

WARDENS ACRES

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR WARDEN ACRES

WARDENSVILLE, HARDY COUNTY

THIS DECLARATION; made this 15th day of September,
1988 by the Hardy County Rural Development Authority, hereinafter called
"Developer".

W I T N E S S E T H :

WHEREAS, Developer is the owner of the real property described in
Exhibit A of this Declaration and desires to create thereon a planned com-
munity with permanent parks, playgrounds, open spaces, and other community
facilities for the benefit of the said community; and with a planned mix of
housing types, and public facilities; and

WHEREAS, Developer desires to provide for the preservation and en-
hancement of the property values, amenities and opportunities in said community
and for the maintenance of the Properties 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 made thereto (as provided in Article II),
to the covenants, restrictions, easements, 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, Developer has deemed it desirable, for the efficient pre-
servation of the values and amenities in said community, to create an entity
to which should be delegated and assigned the powers of owning, maintaining
and administering the community properties and facilities and administering
and enforcing the covenants and restrictions and collecting and disbursing the
assessments and charges hereinafter created, and promoting the recreation,
health, safety and welfare of the residents, which said entity shall be known
as Warden Acres Community Services Association, Inc.; and

WHEREAS, it is to the benefit and advantage of Developer and its
successors in ownership of said property, that the protective covenants regulatin
the use of such property be established, set forth, and declared to be covenants
running with above described property. These covenants shall not apply to any

other property owned by Developer, even though it may be contiguous with the above described property.

NOW THEREFORE, in consideration of said benefits, the Developer, does hereby proclaim, publish, and declare that all of the following protective covenants shall apply to all of said property and to any subdivision of same by lot or parcel, whether or not the Developer hereafter specifically declares same to be subject to such covenants by recital in any deed of conveyance executed and delivered by the Developer. These covenants shall become effective immediately and shall run with the land described in any deed of conveyance of property which is contained by description in Exhibit A, and be binding upon all persons claiming under the Developer until terminated by operation of law, or as hereinafter set forth:

ARTICLE I DEFINITIONS

Section 1. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire Document, as may be amended from time to time.

Section 2. "Association" shall mean and refer to Warden Acres Community Services Association, Inc., a non-profit West Virginia Corporation, its successors and assigns.

Section 3. "Developer" shall mean and refer to Hardy County Rural Development Authority, their successors or assigns, or the Hardy County Rural Development Authority in conjunction with any successor or assign to all or substantially all of their interests in the development of said Properties.

Section 4. "General Plan of Development" shall mean that plan, as publicly distributed and as approved by appropriate governmental agencies, which shall represent the total general scheme and general uses of land in the Properties, as may be amended from time to time, subject to at least thirty (30) days notice to the Association and approval of the governmental agencies involved.

Section 5. "The Properties" shall mean and refer to all real property which becomes subject to the Declaration, together with such other real property as may be annexed thereto from time to time under the provisions of Article II hereof.

Section 6. "Common Area" shall mean and refer to those areas of land, shown in the attached and recorded exhibit entitled Common Areas and improvements thereto, which are intended to be devoted to the common use and enjoyment of the Members.

Section 7. "Living Unit" shall mean and refer to any portion of a structure, situated upon the Properties, designed and intended for use and occupancy as a residence by a single family.

Section 8. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties, with the exception of Common Area as heretofore defined.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having an interest merely as security for the performance of an obligation.

Section 10. "Occupant" shall mean and refer to the occupant of a Living Unit, who shall be either the Owner or a lessee who holds a written lease having an initial term of at least twelve (12) months.

Section 11. "Development" shall mean and refer to the platted subdivision which is subject to this declaration.

Section 12. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors of Warden Acres Community Services Association, Inc., as same may be amended from time to time.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, and conveyed, and occupied Subject to this Declaration is located in Hardy County, West Virginia and more particularly described in Exhibit A.

Section 2. Additions to Existing Property. Added properties may become subject to this Declaration in the following manner:

(a) Additions by the Developer. The Developer its suc-

cessors and assigns, shall have the right to acquire and bring within the scheme of this Declaration additional properties, in future stages of development, which are contiguous to the lands illustrated in Exhibit A. Nothing herein shall mean Developer must develop the Properties according to the General Plan of Development.

