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CARL, KEATON & FRAZER PLLC

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE
CAROLINE W. LOY ESTATE PROPERTY, LOTS 1 - 16**

WHEREAS, Caroline W. Loy died testate seised and possessed of certain tracts or parcels of realty situate along the Great Cacapon River, and along both sides of Hampshire County Numbered Route 45/4, in Bloomery District, Hampshire County, West Virginia, which by survey of Frank A. Whitacre, Inc., PS, dated January 11, 1993, was found to contain 498.819 acres, more or less, a copy of said Plat of Survey of the Estate of Caroline W. Loy being of record in the Office of the Clerk of the County Commission of Hampshire County, WV, in Map Book No. 7, at Page 110; and

WHEREAS, by the provisions of the Last Will and Testament of Caroline W. Loy, dated October 30, 1986, probated in the aforesaid Clerk's Office on June 8, 1988, and of record in said Clerk's Office in Will Book 37, at page 783, she did devise all of her realty as follows: a full 7/8 interest to be divided equally between seven of her children, namely Alyn Loy Fletcher, Carolyn Loy Howard, Jacquelin Loy March, Marie Loy Chapman, Sarah Loy Woodward, Elizabeth Loy Fleet, Margaret Loy Barb, and the remaining 1/8 interest to be divided equally between the children of Philip W. Loy, namely, Philip Randal Loy, Damon Andrew Loy, Vicki Loy Drake, and Nicole Loy Haglund, all of which said beneficiaries are now the owners of the above described realty, and shall now be hereinafter referred to as "Declarants" hereunder; and

WHEREAS, the aforementioned heirs and "Declarants" subsequently reached an agreement to partition and divide said realty between them and to that end caused a Revised Survey of the realty to be prepared by Frank A. Whitacre, Inc., PS, dated September 21, 2001, titled Plat of the Division of the Estate of Caroline W. Loy, which said Plat is of record in the aforesaid Clerk's Office in Map Book 9, at Pages 165 and 166, on which said plats the realty was divided into 16 separate lots with the understanding that the realty as divided would be conveyed unto each of the beneficiaries as agreed between the parties in such a manner that each was satisfied and that all of the Declarants felt was a fair and equitable division of the realty; and

WHEREAS, prior to actually granting and conveying each of the 16 lots to the designated persons, and as a strict contingency and conditions precedent for each of the parties to be so bound by this document prior to conveying their respective interests in and to the 16 original lots, all of the parties did also agree that in order to protect the interests of each of the parties hereto and the value of the property, that Protective Covenants and Use Restrictions should be placed upon each of the lots in the division of the Caroline W. Loy realty, which would be binding on the parties, their heirs, successors and assigns, and the parties have now met and agreed to execute this instrument for the purpose of contracting and agreeing to placing the following Declaration of Covenants, Conditions and Restrictions for the Caroline W. Loy Lots on record for the purpose of binding all of the parties hereto and their respective realty by these covenants and conditions, which shall be covenants running with the land; and

NOW, THEREFORE, WITNESSETH this Declaration of Covenants, Conditions and Restrictions for the Caroline W. Loy Estate Lots, 1 through 16, made and entered this 5 day of February, 2008, wherein each of the parties hereto, being all of the owners of same, do now execute this

instrument for the purpose of imposing the following terms, stipulations, restrictions, conditions, etc., upon all of the realty of the late Caroline W. Loy, designated on the 2007 Hampshire County Land Books for Bloomery District as Tax Map 18, Parcel 12, and being more particularly bounded and described as set forth on the above referenced plats of record in Map Book 9, Pages 165 and 166, comprised of Lots 1 through 16, hereinafter referred to as the "property", thereby forever designating and requiring that each of said lots shall be held, owned, possessed, sold, transferred, devised, conveyed, etc., by their respective owners, their heirs, successors and assigns, subject to these covenants, conditions, and restrictions as set forth below, which shall be covenants running with the land.

