Review Committee.

(d) Value of Residence. If a residence is constructed upon any Lot, it shall have an appraised value of no less than seventy-five thousand (\$75,000) dollars, excluding land value, adjusted annually for inflation with 1987 as the base year and adjusted thereafter based upon the Marshall and Swift Housing Index published annually (or by any other index determined comparable by the Association if the Marshall and Swift index should cease publication).

### **Section 3. Other Restrictions.**

(a) Pets. No animals or livestock, including but not limited to horses, sheep, goats, swine, kine, or fowl, shall be raised, bred, kept, or boarded on any Lot or on the Common Areas, except that no more than a total of five (5) domestic animals or pets may be kept and maintained within the boundaries of each Lot, provided they are not raised, bred, kept, or boarded for commercial purposes, and subject to rules and regulations that may be adopted by the Board of Directors.

(b) Inoperable Vehicles. No Vehicle that is junked or not in current use shall be stored or parked in any open area of any Lot. This provision shall include, without limitation, any automobile, commercial vehicle, truck, tractor, mobile home or trailer, or any other transportation device of any kind.

© Refuse Collection. The Owner of each Lot shall maintain responsibility for the proper collection and removal of all trash, garbage, or refuse of any kind. All garbage shall be kept in insect and rodent proof receptacles, and removed from the Lot no less than once every fourteen (14) day period.

(d) Utilities. The Owner shall commit to private utility company providing sewage disposal and water systems and pay to the private utility all fees including without limitation tap or connection fees, monthly fees for use of the system and other fees for equipment charges including pumps. The Owner shall purchase, install and maintain any and all equipment required by the utility company. No cesspool, septic tank or other sewage disposal system shall be installed, kept, or maintained on any lot.

(e) Signs. No sign of any kind shall be displayed to the public view on any Lot or the Common Area without the resolution or prior written consent of the Board, with the exceptions of (i) customary name and address signs, (ii) one (1) "For Sale" or "For Rent" sign per Lot, and (iii) during the permitted construction period of any building or structure, one (1) sign, with dimensions no larger than twenty-four (24) inches square, identifying the builder. The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Common Area. Notwithstanding this provision, Developer expressly reserves the right to erect reasonable signage on any Lot owned by Developer or on the Common Area.

(f) Prohibited activities. No destructive, noxious, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be permitted on any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity.

Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

(g) Extraction of lake water. The Board shall have the right to restrict the extraction of water from the lake by giving written notice to Lot Owners.

(h) Use of fertilizers and chemicals. The Board shall have the right to restrict the use on the Common Areas or on any Lot of any or all fertilizers or chemicals that the Board may from time to time determine may cause deterioration of the lake water quality.

#### **Section 4. Additional rules and regulations.**

In addition to any and all restrictions herein provided, it is expressly acknowledged and agreed that the Board of Directors may establish additional reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, social invites, and agents until and unless such rule, regulation, or requirement shall be specifically overruled, canceled, or modified by the Board or the Association in a regular or special meeting. The Board shall have the authority to impose reasonable monetary fines and other sanctions, including, without limitation, use restrictions except where use restrictions are prohibited herein, and monetary fines may be collected by lien and foreclosure, as provided in Article IV.

## **Section 2. Obligations of the Lot Owner.....**

(a) Owner's Lot. Owner's Lot and all parts of the residence or any structure or improvements thereon shall be the sole responsibility of the Owner, and each Owner shall maintain and keep the same in good, clean, attractive, and sanitary condition, order, and repair.

(b) Failure to Maintain. In the event that the Board of Directors, by a vote of two-thirds (2/3), determines that (i) any Owner has failed to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of Owner, his family, tenants, guests, or social invites, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary. The Owner shall have thirty (30) days within which to complete the maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within thirty (30) days, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which Owner is subject and shall become a lien against the Lot.

## **ARTICLE X INSURANCE**

### **Section 1. Insurance.**

(a) Risk coverage. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket, all-risk insurance risk insurance is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

(b) Public Liability Coverage. The Board shall also obtain a public liability policy covering the common area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a one million (\$1,000,000) dollar single-person



Limit as respects bodily injury and property damage; a three million (\$3,000,000) dollar limit per occurrence, if reasonably available; and a five hundred thousand (\$500,000) dollar minimum property damage limit.

© Payment of Premiums. Premiums for all insurance on the Common Areas shall be common expenses of the Association. Any or each policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals the full replacement cost.

## **Section 2. Individual Insurance.**

The Owner of each Lot hereby covenants and agrees to carry insurance on his Lot and any improvements thereon. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of any construction. All such repair, reconstruction, or return to the natural state shall be commenced within ninety (90) days of the loss and completed in a reasonable time thereafter unless an extension is granted by the Board of Directors.

## **Section 3. Damage and Destruction.**

(a) Claims. Immediately after the damage or destruction by fire or other casualty to all or part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Determination Not to Repair. Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total Eligible Vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. This sixty (60) day period may be extended if for any reason the amount of insurance proceeds to be paid as a result of the damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, but in no event shall the extension exceed one additional sixty (60) day period. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

© Restoration. In the event it should be decided by the Association that any damage or destruction to the Common Area shall not be repaired or reconstructed, then the Properties shall be restored to the natural state in which it existed prior to the beginning of any construction.

## **ARTICLE XI GENERAL PROVISIONS**

### **Section 1. Duration.**

The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically renewed for successive periods of twenty-five (25) years unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of not less than seventy-five (75%) percent of the Lots. A termination must be recorded in order to become effective.

### **Section 2. Amendments.**

This Declaration may be amended unilaterally at any time and from time to time by Developer (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot or residence or other structure on any Lot subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot or residence or other structure on any Lot subject to this Declaration; (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any Lot or residence or other structure on any Lot subject to this Declaration; provided, however, that no such amendment shall adversely affect title to any Lot unless Owner shall consent thereto in writing.

In addition to the above, this Declaration, except when specifically excluded in Article VII herein, may be amended upon the affirmative vote or written consent of at least seventy-five (75%) percent of the Eligible Votes of a Quorum of Members.

Amendments to this Declaration shall become effective upon recordation in the Mineral County, West Virginia records, unless a later effective date is specified therein.

### **Section 3. Indemnification.**

The Association shall indemnify each and every officer and director against any and all expenses, including reasonable attorney's fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with

respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **Section 4. Interpretation.**

(a) Gender and grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the feminine or neuter.

(b) Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

© Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

#### **Section 5. Perpetuities.**

If any of the covenants, conditions, restrictions, or other provisions of 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 living lineal descendants of George Herbert Walker Bush who is alive upon execution hereof.