(b) Other Additions. Notwithstanding the foregoing, additional lands may be annexed to the existing property upon approval in writing of the Developer and of the Association, pursuant to a majority of votes of the Owners, who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose.

The additions authorized under subsection (a) and (b) shall be made by the filing of record in the Hardy County Clerk's Office of these or additional Declarations of covenants and restrictions with respect to the additional property and by filing with the Association a General Plan of Development for the proposed additions. Unless otherwise stated therein, such General Plan shall not bind the Developer to make the proposed additions.

(c) Mergers. Upon a merger or a consolidation of another association with the Association its Properties, rights and obligations may, as provided in its Articles of Incorporation, by operation of law be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may by operation of law be added to the Properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restriction established by this Declaration within the existing property, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the existing property, except as hereinafter provided.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of

record to assessment by the Association shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. All members of the Warden Acres Community Services Association, Inc., shall be governed and controlled by the Articles of Incorporation and the By-Laws thereof.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in paragraph 1 with the exception of the developer. Class A members shall be entitled to one vote for each lot in which they hold the interest required by membership by paragraph 1. When more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they determine among themselves, but in not event shall more than one vote be cast with respect to any such lot.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to three votes for each lot in which it holds the interest required for membership by paragraph 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or,

(b) On the 31st day of December, 1999.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each lot in which it holds the interest required for membership under paragraph 1.

ARTICLE IV

COMMON AREA

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 2. Members' Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment in the Common Area.

Section 3. Extent of Members' Easements. The Members' easements of enjoyment created hereby shall be subject to the following.

(a) the right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Area

(b) the right of the Association to suspend the right of an Owner to use the facilities for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days, after notice of same; the right of the Association to suspend the right of a Member to use the said facilities for a period not to exceed sixty (60) days for any other infraction of this Declaration or the Book of Resolutions:

(c) the right of the Association to mortgage any or all of the facilities constructed on the Common Area for the purpose of improvements or repairs to the Association land or facilities, pursuant to approval of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless and instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer, has been recorded.

Section 4. Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area and facilities to the members of his family and to his guests, subject to such general regulations as may be established from time to time by the Association, and included within the Book of Resolutions.

Section 5. Damage or Destruction of Common Area by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby

authorize the Association to repair said damaged area; the Association shall repair said damaged area in good workmanlike manner, in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary to cover the costs of such repairs shall become a Special Assessment upon the Lot of said Owner.

Section 6. Title to Common Area. The Developer may retain the legal title to the Common Area or any portions thereof, until such time as it has completed improvements on the Properties; but notwithstanding any provision hereto, the Developer hereby covenants that it shall convey the Common Area and any portions thereof to the Association. Members shall have all the rights and obligations imposed by the Declaration with respect to such Common Area.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following; (1) annual general assessments or charges (2) special assessments for capital improvements.

Section 2. General Assessment.

(a) Purpose of Assessment. The general assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the improvement, maintenance and operation of the Common Area and facilities.

(b) Basis for Assessment. Each Living Unit which is certified for occupancy, and each unimproved Lot which has been conveyed to an Owner, shall be assessed at a uniform rate. For the purpose of assessment, the term "Owner" shall exclude a person or entity holding an interest merely as security for the payment of a debt or performance of an obligation.

(c) Method of Assessment. Initially the assessment shall be three dollars (\$3.00) per month, payable annually in advance in the amount of thirty-six dollars (\$36.00), to the Treasurer of the Warden Acres Community Services Association, Inc. At the time of the closing of the purchase of a Lot, that portion of the assessment remaining from that date until June 30 shall be

due and payable, and thereafter payment shall be done on June 30 of each year. No Owner who is in default of the payment of the annual assessment lien as of October 1st of any year shall be entitled to vote at any meeting of Members, until same is paid in full. When an Owner sells a Lot, the Association Treasurer shall refund the unused portion of the assessment to the seller. By a vote of two-thirds (2/3) of the Directors, the Board of Directors of the Association may raise or lower the annual assessment upon the basis provided above and/or adopt different payment schedules; however, the annual assessment shall be sufficient to meet the obligations imposed by the Declaration.