Declarants hereby declare that all of the Real Property described above, being Lots 1-16, inclusive, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which shall be covenants running with the Property, binding on the parties hereto, their heirs, successors and assigns, and every lot and parcel contained therein, whether or not specific reference is made to this Declaration in any Deed or other instrument transferring or conveying any portion or all of such property. These covenants shall be binding on all parties having any right, title or interest in the described Property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I USE RESTRICTIONS

The following use restrictions shall apply to Lot Nos. 1 through 16 of the Property.

- a) No signs of any nature shall be erected on any lot, except for sale, directional or informational relating to the location of individual lots. This specifically prohibits signs such as "for rent", advertisings, commercial, etc. Maximum size of any sign shall be six (6) square feet.
- b) No owners of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot; consequently, in the construction of a driveway into any lot, a fifteen (15) inch in diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to prohibit blockage of natural drainage. There shall be absolutely no blocking or obstructing at any time as to the rights-of-way serving these lots called Forks Drive (ROW entered off County Rt. 45/4) or Loy Lane (ROW entered off WV Rt. 29) at Lot 15. On Lot 15 the right-of-way is the only entrance off Rt. 29 approved by the West Virginia Highway Department. Any culverts installed shall either meet or exceed the minimum specifications and requirements of the WV Highway Department.
- c) Any motor vehicle which does not have a current license plate or inspection sticker will not be permitted on any lot longer than three (3) months after the expiration date; except or unless if same is stored in a building or shed, or enclosed behind a privacy fence or like barrier where it is not visible to the other lot owners nor from any roadways.

d) Set back lines: No building shall be erected closer than fifty (50) feet from the front property line, nor closer than twenty-five (25) feet to the side or rear property lines, with the exception that where permitted and two or more lots are used together for the placement or construction of one dwelling, then said twenty-five (25) feet setback shall apply only to the outside property lines unless otherwise approved by the Declarants or their assigns. For purposes of this instrument, "front property line" shall be defined as the property line of each lot as it borders on the nearest county road from which access to the lot is gained; and for purposes of this paragraph as to set back lines, as to all lots without county road frontage or lots with county road frontage that for whatever reason is not utilized to gain access to the lot, such as those lots accessed via those two certain rights of way designated as Forks Drive (4 through 8) or Loy Lane (13 through 15), the front property line set back line shall be designated as 50 feet from Forks Drive or Loy Lane on the side of the road on which any improvements or dwellings may be built, as it is the intent of this covenant that no dwellings or buildings be built closer than 50 feet to the roadways in the division. As to Lots 8 and 13 the front set back line shall be 50' from the entire boundary line upon which the right of way (either Forks Drive or Loy Lane) intersects or enters each lot.

e) No trailers, mobile homes, travel trailers or campers shall be placed on a lot except during construction of a permanent residence, and for no longer than two (2) years in that instance. Nothing in this section should be construed to prohibit the placement of "modular" housing which meets HUD standards and local building codes. The residence shall contain a minimum of six hundred (600) square feet of finished living area, excluding basement, garage, and porches. Travel Trailers or campers shall be allowed for up to ninety (90) days per calendar year for recreational use, or may be parked at a dwelling so long as same is not being used as a residence.

f) No portion of any lot may be used as a roadway or a right-of-way to any property not included on the attached reference plat, except this restriction shall not apply to roadways or right-of-ways to any land now owned or hereafter acquired by Declarants, as well as established easements for adjoining land owners.