Section 3. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year and not more than the next two succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a special meeting duly called for that purpose.

Section 4. Effect on Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date, may, upon resolution of the Board, bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate charged on an "open account," to be set by the Board for each assessment period. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 5. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure shall extinguish the lien of such assessments as to payments which became 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 6. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (1) all properties to the extent of any easement, or other interest therein, dedicated and accepted by the local public authority and devoted to public use; (2) all Common Areas; (3) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges, or liens.

Section 7. Annual Budget. By a two-thirds (2/3) vote of the Directors, the Board of Directors of the Association shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplementary Declarations will be met.

ARTICLE VI

ARCHITECTURAL CONTROLS

The following basic architectural controls are intended to insure that from an aesthetic as well as a quality standpoint, Warden Acres will be Wardensville's finest and most complete family and recreation-oriented residential community.

Section 1. The Architectural Review Board. An Architectural Review Board (ARB) consisting of three (3) or more persons, shall be appointed by the Class B member. At such time as the Class B membership expires, the Board shall be appointed by the Board of Directors of the Warden Acres Community Services Association, Inc.

A majority of the ARB may designate a representative to act for it. In the event of death or resignation of any member of the ARB, the Class B Member or Board of Directors (whichever is applicable), shall designate a successor. Neither the members of the ARB nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 2. Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Properties

and of improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 3. Conditions. No improvement, alternation, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any property or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by the Developer to an Owner, shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence, or other structure shall be commenced, erected, maintained, or improved, altered, made, or done without the prior written approval of the Architectural Review Board.

Section 4. Home Plan Approval. One set of complete prints of the home as well as the proposed lot selection must be submitted to the ARB for approval. Prints must include foundation plan, floor plan, all exterior elevations, location and width of driveway, and projected finish grades following backfilling and landscaping. The ARB shall use as its standard for construction the Building Officials and Code Administrators International, Inc., (BOCA) Basic Building Code. The ARB shall use the most current edition available of the BOCA Basic Building Code in determining the acceptability of any particular building plans which they review for approval.

In addition, actual samples and/or descriptive information on materials, such as brick, stone, siding and roofing, as well as exterior color schemes, must be submitted. Construction may not be started until the builder and/or owner receives a letter of approval from the ARB; one (1) copy of which will be signed by the builder and/or owner and retained by the ARB along with the complete set of prints. Any change of any kind made following the approval must be submitted to the ARB for reapproval.

Section 5. Construction and Inspection. Following receipt of written approval by the ARB for a home on a particular site, the builder shall be permitted to stake the house and driveway location. The ARB shall then inspect and approve the home site before any tree cutting or grading takes place.

During all phases of clearing, grading and construction, builders' and suppliers' vehicles must enter and leave the home site on the intended driveway. There shall be no subcontractor signs, and no signs nailed to

trees. Builders' signs and permits shall be professionally lettered and fastened to four inch by four inch (4' x 4') dark-brown stained posts. Real estate agency signs must be of a design and location approved by the ARB.

All construction debris, stumps, trees, etc., must be periodically removed from each lot by the builder and/or owner, and such debris shall not be dumped in any area within Warden Acres unless approved in writing by the ARB. Following construction and until the house is sold and/or occupied, the builder and/or owner shall keep the home clean and the yard landscaped.

If during or after construction, the ARB finds that the construction does not comply with the approved plans, it reserves the right to require conforming changes to be made. Before such changes shall be required, said homeowner shall be given a hearing before the ARB in order to present any mitigating evidence relating to noncompliance of this article. The cost of said changes, if required, shall be borne by the the builder and/or owner.

Section 6. Outside Materials. Roof color and materials shall be approved by the ARB as stated above. Roof vents and flashing shall be the same or a complimentary color to the roof, and the vents should be installed on the back side of the roof behind the ridges.

Improved surface drives are required.

Section 7. Outside Aesthetic Requirements. Radio transmitting or receiving aerials or antennas (including television), may be installed with prior permission of the ARB. (Television antennas may only be installed when cable service is not available.)

In the event the developer does not provide a Community mail center, the erection, location and design of all mailbox and newspaper receptacles shall be approved by the ARB.

Any yard fencing plans shall also be submitted to the ARB for approval.

The use and location of a construction trailer and/or shed by a builder and/or owner must be approved by the ARB.

Section 8. Procedures. In the event the Board fails to approve, modify or disapprove in writing an application within thirty (30) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Board decision to the Board of Directors of the

Association who may reverse or modify such decision.

Section 9. Miscellaneous. Any change in exterior, including color, materials, alterations, additions, etc., must have prior approval of the ARB.

The ARB also reserves the right to require owners of homesites where construction has not taken place to reasonably maintain the appearance of said property on request, or to pay the Association for such maintenance if the request is not acted on by the owner and/or builder.

All houses and other structures, including driveways and landscaping must be completed within one (1) year after the start of construction, except where such completion is impossible or would result in great hardship to the owner or builders due to strikes, fires, national emergency or natural calamities.

Landscape plans shall be submitted to the ARB for approval and the design of that portion of the yard facing the street must be approved by the ARB before the home is occupied.

ARTICLE VII

USE OF PROPERTY

Section 1. Protective Covenants.

(a) Residential Use. All property designated for residential use shall be used, improved and devoted exclusively to residential use. Nothing herein shall be deemed to prevent the Owner from leasing a living unit to a single family, subject to all of the provisions of the Declaration.

(b) Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to be detrimental to any other property in the vicinity thereof or to its occupants.

(c) Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary disputes, and similar corrective instruments.

(d) No temporary house, and no temporary or permanent storage building, shack, church, mobile home, tent, barn or other outbuilding shall be erected or placed upon said lots to be used for residential purposes.

Said lots shall be used for single family residence purposes only.

(e) No streets, roads or driveways shall be opened through said lots to service adjoining property except as might have been previously provided for by plat or survey duly recorded, or as might hereinafter be specified, except as approved in writing by the Architectural Review Board (hereinafter referred to as ARB) as hereinafter described.

(f) No clearing, grading, building, fence or other structure shall be erected, placed or altered on any lot or parcel until the proposed building plans, specifications, exterior color and/or finish, plot plan showing the proposed location of such buildings or structure, drives and parking areas, and construction schedule shall have been approved in writing by the ARB, its successors or assigns. Refusal or approval of plans, location or specifications may be based by the ARB upon any reason, including purely aesthetic conditions, which in the sole discretion of the ARB shall be deemed sufficient. No alterations in the exterior appearance of any building or structure shall be made without approval by the ARB. One (1) copy of all plans and related data shall be submitted to the ARB for its records.

(g) Whenever buildings erected on lots or parcels are constructed in whole or in part of concrete, concrete blocks, cinder blocks or other fabricated masonry block units, the entire surface of such blocks exposed above finish grade shall be veneered with brick, natural stone, stucco approved by the ARB, or other material approved by ARB.

(h) No lot or parcel of land shall be used as a dumping ground for rubbish, trash, or garbage; nor shall any lot or parcel be used for the keeping or breeding of livestock animals or poultry of any kind, except that household pets may be kept, provided they are not kept for breeding or maintained for any commercial purpose. No noxious or offensive activities shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance to the neighborhood. Garbage and trash containers shall be buried or shall be located abutting the rear of houses or shall be contained within an enclosure. The design and material of said enclosure shall be in keeping with the general appearance of the house and its design shall be approved by the ARB. After homeowners who have violated this provision have been afforded a hearing before the ARB, violations of this covenant shall be subject to a stipulated liquidated damage sum of fifty dollars (\$50.00) for each day

during which such violation continues. The recovery of such damages shall inure to the benefit of the Warden Acres community Services Association, Inc., and shall be used for enforcement of these covenants.

(i) Dogs and cats may be kept as household pets, except that kennels to house more than two (2) dogs are prohibited. As a general guideline, dogs must be controlled and/or restrained in a manner so as not to create a nuisance to surrounding homeowners. The term nuisance will include continued and excessive barking. The ARB, upon receipt of a written complaint, and after a hearing, to determine the facts of the complaint, where both sides are afforded time to state their case, may take whatever action it deems necessary to abate such nuisances, including the imposition of fines of up to fifty dollars (\$50.00) after an individual has been duly warned one time in writing. Upon repeated complaints and after fines have been imposed without result, the ARB may compel owners to dispose of offending animals.