g) No commercial farming enterprise, commercial farming houses of any variety, or feed lots may be maintained or exist on any lot within the subdivision EXCEPT for Lots 1 through 8. Cattle, horses or other domestic livestock may be grazed, raised or otherwise maintained within the subdivision for personal use only, but NOT for commercial use. Household pets, such as dogs or cats are permitted, provided all dogs and cats must be restrained within the owners lot so as to not trespass on other owners lots. No commercial or other type of dog kennel shall be permitted to house household pets other than those owned by the lot owner. There shall be no more than up to six dogs and ten cats on any lot within the subdivision. Lots 1 through 8 may be used for commercial farming for the raising of crops and the grazing and keeping of livestock. The parties acknowledge that there is a farming lease for Lots 1 through 7 in existence at this time. Provided further, that as to the commercial farming operations to be conducted on lots 1 - 8, they shall be restricted to crop raising and livestock grazing, and shall not be construed to permit commercial buildings/houses for poultry, turkey, etc., nor for commercial swine or other like operations. All other commercial or business

use of the property is prohibited EXCEPT that as to landowners who RESIDE on their lots, the lot owner(s) may conduct such business as he desires from his HOME/RESIDENCE or from a separate building or structure on the lot on which he /she RESIDES, so long as not in violation of the provisions of this or other covenants, and provided further that he/she has no more than two (2) full or part-time employees. Thus lot owners may have a business in their homes or in separate buildings or structures on the lot where they RESIDE so long as it is only operated by the landowner and does not otherwise violate this or any other covenant. No excessive traffic would be permitted, nor any loud or noxious noise or smell, and the business could not be of a nature to be a nuisance to the subdivision. For purposes of this provision only, a vote of a simple majority of the lot owners would have the final determination as to whether a business is a nuisance and should be terminated.

h) The following limitations shall apply (except for Lots 1-8 as set forth above and as described below) to the personal use of cattle, horses, hogs, chickens, turkeys, ducks, geese, or any other feathered farm animals or any other domesticated farm animals or livestock including but not limited to goats, sheep, llamas, donkeys, etc.:

1. For Cow/calf combination and all other domesticated livestock included but not limited to goats, sheep, llamas, donkeys, etc., (except as otherwise specifically set forth below) - three acres of pasture per animal
2. Horses - three acres of pasture per animal
3. Hogs - limit of six animals with a minimum of 500 square feet of fenced area per animal
4. Chickens, turkeys, ducks, geese, or any feathered farm animal shall be limited to 30 animals in any combination.
5. All animals must be contained on owner's property.
6. As to the animal limitations imposed on Lots 1 through 8, which are permitted to have commercial farming operations, then for those lots the total number of animals permitted to graze or be kept on each lot shall be that as recommended by the local West Virginia University - Hampshire County Extension Office, who will have the final say into the number of animals permitted to graze or be held on these lots.

i) All dwellings and other improvements constructed on any of these lots must comply with any and all applicable rules and regulations as set forth by County, State or Federal laws; all dwellings constructed on any of these lots shall at a minimum be placed upon a permanent masonry foundation which may include piers and stilts of a substantial material such as wood or masonry. The owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any lot owned by the lot owner. All lot improvements must be maintained by the lot owner in a neat and orderly condition at all times. No garbage, trash, refuse, junk or debris shall be permitted to accumulate or remain on any lot.

j) All permanent dwellings placed on any lot must have septic systems and wells that comply with the regulations of Hampshire County Health Department. All garbage, trash, refuse, junk or debris must be kept in closed containers.

k) Mineral rights may not be sold separate from the surface rights, but can be leased or developed by the owners of any of said lots.

l) Property boundary fencing must be uniform with the property owner's lot. Front boundary fencing may be upgraded. Any fencing must be maintained in good condition.

m) Lot Nos. 4, 5, 6, 7, and 8 are accessed by that certain 30' wide right of way over the existing driveway or roadway known and designated as Forks Drive, which leads from Hampshire County Route 45/4 into Lot 4, thence traveling in a generally north - northeasterly direction to and through Lots 5, 6, and 7 to the boundary of Lot 8, and which right of way is more particularly located as shown on the above referenced Plat which is of record in Map Book 9, at Page 165, which is by reference made a part hereof for all pertinent and proper reasons; and Lot Nos. 13, 14, and 15 are accessed by that certain 30' wide right of way over the existing driveway or roadway known and designated as Loy Lane, which leads from West Virginia State Route 29 into and over Lot 15, thence crossing Lot 15 in a generally south - southwesterly direction to and thence through Lot 14 to the boundary of Lot 13, and this right of way is more particularly located as shown on the Plat of said lots which is of record in the aforesaid Clerk's Office in Map Book 9, at page 166, which is by reference made a part hereof for all pertinent and proper reasons. These rights of way are to be used only by the above referenced lots as shown on the above referenced plat, and they are non-exclusive rights of way to each of the effected and necessary lots only and said rights of way shall be used for purposes of ingress, egress, utilities, and any and all other pertinent and proper reasons. No other lot owners shall have the right to utilize said rights of way.