(j) No hunting, trapping, or shooting of firearms of any kind will be permitted on any part of this subdivision, including the lots, common areas, and roads. This provision shall extend to all association members and to the public at large. The properties shall, by this recorded document, be posted from hunting; Violators will be prosecuted as provided by West Virginia Statute.

(k) No single family building shall be located nearer to a street line than indicated by the building lines shown on the recorded plat, nor nearer to an interior side lot line than ten feet (10'). For the purpose of these covenants, eaves, steps and open porches not covered by a roof structure shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of the building or construction on any lot to encroach upon another lot.

(1) No single family detached residential building shall be located on said lot unless said building shall have at least one-thousand (1,000) square feet of heated living space. Any such building which exceeds one (1) story in height, shall have not less than five hundred (500) square feet on the ground floor. No such building shall exceed three (3) stories in height, but nothing contained herein shall be construed as preventing residential buildings designed as "split level", such buildings being ones in which floor levels of habitable spaces are separated so that ground levels are in differing eleva-

tions, and part of said dwelling is three (3) stories in height. In case of split level buildings, there shall be not less than five hundred (500) square feet of heated living space on the two (2) ground floor elevations. The ARB may change these minimums after HUD-FmHA requirements as to income have been met. A detached building not exceeding two (2) stories in height may also be placed on said lots to be used as a garage, storage, and hobby area as approved in writing by the ARB.

(m) Adequate off-street parking shall be provided by the owners of said lots for the parking of automobiles owned by such owner, and said owners agree not to park their automobiles on the adjacent roads and streets as a matter of course. Boats, campers and/or recreational vehicles shall only be parked on said lots or on parcels or streets with written permission from the ARB.

(n) Easements are reserved to Hardy County Rural Development Authority, its successors or assigns, for installation and maintenance of utilities, drainage facilities, storm sewers, and sanitary sewers over the rear ten (10) feet of each parcel of lot, and five (5) feet wide along each side line; with a further easement reserved to cut or fill at a three-to-one slope along the boundaries at all public streets or roads built on this land. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these covenants.

(o) Nothing shall be erected, placed, or altered on any lot nearer to any street than the building set back lines, unless the same be retaining walls of masonry construction, which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to anything which has been approved by the ARB. The exposed part of retaining walls shall be made of brick, natural stone, or veneered with brick or natural stone or other material approved in writing by ARB.

(p) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. The same sight lines

limitation shall apply to any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such triangular area unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

(q) No advertising signs, billboards, or high and unsightly structures shall be erected on any lot or displayed to the public on any lot or parcel, except after written permission of the ARB, its successors or assigns, is obtained. A sign may be used to advertise the property for sale or rent, provided prior approval is obtained from the ARB. The ARB shall be authorized to withhold its approval or consent until being furnished information as to the size, style, and color of any proposed sign permitted hereunder. After a hearing or other means of insuring due process to the offender, violations of this covenant shall be subject to liquidated damage sum of fifty (\$50.00) dollars for each day during which such violations continue. The recovery of such damages shall inure to the benefit of the Association and shall be used for the enforcement of these covenants.

(r) The grounds of each lot (whether vacant or occupied) shall be maintained in a neat and attractive condition. Upon the failure of any owner to maintain his lot (whether vacant or occupied) in a neat and attractive condition, the ARB or its authorized agents or successors and assigns may, after ten (10) days notice to such owner, enter upon such lot and have the grass, woods, and other vegetation cut and debris removed, when, and as often as, the same is necessary in its judgment, and may have dead trees, shrubs and other plants removed therefrom. Such owner shall be personally liable to the ARB for the cost of any cutting, removing of debris, clearing and maintenance described above, and the liability for amounts expended from such cutting, clearing and maintenance shall be a permanent charge and lien upon such lot, enforceable by the ARB by an appropriate proceeding at law or in equity. All costs incurred by the ARB on behalf of such owner shall be reasonably incurred.

Section 2. Exceptions. The Architectural Review Board may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures.

Section 3. Developer's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the First Lot in the Development,

the Developer reserves a blanket easement and right on, over and under the ground within that Development to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. If the ARB determines that the drainage proposal by the Developer is unreasonable or unnecessary, they may require the Developer to correct the problem in another manner, provided the alternative does not unreasonably elevate the cost of the remedy.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each.

Section 2. Amendment. This Declaration may be amended at any time by an instrument signed by not less than seventy-five percent (75%) of the Members of the Association. Any amendment must be recorded, and all amended declarations shall run with the land and be binding on all Owners, their heirs and assigns.

Section 3. Enforcement. The Association, its Representative, an Owner, or the Developer shall have the right to cause enforcement, by any proceeding at law or in equity, of all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplementary Declarations.

The failure to insist, in any one or more cases, upon the strict performance of any of the terms, covenants, conditions, provisions or agreements herein contained shall not be construed as a waiver or a relinquishment in the future of the enforcement of any such term, covenants, condition, provision, or agreement. The acceptance of performance of anything required to be performed, with knowledge of the breach of a term, covenant, condition, provision or agreement, shall not be deemed a waiver; and no waiver of any term, covenant, condition, provision or agreement shall be deemed to have made, unless expressed in writing and signed by the Board or their agents.

Whenever in any of the above covenants and restrictions, a fine or a liquidated damages sum is set, the recovery of such damages shall inure to the benefit of the Association and shall be used for the enforcement of these covenants.

The provisions herein shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the herein described properties. Enforcement of these covenants as to the fines and liquidated damages shall be by the Association and by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both, and against any lot to enforce any lien created hereby; and the failure or forbearance by the Association or the owner of any lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

There shall be, and these is hereby created and declared to be the conclusive presumption that any violation or breach or any attempted violation or breach, of any of the within covenants or restrictions cannot be adequately or exclusively remedied by recovery of damages in an action at law.

Section 4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 5. Zoning. Zoning regulations applicable to property subject to this declaration shall be observed. In the event of any variance between any provision of such zoning restrictions and the restrictions of this declaration, the more restrictive provisions shall apply, provided that they do not conflict with the zoning laws. In the event of conflict, zoning ordinances shall prevail.

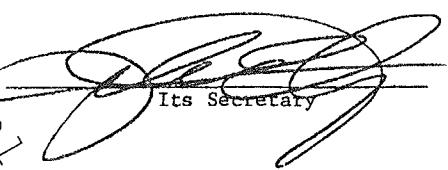
IN WITNESS WHEREOF, the said Hardy County Rural Development Authority, being the Declarant herein, has caused this declaration to be signed by its Chairman and its common seal to be affixed, duly attested by its Secretary.

HARDY COUNTY RURAL DEVELOPMENT AUTHORITY

By: 

Its Chairman

ATTEST:


Its Secretary

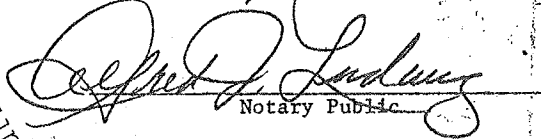
STATE OF WEST VIRGINIA,

COUNTY OF HARDY, to-wit:

Alfred J Ludwig, a Notary Public in and for the State and County aforesaid, do hereby certify that Leslie A. Barr, who signed the writing annexed hereto, bearing date the 12th day of Sept, 1980, for the Hardy County Rural Development Authority, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said development authority.

Given under my hand this 12th day of Sept, 1980.

My commission expires Oct 16, 1988


Notary Public

"EXHIBIT A"

For "Exhibit A" see Plat of Survey of Warden Acres, Capon District, Hardy County, West Virginia, as prepared by Frank A. Whitacre, New Enterprise Land Surveying, Augusta, West Virginia, and recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Plat Book No. 2, at page 104. The contents of said Exhibit A are hereby expressly incorporated into this Declaration of Covenants and Restrictions for Warden Acres, and made a part hereof.

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office September 15, 1980
Covenants and Restrictions
The foregoing ~~XXXX~~ together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Arue K. Hecterman Clerk.