n) No maintenance fees shall be levied against any of said lot owners for the upkeep, maintenance, etc. of the above referenced rights-of-way known as Forks Drive and Loy Lane, and all lot owners having the right to use said rights of way shall pay at their own expense and discretion for such repair, maintenance and upkeep as they so choose unless otherwise agreed to between the respective owners. Further, their use of said rights of way shall be done so at their own risk and in the condition they are in as of the date of this declaration.

o) Should any lot in this subdivision be further subdivided, it shall comply with all applicable County and State ordinances and regulations, and shall also be subject to and shall comply with the terms and provisions of this Declaration of Covenants, Conditions and Restrictions of the Caroline W. Loy Estate Lots.

p) If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any such covenant, either to prevent him or them from so doing or to recover damages or other dues for such violation. Failure to enforce any provision herein contain shall in no way be deemed a waiver of the right to do so hereafter.

**ARTICLE II
GENERAL PROVISIONS**

- a) The covenants, restrictions and other provisions of this Declaration shall be considered covenants running with land and shall be binding as to each and every lot (or further subdivision thereof) of the Division of the Caroline W. Loy Estate Lots, and on all of the parties hereto, their heirs, successors and assigns.
- b) The lot owners, by vote of fifteen (15) of the sixteen (16) lot owners, may make additional rules, covenants, and restriction for the use of the property, which together with the above, may be enforced by fines, or other penalties. Provided that each of the original 16 lots in this subdivision shall have one vote, and should any lot be further subdivided then the vote reserved unto that lot shall be divided by the number of lots created. For example, should Lot 9 be divided into 4 separate lots, each lot would have a 0.25 (1/4) vote, and so on, unless the original lot owner would otherwise retain or convey the voting rights pertaining to said lot, provided that in no event shall any lot either in its original or revised condition total more than one vote for purposes of this section.
- c) Breaking of any of the covenants, restrictions or other provisions of this Declaration by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.
- d) In construing this Declaration, the use of the gender or number shall imply the use of any other gender or number as the context may require;
- e) The vote of each property owner may be in person, or by proxy if not present, at the meeting called for such purpose, as set forth in 36B-3-110 of the West Virginia Code (as amended).

**ARTICLE III
SALE/TRANSFER PROVISIONS**

- a) The Declarants hereby contract and agree that if any of the owners of any lot or interest in any lot in this subdivision should ever desire to sell or otherwise transfer or convey in any way their interest in any lot in this subdivision that same shall be done subject to the following provisions:
 - 1. It shall be permissible for any lot owner to sell, transfer, convey, gift, devise, etc. any lot or interest in any lot in this subdivision to the immediate family members and/or the spouses of any lot owner; and the parties acknowledge that it is the hope and intent of all the parties hereto that all of the realty in this subdivision remain in the lineal descendants of Caroline W. Loy for as long as possible.
 - 2. That prior to any lineal descendant of Caroline W. Loy and/or their spouses or former spouses selling, or non-lineal descendant of Caroline W. Loy conveying, transferring, devising, etc., any

interest in any of said realty to a non-family member as contemplated above, that all other lot owners of any lot in this subdivision who is a lineal descendant of Caroline W. Loy, shall have a right of first refusal to purchase the realty under the same terms and conditions as offered to a non-family member for purchase. This shall be accomplished and complied with by mailing a copy of any fully executed real estate sales contract entered into by the seller with a bona fide good faith prospective purchaser, to each of the lot owners who are lineal descendants of Caroline W. Loy, by certified mail, return receipt requested, who would then have 14 days from their receipt of said notice to notify the seller in writing that they either accept or reject the right to purchase said property under the same terms and conditions; should no answer be mailed within 14 days of their receipt of the notice, their right to purchase would be deemed waived; and should more than one qualified owner accept the right to purchase the lot under those terms and conditions, then the seller may choose the individual or individuals he/she wishes to sell to and the successful purchaser would then have 30 days to close from the date of notice that he/she is the successful purchaser. Further, should no lot owner choose to accept the offer, then the seller may then sell said lot to the original non-family member purchaser, provided further that in no event may the property be sold to a non-family member for less than what it was offered to a family member. Further, should any lot owner who is lineal descendant or spouse or former spouse of a lineal descendant of Caroline W. Loy devise, or by intestate descent and distribution law should same pass by operation of law, to a non-lineal descendant of Caroline W. Loy, then that recipient of said lot, either through devise or intestate succession, SHALL be governed by this provision upon their attempt to transfer, convey, etc., their interest in said realty to the same extent as all other lineal descendants of Caroline W. Loy as set forth above. For purposes of proving compliance with the provisions of this article, as to any lot owner who is entitled to exercise the right of first refusal who does not reply with a release or other written refusal to accept their right to match the offer, then the seller would record the mail return receipt signed by said lot owner as proof that they have waived their right to purchase hereunder.

3. The parties also contract and agree that should any lot owner wish to sell his/her interest in the realty of this subdivision, they will first attempt to notify all other lot owners who are lineal descendants of Caroline W. Loy and hopefully make arrangements for the sale of same prior to publicly advertising for the sale, although this shall not be a legal requirement.

4. Although this right of first refusal is reserved only to lot owners who are lineal descendants of Caroline W. Loy, all subsequent lot owners, be they lineal descendants of Caroline W. Loy or not, are subject to the provisions of these covenants and specifically the subsequent resale or transfer of their lots are subject to this right of first refusal, which is deemed a covenant running with the land. The non-lineal descendant would enjoy the same exceptions as to transfer as the lineal descendants are granted as set forth in this Article, and it is always encouraged that should a non-family member wish to sell their interest in the realty that they would do so unto a lineal descendant of Caroline W. Loy to the greatest extent possible. This right of first refusal also applies to spouses or former spouses of lineal descendants of Caroline W. Loy in so far as that should they possess an ownership interest in any of said lots or realty that they are then subject to the right of first refusal provisions before they can sell their interest to a non-family member. In other words, even though a non-lineal descendant may acquire a lot or revised or resubdivided portion of a lot in this subdivision, before

he can transfer or sell same they must comply with the right of first refusal provisions of this Article to the same extent as a lineal descendant of Caroline W. Loy must do; however, they are NOT entitled to a right of first refusal to purchase a lot, as that right is reserved unto the lineal descendants of Caroline W. Loy.

5. This right of first refusal shall be subordinate to any mortgages or deeds of trust liens which any lot owner may place upon the property either for purchase money, or for making improvements, etc., so that no lender is subject to the terms of this Article and the owners may pledge or mortgage said realty and not be subject to the terms of this provision.

ARTICLE IV ENFORCEMENT

a) In the event a dispute shall arise between any of the parties to this Declaration of Covenants, Conditions and Restrictions, any demands, claims or controversies hereto arising out of or relating to these Covenants, or the breach of any term or provision thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement, without court intervention.. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties. If they do not reach such solution within a reasonable time period not to exceed 90 days, and further negotiations would be determined as fruitless by any of the parties, then, upon notice by either party to the other, but again prior to litigation being instigated, all remaining disputes, claims, questions, or differences would then be submitted to non-binding pre-litigation mediation to be conducted by an attorney or licensed mediator authorized to practice in the Circuit Court of Hampshire County, West Virginia. The parties would agree as to the mediator (and should they not be able to agree as to a mediator the parties agree to utilize a very primitive method to select same; each of the parties shall submit the name of the mediator they wish to utilize and place same in a box or hat and then the name of the mediator shall be drawn, and this process shall be repeated until a mediator is retained) and each of the participating parties would pay equally for the costs of mediation. Only upon the failure of mediation to cure the problems would any party be permitted to pursue the action further in the Magistrate or Circuit Courts of Hampshire County, West Virginia. Further, all parties agree that Hampshire County, West Virginia, shall have exclusive jurisdiction over all actions arising from this subdivision.

b) Should the pre-litigation mediation be unsuccessful, then any party may file a civil action in the appropriate court in Hampshire County, WV, to litigate and resolve the issue.

c) The determination by any court that any provision of this Covenant is unenforceable, invalid or void shall not affect the enforceability or validity of any other provisions. This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purposes of protecting and enhancing the value, marketability and desirability of the Property.

d) As these covenants shall not be executed by all of the Declarants at the same time and will be circulated for execution to each of them, it is the specific understanding and agreement that unless

and until each of the Declarants, being all of the lot owners, as set forth below have properly signed and executed this instrument that same shall not be legally binding on any of the Declarants, including those who have already signed. Nor shall said instrument be recorded or relied upon by any of the parties hereto unless and until all of the Declarants have signed same and each of the parties does contractually agree to this arrangement in order to induce the separate signing of this instrument by all Declarants. Should any of the necessary Declarants not sign and execute this instrument within a reasonable time period, or otherwise choose not to execute said instrument, then the entire instrument shall then be considered null and void and of no legal consequence, even as to those lot owners who have signed. Upon full and final execution of this instrument by all Declarants as set forth below, then this instrument shall be legally enforceable as to all lot owners and this instrument shall then be recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia.

e) Upon full and proper execution of this instrument by every Declarant necessary, the parties hereto do contract and agree that they shall then execute separate Deeds of conveyance to each of the individual lot owners for the purpose of partitioning and dividing the Caroline Loy lands pursuant to the mutual agreement of all parties, and these lots shall be taken subject to the provisions of this instrument, which shall be incorporated into the provisions of each deed arising therefrom and thereafter. The Declarants do further state that it is their contract and agreement that they have agreed to the division and partition of the 16 lots as shown on that Plat of the Division of the Caroline W. Loy property of record in the aforesaid Clerk's Office in Map Book 9, Pages 165 and 166, and they are by agreement of all Declarants to be deeded to the following individuals: Alyn Loy Fletcher is to receive a deed for Lots 1 and 13; the four children of Philip W. Loy, namely Philip Randal Loy, Damon Andrew Loy, Vicki Loy Drake, and Nicole Loy Haglund, are to receive a deed for Lots 5 and 12; Carolyn Loy Howard is to receive a deed for Lots 3 and 16; Jacquelin Loy March is to receive a deed for Lots 7 and 15; Marie Loy Chapman is to receive a deed for Lots 8 and 10; Sarah Loy Woodward is to receive a deed for Lots 4 and 9; Elizabeth Loy Fleet is to receive a deed for Lots 6 and 14, and Margaret Loy Barb is to receive a deed for Lots 2 and 11. The Declarants do contract and agree to execute these deeds to the respective lot owners upon execution of this instrument, and each Declarant does hereby agree to be contractually bound to terms of this provision and this instrument.

IN WITNESS WHEREOF, the Declarants have caused this Declaration of Covenants, Conditions and Restrictions for the Caroline W. Loy Estate Lots, to be executed this 5th day of February, 2008.

Alyn L. Fletcher
Alyn Loy Fletcher

Philip Randal Loy by Vicki Loy Drake, his attorney in fact
Philip Randal Loy (child of Philip W. Loy), by Vicki Loy Drake,
his Attorney in Fact